State of Maine

Manual for

Legislative Drafting

Director of Legislative Research
Augusta, Maine 04330
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FOREWORD

This manual is meant for persons drafting and processing legislative text in the State of Maine. To serve this purpose, it assembles specific information in one convenient source in order to minimize errors and to achieve a greater degree of uniformity in the preparation of legislation.

This manual is not intended to replace any of the recognized drafting authorities such as Legislative Drafting by Reed Dickerson and Statutory Construction by J. G. Sutherland, which are basic to all legislative drafting. This manual is, however, intended to provide guidance and a better understanding of those details peculiar to bill drafting in Maine, details which the standard drafting authorities must of necessity avoid. During preparation of this manual, Dickerson's Legislative Drafting, Sutherland's Statutory Construction and manuals from other states were drawn upon for suggestions and ideas, and we gratefully acknowledge our debt to all of them.

A drafter must recognize that no manual is infallible and that in the course of time requirements often change. In this respect, the Director of Legislative Research reserves the right to correct and revise this text periodically in response to changing needs and circumstances. Drafters are urged to use this manual as a general guide only and to consult with the Office of Legislative Research when in doubt as to currently prevailing policy and form.

If you have any questions or suggestions for improving this publication, please feel free to direct them to the attention of the Director of Legislative Research, State House, Augusta, Maine 04330 (Tel. 289-2101).

PART I

INTRODUCTORY MATERIAL

TABLE OF CONTENTS

PART I INTRODUCTORY MATERIAL

PART II BILL DRAFTING, AN OVERVIEW

PART III DRAFTING FORMAT FOR LEGISLATIVE INSTRUMENTS

PART IV STYLE AND GRAMMAR IN DRAFTING

PART V SPECIALIZED DRAFTING PROBLEMS

APPENDICES

CHAPTER 1

INTRODUCTION

> Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning....
>
> Chase v. Edgar (Me.)
>
> 259 A2d 30, 32 (1969)

In order for our system of government to operate effectively, it is essential that those making the laws and those to whom the laws are directed have a clear line of communication. To a great extent, rules of law help to fashion people's primary conduct, by guiding them in everyday affairs and by advising them, in advance of any dispute, what their primary duties, powers, corresponding rights and liabilities are. Uncertainty in the law can only tend to disrupt people's primary conduct. That uncertainty is, more often than not, the result of a poorly written law.

In order for the quality of our laws to improve, all the processes involved in converting a meritorious idea into an effective law must employ experts. A law which is carelessly or inaccurately drafted may be incomprehensible, unenforceable or even invalid. To help prevent these problems, the Office of Legislative Research was established in 1947: "To furnish to the members of the Legislature the assistance of expert draftsmen qualified to aid the Legislature in the preparation of bills for introduction into the Legislature."

The following chapter explains in more detail the responsibilities and functions of the Legislative Research Office.

Drafters within the office have accumulated and developed a set of standards and procedures which will aid in drafting legislation for presentation to the Maine Legislature. These standards and procedures help not only drafters, but private citizens, administrative officials and courts as well, by saving time and lending uniformity and consistency to the drafting process. More important, they improve the quality of the end product as a vehicle for carrying out the legislative will. This manual is a publication of the guidelines, formal and informal, followed by drafters within the office.

Part II provides a general background for the drafter engaged in the initial drafting stage - the research phase. Any drafter should be aware of certain categorical limitations placed on the legislative process. Chapters 1 to 6 of Part II describes what these limitations are, including limitations imposed by the Constitution, statutes, rules or legal opinions. Chapter 7 of Part II offers a brief outline of the various steps which a drafter should follow in preparing to write a bill or other instrument.

Parts III and V give examples of various types of instruments, standard forms and standard language frequently used by drafters. Part III sets out the form for standard language used in the various types of instruments described in that Part. Part V sets out the form for standard language in special situations. Although it would seem proper to assume that when the Legislature says different things it means different things, and that when it says the same thing it means the same thing, frequently language is enacted in direct contradiction to these assumptions. In order to avoid varying terminology drafters should use the forms found in Parts III and V, when applicable.

Much of the manual is devoted to the elements of style and grammar. Part IV provides various rules of style and grammar to aid the drafter at the writing stage. A drafter should try to prevent the law from being unnecessarily complicated and hard to understand. By using the suggestions and techniques found in Part IV, that goal can be achieved.

By reading this manual a person will not automatically become an expert on legislative drafting. Proficiency in drafting requires experience, and can only be achieved with endless practice and patience. This manual can, however, help the drafter avoid many of the errors that others have made.

CHAPTER 2

THE LEGISLATIVE RESEARCH OFFICE

The Legislative Research Office is staffed by lawyers, skilled technicians and specialists who are available to draft measures and to counsel Legislators on proposed legislation, both between and during legislative sessions. The staff also provides service and assistance to interim committees and standing committees on request. The office serves all Legislators and committees impartially, without regard to party affiliation or seniority. A sponsor desiring service may submit a request for legislative drafting and consult with a drafter on all aspects of proposed legislation. The proposal will then be drafted in proper form for introduction in the Legislature. The office is also available to check and correct the form of proposals drafted by persons outside the office. The office may not accept any instrument for processing unless it is sponsored by a Legislator, Legislator-elect or legislative committee. Nonlegislators wishing to propose legislation may draft their proposals, obtain a legislative sponsor and have the sponsor present the proposal to the office for processing. Drafts submitted by non-legislators must be in original form, typed, double spaced and on 8 1/2" X 11" paper. All proposals must be drafted, finally typed, proofread, jacketed, photo copied and signed by the sponsor before being introduced in either House of the Legislature. The Clerk of the House and Secretary of

the Senate will not accept any proposal for introduction, unless it has been jacketed and marked, indicating that it has been properly processed and approved as to form by the director.

The office also serves as a control point for the enforcement of certain legislative rules concerning filing deadlines, after-deadline requests and requirements for accepting proposed legislation for drafting.

All requests for legislative drafting which are submitted to the office are treated with strict confidence and are not discussed outside the immediate staff. If conferences with other persons or agencies are desirable the drafter will, if possible, obtain the sponsor's permission before taking such action. The Legislator is assured that his proposals will be confidential for the biennium (1 MRSA §402, sub-§3). No one may examine a legislative file without the express consent of the individual Legislator involved. Drafting files are permanent records of the office and may not be loaned or removed from the office at any time without the express consent of the director. Written receipts must be obtained in all cases to insure the return of any files or materials loaned or removed from the office. If a requester furnishes any documents or materials to be used in drafting and the documents or materials are to be returned to the requester, copies will be made to remain as part of the permanent drafting file, unless the requester indicates otherwise.

Drafting requests should be submitted as early as possible before or during the session to give the office adequate preparation time. Every effort is made to handle requests promptly, but each request requires a certain period of time for preparation and some may require much more time than others. The drafter cannot sacrifice accuracy for speed. If a special deadline for a particular request is necessary the sponsor should make the necessary arrangements with the director to avoid interruption of the normal workflow in the office.

Under the legislative rules, members of the Legislature may prefile requests with the Director of Legislative Research prior to the convening of any first regular session.

The advance period for filing is designed to avoid the logjam at the commencement of the session and, with the cooperation of the members, to enable the Legislature to prepare and process a sufficient workload for opening day. Advance processing has many advantages and should always be encouraged. The filing of bills or resolves introduced on behalf of legislative, executive or judicial departments is controlled by joint rule. A drafter should be familiar with these rules when handling this type of legislation. Prefiling of legislation is not nearly as important as predrafting of legislation in order to insure that a request is given adequate attention. Predrafting is done by the office continuously between legislative sessions and legislators should be encouraged to have requests predrafted.

Drafting requests will be handled in the order received unless a different priority is directed by the Director of Legislative Research or Legislative Council. Drafters are cautioned to avoid promising drafts within a certain time as prior requests and the typing and proofreading workload may not permit completion within the allotted time. The drafter should also guard against accepting a title only or accepting partial information which would be insufficient to draft a bill. The legislative rules require that requests be titled and accompanied by sufficient information and data necessary for their preparation.

A special note is necessary to explain the office's role with respect to initiative petitions. They must be drafted by the person or group sponsoring the petition and not by members of the office. (See Part V, c. 1).

The Legislative Research Office was set up to furnish professional and technical assistance to members of the Legislature and to control the form used in drafting legislation in order to insure uniformity in the statutes of the State. The cooperation of all parties involved in converting an idea into law is the best way to insure that goals established for the office are achieved. Proper use of this manual will help to develop that necessary cooperation.

PART II

BILL DRAFTING

AN OVERVIEW

CHAPTER 1

INTRODUCTION

Drafting, like many other processes, does not take place in a vacuum, but rather occurs within the parameters set by constitutional provisions, statutes, rules and opinions of courts and state officials. These parameters define what actions are properly considered in a legislative instrument, identify substantive issues that must be addressed when drafting in certain areas of the law, set the proper form for the various legislative instruments and list provisions which must be included in certain instruments if they are to be properly drafted.

Chapters 2 to 6 focus on some of the general drafting requirements, including restrictions and rules set down by the Maine Constitution, the laws of Maine, the rules of the Maine Legislature, the opinions and rules of the courts of Maine and the opinions of the Attorney General. In addition to these drafting restrictions and guidelines, a drafter should also be aware of provisions of the Federal Constitution and federal statutes which may be pertinent in the area of the law in which he is drafting.

Chapter 7 deals with the steps that should be followed in drafting legislation and identifies procedures which a drafter can use to insure that an instrument is well drafted.

CHAPTER 2

CONSTITUTIONAL PROVISIONS PERTINENT TO BILL DRAFTING

A working knowledge of the Constitution of Maine is of vital importance in drafting legislation since the provisions of the Constitution override any provisions of law which are in conflict with them. The Constitution also sets out certain guidelines for the proper construction, introduction and enactment of legislation. This chapter deals only with those provisions of the Constitution which are especially pertinent to drafting legislation. Certainly, there are many constitutional issues, such as due process, which a drafter must consider, but since these issues are not necessarily peculiar to the Constitution of Maine, they are omitted here.

In dealing with issues pertaining to the Constitution of Maine, a drafter must consider interpretation of the Constitution by relevant federal and state court cases, which can be found in the Maine Key Number Digest, as well as relevant Attorney General's opinions.

Initially, the drafter should note that Maine has no constitutional requirement concerning the title of legislation passed by the Legislature. Thus, the title need not be all inclusive of the contents of a piece of legislation. There is no formal requirement that a piece of legislation relate only to one subject and finally, there is no constitutional restriction on the introduction of private and special laws.

These procedures are normally handled as ones of custom and usage and the office can counsel drafters who need assistance in determining the subject matter of legislation. (For restrictions on special types of legislation, see Part V)

Certain provisions of the Constitution of which the drafter should be particularly aware include the following:

Article I, Section 15	- Right of Petition
Article IV, Part First, Section 1	- Requirement that bills contain an enacting clause
Article IV, Part Third, Section 1	- Convening of the Legislature
Article IV, Part Third, Section 2	- Signing of bills, vetoes
Article IV, Part Third, Section 7	- Limitation on law increasing legislative salary
Article IV, Part Third, Section 9	- Requirement that revenue bills originate in the House of Representatives and restrictions on which House certain bills may originate in
Article IV, Part Third, Section 13	- Private and special legislation
Article IV, Part Third, Section 14	- Limitation on the creation of corporations by special Acts of the Legislature
Article IV, Part Third, Section 15	- Procedure for calling a constitutional convention to amend the Constitution of Maine
Article IV, Part Third, Section 16	- Effective date for legislation and requirements and restrictions on emergency referenda

Article IV, Part Third, Section 17	- Requirements concerning referenda
Article IV, Part Third, Section 18	- Requirements concerning the direct initiative of legislation
Article IV, Part Third, Section 19	- Effective date of measures approved by referenda and enactment of measures conditional upon ratification by referenda
Article VIII, Part Second, Section 1	- Legislative power concerning procedures for alteration of municipal charters
Article IX,	- Certain restrictions on state bonding authority
Article X, Section 3	- Effect of laws in force prior to adoption of the Constitution of Maine
Article X, Section 7	- Omission of certain sections in printed copies of the Constitution of Maine

The text of these sections of the Constitution of Maine can be found in Appendix V.

CHAPTER 3

STATUTORY LIMITATIONS ON DRAFTING

Ultimately, there are no statutory limitations on drafting substantive provisions, as the Legislature, in enacting a new law, is not bound by any previous state law. Of course, the Legislature is bound by provisions of the Constitution of Maine, as well as by provisions of the Federal Constitution and of federal statutes where they pre-empt state law.

An example of the practical inability of a previous state law to bind the Legislature was 30 MRSA §3, which, prior to its repeal, provided:

> "Increases in the salaries of county officers, authorized by the Legislature, shall not become effective until January 1st of the year next succeeding the recess of the session of the Legislature passing such salary increases."

Despite that statutory limitation, the Legislature frequently authorized salary increases for county officers which took effect within the biennium in which the salary increase was enacted. The standard language used at the beginning of such a bill to avoid the limitations of that section was:

> "Notwithstanding the provisions of Title 30, section 3, the salaries of the following county officials shall be increased as follows..."

As this example shows, statutory efforts to bind future legislatures are ultimately futile - - in order to be completely effective, such efforts must be accomplished by amendment to the Maine Constitution.

However, in the absence of express or implied legislative intent to the contrary, one provision of the Revised Statutes or of the unallocated public laws can bind another earlier enacted, contemporaneously enacted or later enacted law.

There are at least three areas in the present Maine Revised Statutes which attempt to expressly bind other portions of the Revised Statutes: 1 MRSA §71, "Rules of Construction"; 1 MRSA §72, "Words and Phrases"; and 21 MRSA §2, "Construction". (These sections are set out in Appendix VI) 1 MRSA §71, "Rules of Construction" and 1 MRSA §72, "Words and Phrases" set out rules for construction of statutes and words and phrases used in the statutes. These rules of construction hold throughout the Maine Revised Statues "unless such construction is inconsistent with the plain meaning of the enactment." 21 MRSA §2, "Construction" sets out rules of construction which apply to Title 21 dealing with elections.

Perhaps the most commonly forgotten portions of 1 MRSA §71 are those portions relating to:

"and,"
"or,"
"dates,"
"gender,"
"severability,"
"singular" and "plural,"
"statute titles" and
"statutory references."

These references should be thoroughly understood as their use will help avoid unnecessary duplication in the drafting of statutes.

The drafter should also make use of 1 MRSA §72 for rules governing the ordinary construction of terms such as:

"highway,"

"month,"

"municipality,"

"state,"

"town," and

"year."

Similarly, anyone drafting in Title 21 should check the provisions of 21 MRSA §2 before completing his draft.

One further provision on statutory drafting should be noted here. Private and special laws, which the Constitution of Maine permits, may override, as to their terms, more general statutes concerning the same subject area. State v. Cleland, 68 Me. 258 (1878). This is, of course, subject to express or implied legislative purpose to the contrary. If a general statute is intended to pre-empt all private and special laws in conflict with it, the court has indicated it will so interpret the general law. Lewiston Fire Association v. City of Lewiston, 354 A. 2nd 154, 1976. For this reason a drafter must, when drafting a bill intended to affect public law, be aware of

any private and special legislation on the same subject. If the bill is meant to have uniform application to all persons possibly subject to it then the intent to repeal conflicting private and special laws must be clear or any previous exemption may stand.

CHAPTER 4

LEGISLATIVE RULES

Before drafting legislation, a drafter should consult the Legislative Rules, which consist of the Joint Rules, the Senate Rules and the House Rules. These rules can be found in the current Senate and House Registers, where they are set out and indexed. A drafter must, however, keep in mind that the rules set forth in the Registers are only as current as the Registers themselves and that the rules are sometimes changed during a legislative session. The Secretary of the Senate or the Clerk of the House can supply information concerning any recent rule changes and the Legislative Research Office maintains a complete and up-to-date set of the Joint Rules, the Senate Rules and the House Rules, which a drafter can consult.

The following are a few of the rules most relevant to legislative drafting.

A. JOINT RULES

These rules bind both the Senate and the House of Representatives until they are modified. Each new Legislature adopts its own joint rules, although these are ordinarily the rules of the previous Legislature with certain changes. The Joint Rules of the 109th Legislature most pertinent to drafting are as follows.

Joint Rule 18 sets forth the procedure for committee study orders and reports.

Joint Rule 23 sets forth the system for prefiling of bills by a member-elect before the convening of any first regular session.

Joint Rule 24 details the submission deadline for departmental bills (that is, bills introduced on behalf of a state department, agency or commission).

Joint Rule 25 sets out the deadline for submission of requests for drafting to the Director of Legislative Research before the First Regular Session, and Joint Rule 26 sets forth submission deadlines for the Second Regular or any Special Session.

Joint Rule 27 provides for the introduction of bills and resolves after the cloture deadline.

Joint Rule 29 provides that all requests for drafting must be originally filed with the Director of Legislative Research and must be accompanied by "sufficient information and data required for their preparation."

Joint Rule 31 requires a statement of fact on bills, resolves and amendments.

Joint Rule 32 provides that the Director of Legislative Research shall correct all legislation as to matters of form before introduction.

Joint Rule 33 provides for correction of clerical mistakes in bills and resolves.

Joint Rule 34 provides that expressions of legislative sentiment must be presented in a manner standardized by the Legislature.

Joint Rule 35 requires that memorials must be approved by a majority of the Legislative Council before introduction.

Joint Rule 37 provides that no measure finally rejected in a first regular session may be introduced at any second regular or special session without a two-thirds vote of both Houses.

B. SENATE RULES

These rules bind the Senate until they are suspended or modified. The Senate adopts its rules at the beginning of each new legislative biennium, although these have ordinarily been the Senate rules of the previous biennium with certain changes. The Senate Rules of the 109th Legislature most pertinent to drafting are as follows.

Senate Rule 11 deals with the germaneness of amendments.

Senate Rule 18 concerns the correction of bills before their second reading by the Senate Committee on Bills in the Second Reading.

Senate Rule 27 provides that any person introducing a bill, resolve or petition must sign it and provide a brief descriptive title of its contents.

C. HOUSE RULES

These rules bind the House of Representatives until they are suspended or modified. The House adopts its rules at the beginning of each new legislative biennium, although these have ordinarily been the House rules of the previous biennium with certain changes. The House Rules of the 109th Legislature most pertinent to drafting are as follows:

House Rule 31 deals with the germaneness of amendments.

House Rule 41 deals with the method of introducing legislation into the House.

House Rule 42 concerns the correction of bills before their second reading by the House Committee on Bills in the Second Reading.

House Rule 44 concerns the committing of bills to be engrossed to the Committee on Engrossed Bills.

CHAPTER 5

COURT OPINIONS AND RULES

A. COURT OPINIONS

Since enacted law is often subject to judicial interpretation and application, a drafter must read and be aware of court opinions relevant to any proposed change in the law, including opinions interpreting a law which he proposes to change and opinions invalidating or interpreting similar changes in the law.

The Maine Supreme Judicial Court has stated that the Legislature, in enacting or amending a statute, is presumed to have read and understood pertinent judicial decisions involving that statute. Realco Services v. Halperin, 353 A 2nd 743 (Me. 1976). Any proposed change in a law may thus be affected by court decisions interpreting that law and the drafter must be familiar with these decisions to ensure that the proposed change will accomplish its intended goal. Another significant point to remember is that reenactment of a law, or a part of a law, without change may often lead a court to assume that the Legislature has,through the reenactment, adopted the judicial interpretations of the relevant portions of that law without disagreement. Maine State Housing Authority v. Depositiors Trust Company, 278 A 2nd 699 (Me.1971).

The most convenient source for discovering relevant cases affecting Maine law is the digests: The Supreme Court Digest, for cases indicating annotations in MRSA where the Federal Constitution or federal statutes preempt certain actions by the Maine Legislature; the Federal Digest, for the same indication by the First Circuit Court of Appeals or the District Court of Maine; and the Maine Key Number Digest, for cases of the Maine Supreme Judicial Court.

A drafter should keep in mind the fact that the Constitution of Maine, Article VI, Section 3, permits the Legislature or the Governor to ask the Maine Supreme Judicial Court for advisory opinions on "solemn occasions". Many times legislation which may have a bearing on a proposed change in the law has been the subject of an advisory opinion, and a drafter should check relevant advisory opinions before he drafts the proposed change.

Cases of the Supreme Judicial Court of Maine, including advisory ooinions, are printed in the Maine Reports and the Maine Reporter. The Maine Reports are available in a state edition printed until 1965. Later cases appear in the Maine Reporter, published by West Publishing Company, which contains Maine cases extracted from the Atlantic Reporter. Generally, there are two or three volumes of the Maine Reporter for each calendar year. Of course, Maine cases are also available in the Atlantic Reporter, published by West Publishing Company back to 1885. Also, Maine cases, and cases on the same subject

in some of Maine's sister New England jurisdictions, are indexed according to the Key Number System in the Atlantic Reporter, which is indexed from 1908 to the present.

B. COURT RULES

When dealing with matters of criminal or civil court procedure, or evidence, a drafter should consult the Maine Rules which are contained in Maine Rules of Court, printed in a paper-bound desk copy by West Publishing Company. The various sets of rules are:

The Rules of Civil Procedure
District Court Civil Rules
Rules of Criminal Procedure
District Court Criminal Rules
Administrative Court Rules
Code of Judicial Conduct
Rules for Probate Court
Rules of Evidence

Changes in these rules are incorporated in the republished volumes of the Maine Rules of Court and also in the various volumes of the Maine Reporter.

Occasionally a matter which seems to involve a statutory change in the law in reality involves a change in a court rule. The Legislature has directed the Supreme Judicial Court to issue new rules, amend existing ones or delete old ones (See 4 MRSA §§7 - 9-A). Knowledge of the various rules and their use will help the drafter determine when such a change in court rules is preferable to a change in the law.

4 MRSA §§8, 9 and 9-A, state that after the effective date of civil rules, criminal rules or rules of evidence or after the effective date of amendments to those rules, "all laws in

conflict therewith shall be of no further force or effect." Thus, a civil, criminal or evidentiary rule with an effective date later than that of a conflicting law repeals that law. This makes a working knowledge of the court rules and changes to those rules an essential drafting aid to ensure drafting the continued application of changes in the law in relation to the various court rules.

CHAPTER 6

ATTORNEY GENERAL'S OPINIONS

Written opinions issued by the Attorney General form an important part of the interpretation of state law and represent a useful resource tool for drafters. 5 MRSA §195 provides:

> "The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters."

Any formal opinion is thoroughly researched and formally reviewed by the Attorney General before it is released to the person seeking the opinion. A selection of formal opinions appears in the biennial reports of the Attorney General of the State of Maine, which currently run through 1972. The formal opinions contained in each biennial report are indexed in the back of the report. In addition, opinions are indexed by subject matter and copies are retained on file in the Attorney General's office.

The Attorney General's office can furnish copies of opinions not appearing in the biennial reports or issued after 1972, and can assist in locating opinions which relate to a particular subject or statute. The State Law Library keeps a binder of opinions issued during the current year. The Legislative Research Office also maintains a partial file of Attorney General's opinions issued from 1974 to the present which are concerned with questions of statutory interpretation.

While the Attorney General provides legal counsel for most of State Government, he is not a judicial officer. Therefore, although his opinions are entitled to the respect due legal counsel for the State, they are not binding on the courts and the courts may not follow them if litigation results from enforcement of a law. Attorney General's opinions should therefore be used with care; however, a drafter should realize that Attorney General's formal opinions have been researched very carefully prior to issuance. (Drafters not employed by the Attorney General's office should, when discussing legislation, avoid rendering formal opinions on legal matters. These questions should be referred to the Attorney General's office where a trained staff can provide the appropriate answers.)

For a drafter in the Legislative Research Office, perhaps one of the most important Attorney General's opinions is one issued by the Attorney General to the Director of Legislative Research on December 19, 1975. (This opinion is set out in Appendix IV). This opinion outlines the general theory of statutory construction in situations where two or more laws enacted by the same legislative session and affecting the same subject matter differ from each other. This opinion should be carefully read as it is the basis for the policy of this office on the question of conflicting legislation.

There are two other opinions which drafters should read. One was issued by a Deputy Attorney General to the Director of Legislative Research on October 16, 1970, concerning the subject of municipal home rule. This opinion should be understood by any drafter dealing with private and special laws affecting municipal powers. Also important to the drafter is the Attorney General's opinion on severability clauses, issued in 1978.

The Attorney General's office, also, from time to time may issue informal opinions in response to questions. These opinions should not be given the same weight as formal opinions since they may not be as well researched and documented as formal opinions. They may, however, be a valuable resource tool and should not be overlooked by a drafter.

Copies of the opinions referred to in this chapter as well as other opinions dealing with resolves permitting suits against the State, amendments to statements of fact on bills and the effective date of legislation are set out in Appendix IV.

CHAPTER 7

STEPS IN THE DRAFTING PROCESS

Legislative drafting involves much more than converting an idea into proper language. The drafter must analyze the sponsor's request, review the existing legal and factual background, create a broad surface to work with, carefully cover the significant details, add the fine touches and make sure that the finished product is not inconsistent with the rest of the law. Saying what he means accurately, cohesively, simply, clearly and economically is the important thing for the drafter, but a great deal must be done before he is ready to say anything.

A. FIELDING THE REQUEST - GET THE FACTS

In order for the drafter to effectively convert the sponsor's request into appropriate statutory language he needs a precise idea of what the sponsor wants to accomplish. Of course, the legislative rules provide that all requests for drafting be accompanied by sufficient information and data required for their preparation. What is sufficient, however, usually means a different thing to the sponsor than it does to the drafter. Don't be afraid to ask questions! When instructions are incomplete, the drafter must guess as to the sponsor's intent and desires. This not only wastes time, effort and expense when a draft must be substantially revised, but also leaves the drafter open to criticism if the draft is unsatisfactory. The drafter must also have free access to the sponsor in order to truly reflect the effect intended. All too often sponsors attempt to relay instructions through others, causing facts to get distorted in the process. Drafters should make every effort to avoid such a practice.

It is widely conceded that the most critical stage of the drafting process occurs when the sponsor walks into the drafters office. It is at this point that the drafter can build a proper foundation for the conversion process. Often the sponsor has only a vague idea of what he wants to accomplish. The drafter's job is to determine why he wants a particular piece of legislation (determine the relevant facts creating the background for his request) and what he hopes to accomplish (determine his specific objectives). For one reason or another, the sponsor may be pressed for time. The drafter should explain to him that the end product will go a lot farther in implementing his vague idea if he takes enough time to allow the necessary foundation for drafting to be built. Quite often, as appropriate questions are asked, the sponsor will realize how narrowly he comprehends the subject and will become more cooperative.

At the critical stage, the drafter must remember, however, that it is the sponsor's prerogative to determine the objectives and content of the legislation. While the sponsor may not have thought the problem through or considered all the relevant factors, the drafter must be careful to see that the sponsor's ideas, and not his own, are incorporated into the bill. The drafter may suggest alternative methods to accomplish the objectives, point out the possibility of pitfalls in a proposal and provide such advice as will clarify the sponsor's thinking. The drafter should not express his personal ideas or promote his

own interests, but must remain an impartial technician.

Often the gaps in the information gathering process can be filled by experts on the subject. Because the sponsor's request is confidential, it is always a good idea to seek his permission to consult experts if the need arises. Technical problems frequently arise that the drafter can't solve by further inquiry of the sponsor or by independent research. When these problems deal with administration, communicating with the agency having jurisdiction over the subject matter of the proposal can quickly result in a solution to the problem. Make sure that the sponsor's authorization is obtained. Because he may be difficult to find after the initial interview, ask his permission at that time.

The obligation to analyze the means of implementing a proposal and to point out unresolved problems to the sponsor for his decision is one of the most important functions of the drafter. Unless a solid foundation has been built, this obligation cannot be met. By digging all that can be dug from the sponsor during this initial conference, the drafter can begin to build a solid informational, policy and legal foundation.

B. PRELIMINARY RESEARCH

Having developed an understanding of the sponsor's specific objectives and of the significant, relevant facts forming the background of the request, the drafter should now determine what existing law provides with respect to the subject matter.

If new laws are enacted without a proper consideration of the effect on existing law, the result may be totally different from that envisioned by the sponsor. The drafter should be able to visualize clearly how legislation will work if enacted into law. This requirement necessitates a comprehensive knowledge of the operations of all phases of state and local government and of judicial procedures. Thus, the drafter must become an expert in the field of government and, if he cannot see how a law will work, he must do the necessary research or be in a position to obtain this information readily. By gaining a good working knowledge of the general area of law in which he is dealing, the drafter will often be able to anticipate concrete details which need to be addressed. Although it would be impossible to anticipate all of the various different factual situations to which any general legal arrangement may apply, the fostering of anticipation, by adequate research, can help to eliminate confusion, hardship and inequity from the end product. The great majority of legislative proposals affect existing law by total or partial repeal or by amendment. Consequently, the drafter must take adequate account of existing law.

1. Check Constitution

Both the United States Constitution and the Constitution of Maine may limit the extent to which the sponsor's idea can be converted into legislation. Failure to consider limitations imposed by either may invalidate the end product of the drafting process. (See chapter 2)

2. Check Maine Revised Statutes

Existing statutory provisions not only provide a good working background of the subject matter, but they frequently reveal that the sponsor's objective can be achieved by a simple amendment to a small section of the law.

A subject index to the Maine Revised Statutes is maintained and published along with the Maine Revised Statutes by West Publishing Company. The index to the 1964 revision of the Maine Revised Statutes is located in volumes 17 and 18 of the Maine Revised Statutes Annotated and the supplementary pamphlet which accompanies those two volumes. This index is arranged into major, minor and detailed subject headings. After each subject heading is listed the title and section of the statutes where the law dealing with that subject heading will be found. The main volumes of the index are updated by a supplement which is issued following each legislative session.

The Maine Revised Statutes Annotated provide the researcher with annotations to relevant court decisions. Often an annotation will lead the drafter to a court decision which answers an important question pertaining to the sponsor's request. The Supreme Judicial Court has the ultimate responsibility to construe language used by the Legislature. Longstanding judicial interpretations of statutory provisions can be sometimes converted, by the Law Court, into "long established principles of law and equity," which seem to survive what could otherwise

be perceived as legislative attempts at repeal. This is because the repeal attempts are not considered by the court to be "unmistakenly apparent." Thus, it becomes important to determine whether court decisions have placed a particular construction on an existing provision with which the drafter is working. (See Chapter 5 - Court opinions)

Three questions which the drafter should be able to answer after carefully checking the Maine Revised Statutes are:

1. What do existing statutes provide with respect to the subject matter?
2. Will the proposed legislation conflict with the provisions of the Constitution of Maine or the United States Constitution?
3. How will existing statutes be affected by the proposed legislation if it is enacted into law?

3. Check Maine Key Number Digest

The Maine Key Number Digest can be a valuable source of information, particularly if the drafter is dealing with a subject which does not appear to be addressed by existing statutory law. This digest brings together under one standard classification system the principles of law announced by Maine's Supreme Judicial Court and by the federal courts when construing Maine law. By using the descriptive word index, the drafter should be able to locate relevant case law touching on the subject matter of the proposed legislation.

4. Check Maine A/G Opinions

Chapter 6 explains the role which these opinions play in the drafting process. They should not be overlooked as a source of information.

5. Check History and Disposition

The Legislative Information Office maintians, for each legislative session, a compilation setting out the actions which have been taken on each piece of legislation introduced in that session, the dates on which that action was taken and the final disposition of the legislation. Following each legislative session a paperbound volume is published which contains the history and final disposition of all legislation introduced at that session.

By checking through the History and Final Disposition publication for the last 10 years or so a drafter may find a reference to a Legislative Document (L.D.) which dealt with the same subject matter as the legislation he is working on. This can be particularly helpful if that L.D. did not get final enactment as, quite obviously, it would not have found its way into any of the publications of the enacted laws. The L.D. from the previous session can then be used as a model when the drafter reaches the writing stage.

6. Check Card Indexes

The Legislative Research Office maintains a set of internal cross reference cards (ICR cards). These indicate sections of the Maine Revised Statutes which are referred to by number in other sections of the statutes. There are also ICR cards for reference to the Maine Constitution and for reference, either by popular name or by numerical reference to federal statutes. The ICR cards serve 2 primary purposes. The first is to ensure that when a drafter wants to change one or a number of sections of the Maine Revised Statutes he is aware of necessary changes that need to be made in other sections of the statutes which refer to the section he is changing. The second is to ensure, after a legislative session, that cross references which should have been changed by recently enacted legislation but were not can be located and changed at the next session of the Legislature, as part of the revision process (done in the Errors and Inconsistencies Bill).

The present ICR cards, measuring 3x5 inches, are kept in the master copy of the Maine Revised Statutes along with the Title and section to which they refer. A sample card is:

20 MRS 3774

29 MRS 23 (1971)

32 MRS 999 (1973)

10 MRS 1291 (1975)

This means that section 3774 of Title 20 is referred to by Title 29, section 23, which reference was first made in 1971; by Title 32, section 999, which reference was first made in 1973; and by Title 10, section 1291, which reference was first made in 1975.

Of course, when the item referred to is a provision of the Constitution of Maine or a federal statute, the appropriate reference should be written on the card.

The Constitution of Maine and the federal statute reference cards are kept separately. The system of reference they use is the same as that used for the Maine Revised Statutes. Both of these ICR card systems are new since 1975, however, and they may not be complete. Thus, some caution should be employed in relying solely on these card systems.

7. Check Private and Special Laws

The Legislative Research Office also maintains a cumulative subject index covering all private and special laws enacted by the Legislature. These should be checked if the subject matter was not treated by general legislation and the drafter suspects that it may have been the subject of previous special legislation.

The index is arranged on 3x5 inch cards with a new card for each new subject heading. The subject headings are cross referenced in the cases where a single private and special law deals with two or more subjects. A sample card follows:

Magalloway River:

Dam	1909	147
Fish protected	1903	258
Amended	1905	387
	1909	138

Following the major subject heading of "Magalloway River" the subheadings are listed (in this case they are "Dam," "Fish protected" and "Amended"). After each subheading the year of enactment of the Private and special effecting that subheading is listed followed by the chapter number of the private and special law. Thus, according to this example, a private and special law dealing with a dam on Magalloway River was enacted by the Legislature in 1909 and was given the chapter number P&SL 147. With this information the particular private and special law could easily be found in the Laws of Maine.

In addition, the Attorney General's Office has compiled and issued a hard-bound 2-volume index to the private and special laws enacted by the Legislature from 1820 to 1957. The index is divided into major, minor and detailed subject

headings, giving the year of enactment and the P&SL chapter number for the private and special law affecting each subject heading. While this index is not current, it is very helpful in locating private and special laws enacted prior to 1957.

8. Check Laws of Other States

Because problems affecting different states are often similar in nature, a drafter can frequently find that legislation similar to that which he is drafting has been enacted in another state. The State Law Library maintains sets of the law for each state. Unless a drafter is prepared to check all 49 codes, however, he must exercise some ingenuity in selecting those states more likely to have been confronted with the problem he is working on. For example, if he is drafting a bill relating to commercial fishing it is unlikely that he will find anything useful among the Utah statutes.

9. Check Uniform and Model Acts

A drafter may find that a bill similar to the one he is drafting has been prepared by the National Conference of Commissioners on Uniform State Laws. The text of any such uniform act can be found in Uniform Laws Annotated at the State Law Library. Table 4 in Volume 17 of the Maine Revised Statutes shows where uniform acts adopted by the State are found in the Maine Revised Statutes.

10. Check Committee Reports

During the legislative session joint orders are frequently adopted directing a particular joint standing committee to study a designated area of concern. Often the completed study report is accompanied by proposed legislation. Study reports are published and are available in the State Law Library. Often accompanying proposed legislation can provide a good model from which to draft.

11. Check Federal Law

An important issue to consider while doing appropriate research is that of federal preemption. Federal laws establishing standards for state programs in certain areas such as welfare, health, education and highways, may limit state activity in these areas. Other areas may be totally preempted by federal action. The negative impact of the commerce clause may preclude certain types of legislation. A call to the appropriate federal or state agency often facilitates this research.

12. Check Indices and Tables

The following indices and tables may prove useful to the drafter during the research stage.

--- Subject index to the Laws of Maine

The Laws of Maine, which are published for each legislative biennium, also contain a subject index to the session

laws passed at that session of the Legislature. The index lists, after each subject entry, the legislative year of enactment and the page in the Laws of Maine on which the law affecting that subject will be found.

Once during each legislative biennium a cumulative subject index is published in the Laws of Maine. This cumulative subject index deals with all session laws since the last revision of the Maine Revised Statutes in 1964. Following each subject heading the index lists the legislative year and the page number (in the volume of the Laws of Maine containing enactments for that legislative year) on which the subject matter is covered.

--- Cumulative Title and Section Index

A cumulative title and section index (see p. 52 for a discussion of the title and section program) printed from the cumulative title and section program, is printed in those volumes of the Laws of Maine which include a cumulative subject index. This cumulative title and section index lists all titles and sections of the Maine Revised Statutes which have been affected by legislation enacted since the last statutory revision. This index gives the effect of the legislation on the title and section, the year in which it was enacted, the public law chapter number of the legislation and the section in the public law in which that title and section was affected.

--- Cross Reference Table between Revisions of the Maine Revised Statutes

This table, found in each revision of the Maine Revised Statutes, shows where the chapters and sections which were contained in the previous revision of the statutes will be found in the new revision. The cross reference table for the 1964 revision is found in Table 1 of Volume 17 of the Maine Revised Statutes. The following are the introductory paragraphs for the table explaining its use and an excerpt from the table:

> Showing, by chapter and section number, where sections of the Revised Statutes of Maine, 1954, will be found in the Maine Revised Statutes of 1964. Repealed sections are designated as "Rp." plus the Session Law containing the repeal. Sections which have been omitted from the Revision as obsolete or exempt are so designated in the Table. A reallocation section is shown by the section number replacing it as well as the original section.

1954 R.S. Ch.	1954 R.S. Sec.	M.R.S. 1964 Title	M.R.S. 1964 Sec.	1954 R.S. Ch.	1954 R.S. Sec.	M.R.S. 1964 Title	M.R.S. 1964 Sec.
1	1	1	1	1	21-J	1	659
1	1-A	1	2	1	21-K	1	660
1	1-B	1	3	1	21-L	1	661
1	1-C	1	4	1	22	1	811
1	1-D	1	5	1	23	1	812
1	2	1	6	1	24	1	813
1	3	1	7	1	24-A	1	814
1	4	1	151	1	24-B	1	201
1	4-A	1	8	1	24-C	1	205
1	4-B	1	9	1	25	1	206
1	4-C	1	10	1	26	1	207
1	5	1	11	1	26-A	1	208
1	6	1	12	1	26-B	1	209
1	7	1	13	1	26-C	1	210
1	8	1	14	1	26-D	1	211
1	9	1	15	1	27	1	252
1	10	Rp 1959,c.213,§2		1	28	1	253
1	11	1	16	1	29	1	254

1	12	1	17	1	30	1	255
1	13	1	18	1	31	1	256
1	14	1	19	1	32	1	251
1	15	1	20	1	33	1	551
1	16	1	21	1	34	1	601
1	17	1	22	1	35	1	451
1	18	1	23	1	36	1	401
1	19	1	24	1	37	1	402
1	20	1	25	1	38	1	403
1	21	1	26	1	39	1	404
1	21-A	1	651	1	40	1	405
1	21-B	1	652	1	41	1	406
1	21-C	1	653	1	42	1	711
1	21-D	1	654	1	43	1	712
1	21-E	1	655	1	44	1	713
1	21-F	1	656	1	45	1	761
1	21-G	1	657	1	46	1	762
1	21-H	Rp 1961,c.402, §3		1	47	1	763
1	21-I	1	658	2	1	34	501

--- Conversion Table Between the Session Laws and the Maine Revised Statutes

A conversion table between the session laws enacted by the Legislature since 1954 and the Maine Revised Statutes is found in Table 2 of Volume 17 of the Maine Revised Statutes and in the supplementary pamphlets and pocket parts to that volume. This table lists the public laws for all sessions of the Legislature since 1954 and tells were the subjects covered in these laws are located in the Maine Revised Statutes. The following are the introductory paragraph for Table 2 and an excerpt from that table:

> Showing where the general laws of all regular and special sessions of the Maine Legislature since 1954 will be found in Maine Revised Statutes.
>
> Sections which repeal earlier laws are indicated as "Rps."

Sections which are repealed by later laws are indicated as "Rpd."

Sections which amend earlier laws are indicated as "Amds."

Sections which are amended by later session laws are indicated as "Amd."

"P.&S.L." refers to Private and Special Laws. "Res." refers to Resolves.

Obsolete, exempt, reallocated or renumbered sections are so labeled.

1955 Session

Public Law Ch.	Sec.	M.R.S. 1964 Title	Sec.	Public Law Ch.	Sec.	M.R.S. 1964 Title	Sec.
1	1	36	4366	20	2	23	1102
2		33	203	20	3	23	452
3		26	401	21		29	946
4		18	104	22		23	2
5	1	19	395	23		Rps R.S.1954,c.38, §23	
5	2	19	402	24		13	591
5	3	19	405	25		1 Rpd 1963, c.362, §33	
6		12	2353	26		Rpd 1957, c.405, §2	
7		12	2353	27		23	954
8		12	2353	28		17	2108
9		12	2601	29		17	1501
10	1	29	2241	30	1,2	Rpd 1961, c.360, §18	
10	2	29	2242	31		35	1947
10	3	29	59	32		20	353
11		7	62	33		12	2552
12		29	1194	34		Rpd 1957, c.405, §2	
13		12	1601	35		27	224
14		29	1653	36	1	35	1188
15		Rps R.S.1954,c.16,§37		36	2	35	1189
16		17	1814	37		12	602
17		23	1705	38		32	2754
18		29	1656	39	1-3	29	783
19		23	1005	40		12	603
20	1	23	1101	41		35	1505

--- Popular Names of Acts

Table 3, found in Volume 17 of the Maine Revised Statutes and its supplementary pamphlets and pocket parts, shows where Acts with popular names may be located in the Maine Revised Statutes. The following are the introductory paragraph for Table 3 and an excerpt

from that table:

> Showing, by title and section number, where Acts having a popular name will be found in the Maine Revised Statutes of 1964.

Popular Name	Title & Section
Administrative Procedure Act	5 § 8001 et seq.
Adoption Subsidy Act	19 §541 et seq.
Archives and Records Management Law	5 §91 et seq.
Beer and Wine Franchising Act	28 §665 et seq.
Certificate of Approval Holder and Maine Wholesale Licensee Agreement Act	28 §665 et seq.
Certificate of Need Act of 1978	22 §301 et seq.
Charitable Solicitations Act	9 §5001 et seq.

--- Uniform Acts and Interstate Compacts

Table 4 in Volume 17 of the Maine Revised Statutes is a table showing where uniform acts and interstate compacts adopted by the State of Maine are found in the Maine Revised Statutes. The following are the introductory paragraph of Table 4 and an excerpt from that table:

> Showing, by title and section number, the classification in the Maine Revised Statutes of 1964 of Uniform Acts promulgated by the National Conference of Commissioners on Uniform State Laws, and Interstate Compacts adopted by the State of Maine.

Uniform Acts or Compact (listed by official title)	Title & Section
Act for Voting by New Residents in Presidential Elections	21 §281 et seq
Atlantic States Marine Fisheries Compact	12 §4601 et seq
Bus Taxation Proration and Reciprocity Agreement	29 §431 et seq
Compact on Taxation of Motor Fuels Consumed by Interstate Buses	36 §3091 et seq
Driver License Compact	29 §631 et seq
Interpleader Compact	14 §6351 et seq
Interstate Civil Defense and Disaster Compact	25 §361 et seq
Interstate Compact on Juveniles	34 §181 et seq
Interstate Compact on Mental Health	34 §2561 et seq
Interstate Compact on Placement of Children	22 §4191 et seq
Interstate Compact on Welfare Services	22 §4101 et seq
Interstate Library Compact	27 § 141 et seq
New England Health Services and Facilities Compact	22 §691 et seq
New England Higher Education Compact	20 §2751 et seq
New England Interstate Corrections Compact	31 §1291 et seq
New England Interstate Water Pollution Control Compact	38 §491 et seq
Northern New England Medical Needs Compact	22 §601 et seq
Uniform Act for Out-of-State Parolee Supervision	34 §1721
Uniform Act for Simplification of Fiduciary Security Transfers	13 §641 et seq
Uniform Act on Fresh Pursuit	15 §151 et seq
Uniform Act on Interstate Arbitration of Death Taxes	36 §3911 et seq

Uniform Act on Interstate Compromise of Death Taxes..... 36 §3981
Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings..... 15 §1411 et seq
Uniform Agricultural Cooperative Association Act (withdrawn in 1943)..... 13 §1771 et seq
Uniform Civil Liability for Support Act..... 19 § 441 et seq
Uniform Commercial Code..... 11 §1-101 et seq
Uniform Criminal Extradition Act..... 15 §201 et seq

--- Omitted Statutes not Repealed

Table 5 of Volume 17 of the Maine Revised Statutes lists certain statutes of the Revised Statutes of 1954 and other laws passed between 1954 and 1964 which were not repealed by the Act which enacted the Revised Statutes of 1964 and which were not contained in the text of the 1964 revision. The following are the introductory paragraph of Table 5 and an excerpt from that table:

> A. Showing certain Revised Statutes of 1954 and subsequent Session Laws, or parts thereof, not repealed by the Repealing Act of September 30, 1964, and not classified in the text of the 1964 Revision, but considered to be of sufficient general interest to be carried or referred to by note. The full text of the repealing statute is set out following Title 39.

R.S. 1954		M.R.S. 1964	
Ch.	Sec.	Title	Sec.
11	7	5	4n
89	254	30	2n
146	28	14	1502n
		15	1362n
P.L. 1955			
Ch.	Sec.		
67	2	20	1172n
424	5	23	451n
467	4	31	3111n
471	9	10	401n
P.L. 1957			
Ch.	Sec.		
387	34-A to 34-J	34	1635n
395	10	30	4601n
395	11	30	4651n
			4751n
395	12	30	4751n
441	2	23	255n
P.L. 1959			
Ch.	Sec.		
303	1	32	2156n
331	1	12	3431n
372	12	30	2n
386	2	4	152n.
P.L. 1963			
Ch.	Sec.		
71	2	12	2553n
89	-	22	2532n
212	-	1	151n
248	1,3	29	245n
299	8	30	2060n
			5351n
		36	843n
302	-	12	4252n
338	2,3	36	4699n
354	4	38	234n
362	40,41	11	1-101n
382	4	25	710n
402	277-A	4	162n
		30	301n
402	279	4	175n
402	280	4	151n
415	2	12	653n
433	5	37	153n

--- Title and Section Program -- Current

This program is maintained by the Legislative Research Office on computer during each legislative session. The program consists of a table listing all Titles and sections of the Maine Revised Statutes which are affected by legislation introduced during that session. The table is arranged numerically, by Title and section. Following the Title, (which appears at the top of each page of the printout) and section listing is a listing by L.D. number, or public law number, of all bills in that session which have enacted, repealed, repealed and replaced, or amended that Title and section. The following is an example of the program table.

T.
15

SEC.	SUB.	EFFECT	YR.	CHAP.	SEC.
9-2		AMD	79	663	103,104
1313		AMD	79	663	105
1318		AMD	79	663	106
1741		RP	79	663	107
1943		AMD	79	663	108
2114		AMD	79	663	109
2115-A		AMD	79	701	14
2115-A		AMD	79	663	110
2121		NS	79	701	15
2122		NS	79	701	15
2123		NS	79	701	15
2124		NS	79	701	15
2125		NS	79	701	15
2126		NS	79	701	15
2127		NS	79	701	15
2128		NS	79	701	15
2129		NS	79	701	15
2130		NS	79	701	15
2131		NS	79	701	15
2132		NS	79	701	15
2304		AMD	79	663	111
2712		RPR	79	681	1
3002		AMD	79	663	113
3003		AMD	79	681	2
3004		RP	79	663	114
31.1		AMD	79	681	3-5

The first column in the example gives the Title in the Maine Revised Statutes affected, the second column gives the section, and the third gives the subsection. The fourth column lists the effect the bill has on that Title and section (RP= repeal, RPR=repeal and replace, AMD=amend, and NS=new section). The fifth column gives the year of the legislative session. The sixth column gives the public law chapter number (given for those bills which have been enacted) and the last column gives the section in the public law where that effecting provision can be found.

--Title and Section -- Cumulative --

This table is the same basic table as the current Title and section table except that it covers all legislative sessions since the 1964 revision of the Maine Revised Statutes. This table lists all Titles and sections which have been affected by any enacted legislation since that revision (unlike the current Title and section program the cumulative table is not maintained for all bills introduced but only for those enacted). This table is generally printed in those volumes of the Laws of Maine which contain a cumulative subject index. This table is extremely useful for drafters interested in the history of a particular Title and section and can be used as any easy reference point for finding those Acts which affected that Title and section.

-- Checklist for Potential Conflicts

This is a computer table maintained in the Legislative Research Office during each legislative session. The table consists of a listing for each of the joint standing committees of the Legislature of all bills referred to that committee which are potentially in conflict with any other bill introduced during that legislative session. A potential conflict is identified by the computer when two or more bills each affect the same Title, section and subsection of the Maine Revised Statutes. The Potential Conflicts List gives the L.D. number of the potentially conflicting bills, the committee to which the other bills were referred (if it is a different committee), the sponsor of each of the L.D.'s, and their status in each of the Houses of the Legislature (where they are in the legislative process).

This listing is a valuable tool to permit the legislative committees and their clerks and staff to identify potentially conflicting pieces of legislation early in the process when any real conflicts may be avoided and to help prevent the enactment of conflicting pieces of legislation.

-- Index of Orders, Joint Resolutions and Resolves

The Legislative Information Office maintains on computer, during each legislative biennium, a subject index for all orders, joint resolutions and resolves passed by the Legislature. This

index gives the title of the order, joint resolution or resolve, its filing number, sponsor and date of passage. This index can be a valuable tool in locating orders and joint resolutions since they are not generally published along with the Acts and resolves enacted by the Legislature.

-- Bill Status Program

This program is maintained on computer during each legislative biennium in the Legislative Information Office. It consists of a list of all pieces of legislation introduced in that legislative biennium. The list is maintained by L.D., H.P. or S.P. number (it is also indexed by name of sponsor, subject matter and committee of reference). This listing gives the title of the legislation, its sponsors and cosponsors, the joint standing committee to which the legislation was referred, and the history and final disposition of the legislation or its current status (if it has not been finally enacted or died). The listing also gives the filing number of all amendments to that legislation which were introduced and whether or not they were adopted in either or both Houses.

More detailed information can be obtained through the Legislative Information Office or by consulting the actual journals in the offices of the Clerk of the House or Secretary of the Senate.

13. Other Techniques

Research and reference services of the Law and Legislative Reference Library (State Law Library) should be used by the Legislator or drafter to obtain information on the subject of proposed legislation. The State Law Librarian maintains a reference library on most 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 Office of Legislative Assistants, the Legislative Finance Office and the Attorney General's office also maintain extensive files on legislation that comes within their jurisdiction and may prove to be excellent sources of background data.

If a drafter is not sufficiently familiar with a given area to determine the practical effect of a new procedure or change in the law, it frequently is helpful if he consults experts in that particular area. For example, if the bill he is drafting would impose new duties and powers on a state agency, he should confer with the appropriate personnel of that agency. Problems of a practical nature may occur to them that would not otherwise come under consideration. Nonpublic agencies can be of help when

no state agency is able to provide sufficient information. Of course, in such instances the drafter must have the sponsor's permission prior to communicating with others.

C. WRITE

Having done the necessary preliminary research the drafter should now have an idea of the structure which would result from converting the sponsor's intention into legislation. He should now be able to visualize the elements of the legislation to be drafted. In some cases an orderly and logical development will be attained only after several tentative outlines have been made. Outlines are valuable and indespensible tools for the drafter. They force him to contemplate the problem before jumping in and they also serve as a checklist. But perhaps their most important function is to help the drafter integrate the structural aspects of the legal problems he is faced with.

In analyzing the provisions which will be included in the proposal, remember that as a general matter the legislation will do one or more of the following:

1. Create a new law;
2. Amend existing law; or
3. Repeal existing law.

Before beginning to write, the drafter must determine what the appropriate type of measure is for the job to be done and the time needed to accomplish the task using that type of instrument. Part III explains in detail the various types of instruments used during the legislative session.

When drafting legislation which must repeal existing law, it is important to make sure that there is nothing in the existing law which should be left in force.

Research may indicate that there is existing law dealing with the subject covered by the request and that a change in or addition of language to one or more of these existing laws will accomplish the sponsor's purpose. In such a case the drafter will be amending the existing law. It is important to harmonize other language in the law with the newly amended language to avoid creating inconsistencies and conflicts with unamended portions of the law.

If the drafter does not find an existing law that can be amended to accomplish what is desired, the draft must take the form of a new section imposing duties, conferring powers, granting privileges, prescribing conduct as necessary to accomplish its purpose. Research may have turned up existing state law that can be used as a model. For instance, when required to draft a bill creating a board to license a certain profession, examine Title 32 MRSA (Professions and Occupations) for provisions that suggest appropriate substance and language. Other possible models include legislative instruments from past sessions, laws from other states and model legislation located during the research stage.

Frequently particular sections, or at least language in sections, have been reduced to boiler plate language. Examples of standard language sections can be found in Part V. Appropriation sections and criminal penalty sections are typical examples.

As the drafter writes it is often a good idea for him to keep each section on a separate sheet until the final draft is prepared. Individual sections can be revised as necessary without affecting other sections.

Part IV,dealing with style and grammar should, of course, be read and absorbed prior to any attempt at writing. Remember that statutes should be written in the vernacular as they are binding on all of the people. By keeping the writing style clear and understandable the drafter can go far in keeping the legislation free from ambiguities and conflicts.

After finishing a first draft it is often an educational and illuminating experience to have an associate read it. He may pick out mistakes which were simply overlooked. In any event, the draft should be revised and reworked as much and as often as possible. During the process the draft should be checked for arrangement, consistency, coherence and clarity.

D. SUMMARY

1. Find out exactly what the sponsor's objective is and the method by which that objective can be implemented.

2. Discuss with the sponsor what alternatives are available and ask appropriate questions.

3. Conduct the necessary research to determine what the existing legal background is. Check constitutional provisions, statutes, regulations keeping track of which provisions might have to be amended or repealed.

4. Develop an organizational pattern for the proposed legislation.

5. Prepare a draft making sure to conform to requirements found elsewhere in this manual. Check doubtful substantive and technical matters with experts.

6. Revise the draft as necessary, checking for arrangement, consistency, coherence and clarity.

PART III

DRAFTING FORMAT FOR LEGISLATIVE INSTRUMENTS

CHAPTER 1

INTRODUCTION

Once a drafter has determined what he wishes to accomplish with a particular piece of legislation, he must decide what type of legislative instrument will best accomplish his goal. This part deals with the 5 basic types of legislative instruments used by the Maine Legislature, sets standards for drafting each type of instrument and gives examples of each type.

The 5 basic types of legislative instruments are:

1. The bill, consisting of:
   A. Public law bills; and
   B. Private and special law bills;
2. The resolve;
3. The constitutional resolution;
4. The resolution, consisting of:
   A. Joint resolutions (including memorials);
   B. Senate resolutions; and
   C. House resolutions; and
5. The order, consisting of:
   A. Joint orders;
   B. Senate orders; and
   C. House orders.

These instruments appear in a number of basic forms during their progress through the legislative process. Each appears, at first, in an original which is prepared in final form by

the Legislative Research Office, signed by the sponsor (or in the case of an instrument being introduced by a committee, by the members of the committee)and introduced into the Legislature. Bills, resolves and constitutional resolutions are reprinted by the legislative printer in the form of legislative documents (L.D.'s) which are distributed to the Legislature and made available to the public. (Occasionally a discrepancy in wording may exist between the original legislative instrument and the printed L.D. In such cases the original instrument is the true document and overrides the printed L.D.) Resolutions and orders generally are printed in the advance or supplemental calendars of the House in which they are introduced rather than being reprinted separately. (If a resolution or order is a joint resolution or joint order, it will eventually appear on the advance calendar of both Houses.)

Following their second reading in each House, all bills, resolves and constitutional resolutions which are passed to be engrossed appear in engrossed form. The engrossing process involves printing each bill, resolve or constitutional resolution in a form which incorporates into the body of the instrument all amendments to that instrument which have been adopted by both Houses. The bills, resolves and constitutional resolutions are then ready for final enactment in both Houses, and for signature by the President of the Senate, Speaker of the House and the Governor.

Resolutions and orders may appear in printed form after their passage if the resolution or order directs someone to make that type of copy.

Following final enactment and signature by the Governor or final enactment over the Governor's veto, each bill, resolve or constitutional resolution is assigned a chapter number by the Office of the Secretary of State.

CHAPTER 2

BILLS

A bill is a proposed public law or private and special law which is introduced for legislative action. A public law bill proposes a law which affects all of the people of the State or all persons or things of a particular class. Public laws are usually, but not always, allocated in the public law bill, in whole or in part, to the Maine Revised Statutes. A private and special law bill proposes a law which relates to particular persons or things, or to particular persons or things of a class, or which operates on or over a portion of a class instead of all the class, or which is temporary in its operation. A private and special law is not allocated to the Maine Revised Statutes, but appears only in the printed volumes of the Laws of Maine.

Bills may occasionally contain both proposed laws relating to the people of the State in general (public laws) and proposed laws relating to particular entities (private and special laws). If possible, a drafter should avoid combining public laws and private and special laws in the same bill as this creates problems in applying and clarifying the proposed legislation. Generally, bills effecting both public and private and special laws are classified as public law bills.

Generally, bills can be divided into 3 basic segments: Those parts before the main body, the main body of the bill and those parts following the main body. The rest of this chapter will deal with each of those segments individually.

A. PARTS BEFORE THE MAIN BODY

The parts of a bill before the main body are the title, the emergency preamble (if the bill is to be enacted as emergency legislation) and the enacting clause. These parts of the bill serve to introduce the main portion of the bill, summarize its content and explain, if necessary, why the bill must be enacted as an emergency.

1. The Title

The purpose of a bill title is to give a person reading the title a general idea of the subject matter of the bill. In this way legislators and members of the public, by reading bill titles, may tell what bills may be of particular interest or importance to them. Titles of bills always begin: "AN ACT...."

The title of a bill should be short and descriptive of the bill's content. It should not, however, attempt to be an exhaustive index of every subject covered by the bill. Maine has no constitutional requirement concerning the title of bills, and titles do not have to be all inclusive of the content of the bill. On the other hand the title should, as much as possible, set out the scope of material covered in the bill and should not be so vague that it is impossible to tell by reading the title what the bill deals with. Another problem created by overly broad or vague titles is that, since bills are advertised for public hearing by bill title, the general public reading the notice for hearing on a bill with such a title will be unable to

determine if the bill deals with a specific subject area on which they might wish to testify at the hearing. An example of an overly vague title is "AN ACT Concerning Labor."

In writing a title for a bill, a drafter should attempt to be as objective in stating the subject matter of the bill as possible. The use of inflammatory or biased language in the title in an attempt to muster support for the content of the bill should be avoided whenever possible. An example of this type of language might be a 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 Director of Legislative Research may, during the processing of a bill draft, correct inaccurate, overbroad or misleading bill titles.

Although a proposed bill may be given a title before it is drafted for filing and indexing purposes, the final title of a bill should not be drafted until every other part of the bill is written. Draft the title to fit the bill; never draft the bill to fit the title. By following this advice, the drafter will be sure that the title accurately reflects the subject matter and is not misleading or incorrect.

Similarly, when a bill that has been introduced is amended or is rewritten in the form of a new draft, the title of the original bill should be carefully checked 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. If the appropriation figures are changed, the title should be changed to reflect the new figures.

The following are examples of bill titles:

> AN ACT to Establish an Income Tax Exemption for National Guard Members and Certain Members of the Military.
>
> AN ACT to Permit Vehicular Traffic to Turn Right at a Red Light.
>
> AN ACT Appropriating Funds for a Fishway at West Bay Pond in Gouldsboro.

2. Emergency Preamble

The next part of a bill is the emergency preamble (used only if the bill is to be enacted as an emergency measure to take effect before 90 days after adjournment of the legislative session enacting the bill). Article IV, Part Third, Section 16 of the Constitution of Maine requires that for passage, emergency legislation have the affirmative vote of 2/3 of the elected membership of each House. That Section also provides that:

> An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.

The following is an example of a standard 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 Maine Juvenile Code, enacted by the first regular session of the 108th Legislature, will take effect on July 1, 1978; and

Whereas, the Maine Juvenile Code contains provisions requiring court intake workers for juveniles; and

Whereas, the first regular session of the 108th Legislature also enacted Public Law 1977, chapter 518, which also provided for court intake workers for juveniles, but which established a different set of provisions concerning the program than did the Maine Juvenile Code; and

Whereas, the Department of Mental Health and Corrections has thus been required to implement a current court intake worker program which will be substantially changed within a period of 6 months; and

Whereas, the implementation of the program required by chapter 518 has required that departmental resources be used which were originally intended for other services, such as probation services and services for juveniles; and

Whereas, to avoid continuing confusion over which statutory provisions govern the intake worker program and to avoid a continuing drain on departmental resources for administration of a program which will be greatly changed upon the implementation of the Maine Juvenile Code, it is necessary to immediately provide that the court intake worker function may commence at the same time the Maine Juvenile Code takes effect; 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

The first and last paragraphs of the emergency preamble are traditional in form and appear in every emergency preamble. The middle paragraphs are used to set out the background situation which makes the emergency enactment necessary. Article IV, Part Third, Section 16, of the Constitution of Maine requires that the facts constituting the emergency be set out in the preamble to the Act, and the drafter should remember that courts look to the preamble to determine whether or not a law purporting to be an emergency enactment is truly an emergency which can take effect before 90 days after adjournment of the Legislature. For this reason, the emergency preamble should be rational and comprehensible and should clearly spell out the circumstances which justify passage of that bill as emergency legislation. Since the facts surrounding the passage of each bill differ, it is impossible to devise boiler-plate emergency preamble language to use in all emergency bills. A drafter should address the particular facts surrounding each individual bill in the emergency preamble for that bill.

3. Enacting Clause

Following the title or the emergency preamble, if the bill has one, is the enacting clause. The Constitution of Maine, Article IV, Part First, Section 1, states: ".... the style of their laws and Acts shall be, 'Be it enacted by the people of the State of Maine." Every public or private and special law must have this phrase at its beginning, or the law may not be valid. Maine case law indicates that every public or private and special law must have an enacting clause at its beginning (Bangor v. Inhabitants of Etna, 140 Me. 85, 34 A2nd 205, 1943), but there appears to be no case in which a purported law has been voided for lack of an enacting clause.

B. THE MAIN BODY OF THE BILL

1. Arrangement of Sections

The main body of a bill contains the general provisions of the bill. It is this part which is the heart of the bill. A bill may contain any number of sections and provisions and there is no restriction as to the length of the bill and no requirement in the Constitution of Maine that a bill deal only with one subject or that the contents of a bill be limited. However, in order to make the purpose of a bill clear and avoid confusion, a drafter should try to avoid dealing with more than one major subject in any single bill.

The main body of a bill is organized into bill sections which are numbered consecutively beginning with the number 1. (i.e., "Sec. 1. " "Sec. 2.," etc.) If a bill has only one bill section, that section is not numbered. Each section should be of convenient length, with each distinct provision in a separate section. Rather than grouping several ideas in one lengthy section, the drafter should place each distinct idea in a separate section. This saves those who read and apply the law from having to read through very lengthy sections in search of one specific idea. It also makes the law easier to index and to amend in the future.

In addition to being organized by subject matter, sections of public law bills and private and special law bills are organized according to what action they are proposing (i. e., enactment of new law; the amendment, repeal or repealing and replacing of existing law or both). Arrangement of the bill sections depends in part on which of these actions the bill proposes.

In the case of a public law bill, if the bill amends existing law contained in the Maine Revised Statutes, then the bill sections are arranged in order of the statutes which they affect. Thus, section 1 of a public law bill would be the section which affected the Title with the lowest numerical designation and the section (or other statutory unit) with the lowest designation within that Title. The bill would then continue in sequence through the higher Title and section designation. For example, a bill consisting of 3 main sections affecting Title 12, section 32; Title 12, section 3; and Title 36, section 1, would be

arranged as follows: Section 1 of the bill would be that section affecting Title 12, section 3; section 2 of the bill would be that section affecting Title 12, section 32; and section 3 of the bill would be that section affecting Title 36, section 1.

If the public law bill is enacting new law, it must be decided if all or part of the bill is to be allocated to the Maine Revised Statutes. The sections of a public law bill which are of general or long-lasting application are almost always allocated to the Maine Revised Statutes (temporary provisions of a public law bill such as transitional provisions, retroactivity clauses, effective date clauses, appropriation clauses and emergency clauses, which are dealt with in more detail later in this chapter, are generally not allocated to the statutes but are drafted as unallocated sections following the allocated sections of the bill). The sections of a public law bill enacting new statutory units are arranged numerically in the same fashion as the sections of a public law bill affecting existing statutory provisions (i.e., in order of the Titles and sections which they enact). The following rules should be remembered when enacting new statutory provisions:

1. Whenever possible, the numerical designation of a new chapter should be an odd number, i. e., 1, 3, 5, 7 etc. This prevents the statutes from becoming too tightly

clustered and leaves room for the enactment of new chapters with even-numbered designations at later dates.

2. When a new chapter is enacted, the number assigned to the first section of that chapter should be sufficiently larger than the last section number of the preceding chapter to permit the future addition of sections between those chapters (if possible, approximately 100 sections numbers should be left between the chapters).

3. The first section of any chapter should be given a numberical designation the last digit of which is "1" (i.e., §21, §5221, §381, etc.).

4. Every newly enacted statutory unit, down to and including a subsection should be given a headnote (See Part IV, c. 2, subchapter E).

(For futher information on the breakdown of the Maine Revised Statutes, the drafter should see Part IV, chapter 2).

(Note that the Director of Legislative Research may revise allocations in bill drafts submitted to his office for processing when it is necessary or desirable so that the parts of the bill may be logically and easily integrated into the Maine Revised Statutes following enactment of the bill).

A public law bill which both affects existing law and enacts new statutory law, should be arranged numerically by title and section, integrating the bill sections enacting new statutory provisions with those affecting existing provisions so that the bill is arranged in ascending numerical

order by Title and section. However, if large blocks of statutory sections are being repealed in one bill, the repealers for these sections may be grouped together at the end of the bill, regardless of where they would otherwise fall numerically.

In the case of private and special law bills, if the bill affects existing private and special laws, the bill sections should be arranged so that the first section of the bill is the section which affects the private and special law which was enacted first in time. The bill should then proceed, in sequence, by date of enactment up to the last private and special law enacted. For example, a bill consisting of 3 sections affecting P&SL 1925, c. 3; P&SL, 1945, c. 24; and P&SL 1945, c. 12, would be arranged as follows: Section 1 of the bill would be that section affecting P&SL 1925, c. 3; section 2 of the bill would be that section affecting P&SL 1945, c. 12; and section 3 of the bill would be that section affecting P&SL 1945, c. 24 (a larger chapter number within the same year indicates that the law was enacted later in time).

If a private and special bill enacts new law, the sections would be arranged by subject matter only, since there would be no allocation to the Maine Revised Statutes and no other overriding method of ordering the sections.

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

Each section of a private and special law bill which enacts new law must have a headnote giving a brief indication of the contents of the section (See Part IV, c. 2, subchapter E).

2. Arranging a Bill by Subject Matter

With the exception of the rules of arranging a bill set out in the preceeding subparagraph, the main body of a bill should be logically arranged according to its subject matter. Proper arrangement can be very important in making the new law easy to read, understand and interpret. Generally the body of the bill is arranged in descending order of importance according to the following guidelines:

1. General provisions normally come before special provisions.
2. More important provisions normally come before less important provisions.
3. Permanent provisions normally come before temporary provisions.
4. Technical housekeeping provisions normally come at the end of the main body.

The remainder of this subchapter sets out the most frequently used provisions in a bill in the order in which they usually appear in the bill (if the bill is enacting new statutory law, each separate provision should be assigned a separage section number in the Maine Revised Statutes).

--Short Title

A short title is often used 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 in making reference to that law elsewhere in the statutes (see Part IV, chapter 2, subchapter H) 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:

§4741. Short title

This chapter shall be known and may be cited as the "School Finance Act of 1978."

--Statement of Policy or Intent

A statement of purpose or intent is used to clearly identify the purpose of the Legislature in enacting a particular law. Its use should be discouraged as much as possible since it may act as an unnecessary restriction on the application or interpretation of the law. Heavy reliance on a statement of policy may often lead to sloppy drafting elsewhere in the bill. If a law is well drafted, it should be clear from the substance of the law what the law intends to accomplish and a statement of purpose or intent should be unnecessary. If one is used, it should appear in a form similar to the following:

§502. Purpose

> The number and size of state departments and independent agencies have increased without sufficient legislative oversight and governmental accountability. The purpose of this Act is to establish a system for periodic justification of departments and agencies of State Government and for the termination of agencies which have outlived their purpose. The Act requires the Legislature to evaluate the need for and performance of present and future departments and agencies on a periodic basis.

In a public law bill, a statement of purpose may be allocated to the Maine Revised Statutes as in the preceding example or, if it is intended as a guide to legislative intent to be of limited use or temporary application, it may be written as an unallocated section of the bill, in which case it would come after the allocated sections of the bill.

-- Definitions

Occasionally it is desirable to define terms that will be used in certain laws. For this purpose a definitions section often appears in a bill. Definitions should only be used, however, when necessary. If a word has a common meaning and can clearly be understood without a special definition, one should not be used. A definition may be useful in maintaining clarity and consistency when using terms that may be otherwise interpreted differently or it may be used to avoid needless repetition in a lengthy law. The standard language used to introduce a definition

section is: "As used in this (title, part, chapter, section or whatever statutory unit is intended to be covered by the definition in the case of a public law which will be allocated to the Maine Revised Statutes) (Act, in the case of an unallocated public law or a private and special law), unless the context otherwise indicates, the following terms have the following meanings." The following is an example of a definition section in an allocated public law.

§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.

Words to be defined within a definition section should be arranged alphabetically. When writing definition sections, a drafter should avoid using the term "shall mean" following each term to be defined. He should instead use the term "means." If however, a definition is only intended to be partial rather than exhaustive (i. e., the definition rather

than setting out all items covered by the definition only sets out examples of the type of item to be covered by the definition) the term "includes" should be used. An example of a partial 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 VIII of Legislative Drafting by Reed Dickerson.

-- General rules and most significant provisions

These sections should set out the main portions of the law or the general rules which the class of persons to whom the law is addressed will be expected to follow. These sections will form the core of the enacted law. They should be written clearly and concisely and should not be overly long or confusing. Each separate idea or rule should be expressed in a separate section.

-- Subordinate provisions and exceptions

These sections will include the major exceptions to the general provisions and rules set out in the preceding sections and will also include minor provisions of the law which will be of less general application or interest. For example, administrative provisions would be included in these sections.

-- Penalty provisions

When a law requires a certain action or prohibits a certain type of conduct it will normally be necessary to include in the law a penalty or sanction for failure to comply with the law. Part V, chapter 4, deals in more depth with writing criminal penalty provisions and a drafter involved in writing such a provision should consult that chapter.

All of the preceding sections are merely examples of what might be found in a bill. The order of their appearance is merely the usual order and may be varied for a particular bill if exceptional circumstances warrant such a variation.

--Conflicting law

In any situation where law proposed by a bill conflicts with existing law, the existing law should be expressly changed or repealed. A drafter should never rely on general language such as "This Act shall apply 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 exactly which of several inconsistent laws are to prevail. This is especially true if several inconsistent laws all have this type of language. When inconsistent laws are repealed in a bill the "repealers" should be arranged in the bill according to where the provisions they repeal fall in the bill section arrangement scheme outlined in the preceeding subparagraph, and should not all be grouped at the end of the

bill, unless there are large blocks of repealers (see p. 76)

The main body of a bill may also include several technical housekeeping provisions. These sections should be placed at the end of the main body of the bill and in the case of public law bills should not be allocated to the Maine Revised Statutes. The most common of these sections, listed in the usual order of their appearance are:

-- Savings clause

Unless otherwise stated, the provisions of an Act become fully effective on the effective date of that Act. If current procedures or actions will be disrupted by the new law taking effect, it may be necessary to limit the application of the new law. This is done through a savings clause which is used to exempt from the effect of the Act certain prcedures and actions. 1 MRSA §302 contains a general savings clause which would cover most situations. However, certain laws may require special savings clauses to meet special problems created in the passage of those laws. The following is an example of a savings clause.

> Sec. 7. Application. This Act shall not affect any rights or benefits which accrued prior to the effective date of this Act.

-- Transition clause

Often times, when a state department or agency is reorganized or abolished it is desirable to provide for the transfer of the functions, property and personnel of the prior

agency to the new agency. This is accomplished through the use of a transition clause. The following is an example of such a clause and other examples may be found in "State of Maine Governmental Reorganization" (May 1971-July 1973) published by the State Planning Office.

> Sec. 13. Transition provisions. All existing rules and regulations currently in effect and operation on the effective date of this Act, in any of the departments, bureaus, commissions or boards referred to in this Act shall continue in effect until rescinded, amended or changed according to law.
>
> All employees and officials of the departments, bureaus, commissions or boards referred to in this Act are, on the effective date of this Act, transferred to the Department of Business Regulation and shall continue in their employment or office after such effective date, without interruption of state service, unless such employment or office is terminated or abolished.
>
> All appointments and deputizations made prior to the effective date of this Act by the administrative deeds of the departments and bureaus or by the commissions and boards referred to in this Act shall continue in force and effect on the effective date of this Act, unless revoked by the Commissioner of the Department of Business Regulation.
>
> All of the records of the Department of Banks and Banking shall remain in the custody and control of the Superintendent of the Bureau of Banks and Banking as required by the Revised Statutes, Title 9, section 3.

All other funds, equipment, property and records of any department, bureau, commission or board to be relocated under this Act to the department of Business Regulation strictly as a result of the reorganization effort, shall, notwithstanding the provisions of the Revised Statutes, Title 5, section 1585, be transferred, on the effective date of this Act, to the proper place in the organizational structure of the Department of Business Regulation by the State Controller, upon recommendation of the department head, the State Budget Officer and upon approval of the Governor.

--- Revision clause

Whenever a bill changes the name of a state agency or other entity or changes the proper name of a Code or Act, the drafter should attempt in the bill to locate all references that that agency, entity, Code or Act in the Maine Revised Statutes and make the reference changes in the body of the bill. If, however, exceptional circumstances prevent a drafter from locating all the references, a revision clause may be necessary to change the references. Since the use of revision clauses is to be discouraged, the Legislative Research Office should always be consulted before a revision clause is used. The following is an example of a standard revision clause.

Sec. 10. Revision clause. Wherever in the Revised Statutes the words_____appear or reference is made to that name, they shall be amended to read and mean_____.

--- Nonseverability clause

Severability clauses are not generally used in Maine bills since 1 MRSA §7 contains a severability clause which applies to all the Maine Revised Statutes. The presence of this section in the statutes makes inclusion of a severability clause, at least in individual public law bills, unnecessary. Inclusion of such a clause may even lead to confusion on the part of courts who interpret the law, since the court may attach some significance to the fact that one bill has a severability clause while others do not. (See an Attorney General's opinion on severability contained in Appendix IV).

Occasionally, however, a Legislator may wish to indicate that the sections of a bill are not severable and that the bill should be considered as an inseparable whole. In such cases a nonseverability clause may be used. The following is an example of such a clause.

> Sec. 10. Nonseverability. Notwithstanding the provisions of the Revised Statutes, Title 1, section 7, it is the intent of the Legislature that each section of this Act be deemed to be essentially and separably connected with and dependent on every other section.

--- Appropriation clause or allocation clause

An appropriation is the Legislature's authorization for a person or organization, generally a state agency, to spend

a given dollar figure from the General Fund. An allocation is the Legislature's authorization to a person or organization, generally a state agency, to spend a given dollar figure from a special revenue fund (such as the Highway Fund). A special revenue fund contains moneys which, by State constitutional provision or by statute, can only be spent for specified purposes.

The form for appropriation of funds has changed slightly over the years. The purpose of the changes has been to facilitate in as few words as possible a clear and concise understanding of the agency funds, of the purpose for the appropriation and of the fiscal years involved.

The standard form established for appropriations is as follows.

> Sec. 10. 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 19-- 19--)
>
> (Name of Major Unit to which appropriation is made, that is the State department, branch of State Government or independent agency to which the appropriation is made)
>
> (Sub-unit if any, that is the bureau, agency or division of a department, branch of government or independent agency to which the appropriation is made,)
>
> (Line category, that is general item categories for which the money is appropriated) (Amt.) (Amt.)
>
> Total Total Total

The following are examples of complete appropriation clauses.

First example:

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

	1977-78	1978-79
EXECUTIVE DEPARTMENT		
Maine Criminal Justice Planning and Assistance Agency		
All Other	$159,000	$132,000

2nd example:

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

	1977-78
FINANCE AND ADMINISTRATION, DEPARTMENT OF	
Bureau of Taxation	
Positions	(2)
Personal Services	$15,600
All Other	1,500
Capital Expenditures	1,000
	$18,100

3rd example:

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1979-80
HUMAN SERVICES, DEPARTMENT OF	
Elderly Low Cost Drug Program	
All Other	$665,000
The amount appropriated is not to be used if funds become available from the Federal Government under a pilot project for elderly low cost drugs. If such funds do become available, the appropriation of this Act shall lapse to the General Fund	

A drafter of an appropriation clause should note that appropriations run from July 1st of one year to June 30th of the next year; that appropriations are broken down into 3 line categories, "Personal Services," "All Other" and "Capital Expenditures." (See 5 MRSA §46); that a personal services appropriation includes the number of positions funded by that appropriation in parentheses in a separate paragraph above the monetary figure, that is the number of new employment positions funded under the appropriation (see second example); that any salaries included in that figure include a state retirement contribution factor; that even though an appropriation is only made for one year of a biennium the figures are arranged so that a space is left for the other fiscal year of the biennium (see second and third examples); that abbreviations or popularized names to refer to agencies or programs to which funds are appropriated are not used (in order to avoid confusion); and that appropriations are rounded to the nearest dollar. A drafter should also be aware of the fact that unencumbered funds lapse at the end of the fiscal year unless the appropriation section specifically states that the funds shall not lapse.

Restrictions on the use of appropriated funds or directions on the use of those funds or on whether or not those funds lapse at the end of a fiscal year, are often placed after the appropriation in a separate paragraph of the appropriation section (see 3rd example).

The drafter of an appropriation clause should be familiar with 5 MRSA Part 4, "Finance;" 5 MRSA c. 141, "General Provisions;" 5 MRSA c. 143, "Accounts and Control;" 5 MRSA c. 145, "Appropriations" and 5 MRSA c. 149, "Budget." He should also be familiar with the general budgetary provisions in the first part or preamble of the last General Appropriations Bill for State Government. He may also wish to check the currently effective "State of Maine Budget Document" for budget information concerning the agency for which he is drafting an appropriation.

Allocation clauses are drafted in basically the same manner as appropriation clauses except that they allocate money from a specified fund rather than appropriate money from the General Fund. The following is an example of an allocation clause.

> Sec. 10. Allocation. There is allocated from the Highway Fund the sum of $50,000 for the fiscal

year ending June 30, 1980, to carry out the purpose of this Act. Any unexpended balance shall not lapse but shall remain a continuing carrying account until the purpose of this Act has been accomplished.

-- Expiration or retroactive clause

It may be desirable to enact a law which will only be in effect for a specific period of time after which it will expire or to enact a law which is applied retroactively. These provisions may either be incorporated into the effective date clause or may be written as a separate clause preceding the effective date clause. Drafting a bill which will have a retroactive application should be handled with extreme caution since it may have serious effects. Constitutional provisions prohibit an ex post facto law in the area of criminal law and thus retroactive clauses should never be used in that area. In the area of civil laws, however, it may be possible to have the law apply retroactively. The drafter should determine if the retroactive clause is necessary to achieve the intent of the legislation before using such a clause. The following are examples of a retroactive clause and an expiration clause.

Sec. 10. Retroactivity. This Act shall be applied retroactive to January 1, 1975.

Sec. 10. Expiration. This Act shall expire on January 1, 1980 and is repealed on that date.
(used in public law bills with unallocated sections and in private and special law bills; see Part V, c. 8, p. 258, dealing with sunset provisions for sections allocated to the Maine Revised Statutes)

-- Effective date clause or emergency clause

The time when an Act becomes law and the time when it goes into effect are not necessarily the same. An Act becomes law upon its enactment in the manner prescribed, but the Act may not go into effect for some time. It is the time when an Act goes into effect which is correctly referred to as its effective date.

The Maine Constitution, Article IV, Part Third, Section 16, provides:

> No Act or joint resolution of the Legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the Legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the Legislature passing it, unless in case of emergency (which with the facts constituting the emergency shall be expressed in the preamble of the Act) the Legislature shall, by a vote of two-thirds of all members elected to each House, otherwise direct.

Thus, under the terms of the Constitution of Maine, the general effective date for Acts is 90 full days after recess of the session of the Legislature passing those Acts. Under these terms, any Act which does not contain an emergency clause and which does not contain a provision within it which sets a specific effective date for the Act more than 90 days after recess of the Legislature, takes effect on the general effective date.

If the drafter of a bill decides, in conjunction with the sponsor of the bill, that it is not necessary or desirable

that the bill go into effect prior to 90 days following the recess of the Legislature and that it is not necessary or desirable to delay the effective date of the legislation beyond the 90 days following recess, then no effective date provision need be included in the bill. The bill will simply go into effect on the general effective date. (See Appendix II on calculating the general effective date.)

It is sometimes 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 necessary preparations to comply with its provisions. (An example of this is the Maine Criminal Code which was enacted in 1975 but which 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, as long as that date is at least 90 full days following recess of the Legislature.

If a decision is made to draft a bill so that it will become effective on a specific date, two things must be kept in mind. First, as has already been stated, the specific date must be at least 90 full days after the recess of the Legislature unless the legislation is enacted as emergency legislation. Second, an effective date clause, setting out the date on which the law will become effective must be included in the bill. An example of an effective date clause

setting out a specific effective date is as follows:

> Sec. 10. Effective date. This Act shall take effect on January 1, 1988.

If, for some reason, a decision is made that the effective date clause should be allocated to the Maine Revised Statutes (See the Maine Criminal Code, 17-A MRSA §1, sub-§1), then the word "Act" should not be used in the effective date clause to refer to the enacted bill unless the bill has a short title including the word "Act" and the short title has been allocated to the Maine Revised Statutes (example, Maine Administrative Procedure Act).

Instead, the statutory portion being enacted should be named. For example: "This chapter (or Part, section, subsection, etc.) shall take effect on January 1, 1988."

A bill which is drafted to become effective immediately upon enactment or on a date which may not be at least 90 full days following recess of the Legislature, must be passed as emergency legislation. Each such bill must contain an emergency preamble and emergency clause. It is the emergency clause which will indicate when the bill will become 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 without his signature) or may set a specific date on which the bill will take effect. The following are examples of emergency clauses:

> Sec. 10. Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

> Sec. 10. Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1977.

A bill may provide that various parts of the bill take effect at different times. Some parts of a bill may take effect on the general effective date while other parts are not put into effect for some time. Also, part of a bill may become effective immediately while other parts become effective at some other time. (But it must be remembered that if any part of a bill is to take effect before 90 full days have elapsed following recess, the bill must be passed as emergency legislation and must contain an emergency preamble and an emergency clause.)

The following are examples of effective date and emergency provisions providing that different parts of a bill take effect on different dates:

Sec. 10. Emergency clause. In view of the emergency cited in the preamble, sections 1, 4 and 5 of this Act shall take effect when approved and sections 2 and 3 of this Act shall take effect on July 1, 1977.

Sec. 10. Effective date. Sections 2 and 3 of this Act shall take effect on January 1, 1980. (Note here that the sections of the Act not given a specific effective date would take effect on the general effective date.)

If a bill contains a referendum provision, the effective date provisions will usually be included in the referendum clause (see referendum clause, p. 99).

The effective date of a bill may be very important and should be carefully considered by the drafter to ensure that the bill is not prevented from accomplishing its purpose because of an inappropriate effective date. For example, complex legislation affecting a state agency which is passed as an emergency bill may be impossible to implement because the agency was not given time to prepare for the legislation prior to its going into effect. Also, if a bill is given an effective date too far in the future, the situation which the bill is intended to address may have changed drastically before the legislation ever goes into effect. These examples make it clear that the effective date clause of a bill is a vital part of the bill and should be given very careful consideration while the bill is being drafted.

-- Referendum clause

A legislator may wish to submit a proposed bill to the voters of the State or of the area being affected by the bill before the bill takes effect. This is done through a referendum clause which appears at the end of the body of the bill (generally replacing the effective date clause). The referendum clause generally provides that upon passage by the Legislature the Act shall 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 (generally following calculation of the vote results and proclamation of those results).

The drafter should note that 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. No attempt should ever be made to lead or sway the vote in a referendum issue by phrasing the question in a biased or deceptive way. The Director of Legislative Research reviews all referendum questions to help ensure that they are not biased or misleading.

The following is the general referendum clause used for submitting a public law bill to referendum (the first example is to be used for bills submitted to referendum at a statewide special election following a first regular session of the Legislature and the second is to be used for bills submitted to referendum at the general election following a second regular session of the Legislature).

First example:

> Sec. 10. Statutory referendum procedure; submission at special statewide election; form of question; effective date. This Act shall be submitted to the legal voters of the State of Maine at a special statewide election to be held on the Tuesday following the first Monday of November following passage of this Act. The city aldermen, town selectmen and plantation assessors 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:
>
> (Here set out a concise statement of the purpose of the bill in question form, usually paraphrasing the title of the bill).
>
> The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the words "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meeting 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 in favor of the Act, the Governor shall proclaim that fact without delay and the Act shall become 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.

2nd example:

> Sec. 10. Statutory referendum procedure; submission at general election; form of question; effective date. This Act shall be submitted to the legal voters of the State of Maine at the next general election in the month of November following passage of this Act. The city aldermen, town selectmen and plantation assessors 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:
>
> (Here set out a concise statement of the purpose of the bill in question form, usually paraphrasing the title of the bill).
>
> The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the words "Yes" or "No." The ballots shall 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 in favor of the Act, the Governor shall proclaim that fact without delay and the Act shall become 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.

Private and special law bills are generally submitted to the particular area of the State subject to the private and special law (since they generally do not affect the entire State). For this reason the referendum clauses on private and special bills may vary more than those on public law bills. The following, however, are some examples of referendum clauses used on private and special law bills.

Sec. 10. Referendum; effective date. This Act shall be submitted to the legal voters of the district at a special election or elections to be called and held for the purpose. The elections shall be called by the municipal officers of the City of Eastport and shall be held at the regular voting places. The dates of the elections shall be determined by the municipal officers, but the first election in the district shall not be later than the first day of September, 1977. Such special elections shall be called, advertised and conducted according to the law relating to municipal election; except that the board of registration shall not be required to prepare nor the city clerk to post a new list of voters, and for this purpose the board of registration shall be in session on the 3 secular days next preceding the elections, the first and 2nd days to be devoted to registration of voters and the last day to enable the board to verify the corrections of the lists and to complete and close up their records of the session. The city clerk shall reduce the subject matter of this Act to the following question:

"Shall the Eastport Utilities District be Incorporated?"

The voteres shall indicate by a cross (X) or check mark (✓) placed against the word "Yes" or "No" their opinion of the same. This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of the district voting at such elections, but only if the total number of votes cast for and against the acceptance of this Act in the special elections equals or exceeds 20% of the total vote for all candidates for Governor in the city at the next previous gubernatorial election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

The results of the elections shall be declared by the municipal officers of the city and due certificates thereof shall be filed by the city clerk with the Secretary of State.

Sec. 10. Referendum; effective date. This Act shall be submitted to the legal voters of the Town of Otisfield at a special town meeting to be called by municipal officials and held on the 4th Tuesday in June, 1977. Warrants shall be issued for this town meeting in the manner now provided by law for the holding of town meetings, notifying the qualified voters of Otisfield to meet to vote on the approval or rejection of this Act.

The town clerk of Otisfield shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question:

"Shall the Town of Otisfield be Annexed to Oxford County?"

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

The results of the vote in Otisfield shall be declared by the municipal officers of that town and due certificate thereof shall be filed by the town clerk of Otisfield with the Secretary of State.

This Act shall be deemed approved by the Town of Otisfield upon its acceptance by a majority of the legal voters of that town voting at that election; provided that the total number of votes cast for and against the acceptance of this Act in that town at that election equals or exceeds 20% of the total vote for all candidates for Governor in that town at the next previous gubernatorial election.

If this Act is deemed approved by the Town of Otisfield, it shall be submitted to the legal voters of Oxford County at a special election to be held on the Tuesday following the first Monday of November, 1977. The Oxford County board of commissioners is authorized to expend those funds which are necessary to implement the referendum.

The county clerk shall prepare the required ballots on which he shall state the subject matter of this Act in the following question:

"Shall the Town of Otisfield be Annexed to Oxford County?"

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

The results of the vote in Oxford County shall be declared by the Oxford County board of commissioners and due certificate thereof shall be filed by the county clerk with the Secretary of State.

This Act shall be deemed approved by Oxford County upon its acceptance by a majority of the legal voters at that election; provided the total number of votes cast for and against the acceptance of this Act equals or exceeds 20% of the total votes for all candidates for Governor case in the next previous gubernatorial election in Oxford County.

If the Town of Otisfield and the County of Oxford approve this Act, the Act shall become effective July 1, 1978.

One thing should be pointed out to persons drafting referendum provisions. Referendum provisions should always specify the date on which the election or vote is to be taken or should specify a time period during which the vote must be taken. Otherwise, a vote on the issue may be postponed for a long period of time and during this time the proposed law's status would be unclear. As long as no vote is taken the law would not go into effect and it would not finally be killed as long as no vote was taken.

C. PARTS AFTER THE MAIN BODY

Those parts of a bill following the main body of the bill are the fiscal note and the statement of fact. The fiscal note and statement of fact are not part of the law and are not given section numbers in the bill. They are required to appear on the bill by joint rule of the Legislature. They are used to furnish information to the Legislators and members of the public reading the bill. Prior to final enactment of the bill they are removed from the bill and they do not appear on the enacted copy of the law.

1. Fiscal Notes

Joint Rule 20 of the 109th Legislature states:

> 20. Committee fiscal impact statements. Every bill or resolve affecting revenue or appropriations which has a committee recommendation other than "Ought Not to Pass" shall include a fiscal impact statement. This statement shall be incorporated in the bill before it is reported out of committee. The Office of Legislative Finance shall have sole responsibility for preparing these fiscal notes.

Thus, any bill which will have a positive or negative affect on state revenue or appropriations must have a fiscal note if any portion of the committee hearing the bill gives it a favorable report. The fiscal notes are generally added by committee amendment to the bill or in a new draft of the bill. The following is the general form for fiscal notes.

Fiscal Note

It is estimated that enactment of this bill will result in a gain (or loss) of revenue of $_____for fiscal year(s) 198_ - 198_.

It may be necessary to add in the estimates of a fiscal note any special assumptions which were made in computing the fiscal gain or loss. Generally, fiscal notes do not involve appropriations, as any needed appropriation should be part of the bill in the appropriation clause. Any drafter desiring a fiscal note for a bill should consult the Legislative Finance Office.

2. Statement of Fact

Joint Rule 31 of the 109th Legislature states:

> 31. Statement of fact. All bills and resulves shall, upon introduction and later amendment thereto, be accompanied by written statement of fact indicating intent.

Generally statements of fact begin "The intent (or purpose) of this bill is to ....." although this form is not invariable. Statementsof fact follow the intent of the sponsor of the bill and he is responsible for their accuracy. Some code enactments, such as the Maine Criminal Code, contain comments listed after each section. These comments take the place of the statement of fact, and are not part of the law, although in some cases they may be used as a guide to legislative intent. The best statements of fact are those which describe concisely what the bill does and the problem which the bill is intended to solve. The following is an example of a statement of fact.

Statement of Fact

The purpose of this bill is to provide that the term of office for members of the Inland Fisheries and Wildlife Advisory Council shall be 3 years rather than 6 years and that a member is limited to 2 consecutive 3-year terms on the council.

D. EXAMPLES OF COMPLETE BILLS

The following 2 bills are examples of complete bills with each of the parts of the bill labeled (the first is a public law bill and the second is a private and special law bill):

First example:

Title — **AN ACT Pertaining to Ordinary Death Benefits Under the Maine State Retirement System.**

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

Sec. 1. 5 MRSA § 1124, sub-§ 1, ¶C, as amended by PL 1975, c. 622, § 55, is repealed and the following enacted in its place:

Body of Bill — **C. In lieu of accepting the benefits provided in paragraphs A or B, the first of certain designated beneficiaries, if living at the death of the member or former member, may elect to substitute the benefits described in this paragraph, provided that the deceased member or former member had 20 years or creditable service at the time of his death. The designated beneficiary shall be a spouse, child or children, parent or parents of the deceased; or, if no designation was made, the first of the following list of persons, if any, alive at the death of the member or former member: Spouse, child or children, parent or parents of the deceased. Participating local districts which are subject to these provisions may limit the designated beneficiaries eligible for these benefits. Any alteration in the designation of the beneficiaries shall be in the manner provided in section 1033. The beneficiary shall be paid, commencing the first month after death occurs and continuing until the date of his death, a retirement allowance computed in accordance with section 1121, subsection 2, paragraph A, and subject to the reduction required in section 1121, subsection 3,**

as if the service retirement of the member or former member had taken place on the date of his death. These benefits shall be payable in accordance with section 1126, option 2.

Sec. 2. 5 MRSA § 1124, sub-§ 1, ¶ D, is enacted to read:

D. A member may specify the refund of his accumulated contributions to a designated beneficiary or to his estate in lieu of any payment to survivors, as provided in paragraphs B and C, by filing an affidavit with the executive director expressing the intent.

Sec. 3. Retroactivity. Each person currently receiving benefits under Title 5, section 1124, subsection 1, paragraph B, may elect to receive benefits under paragraph C, if eligible, in lieu of the benefits currently being received under paragraph B, upon written application to the executive director prior to January 1, 1980. Benefit recomputation and payments for all persons electing benefits under paragraph C shall become effective as of the first day of the month following the effective date of this Act. Notwithstanding these provisions, a participating local district electing the provisions of this Act may limit its retroactive application as indicated herein. Participating local districts who elect to adopt the provisions of this Act shall designate the effective date of this Act for purposes of determining which persons currently receiving benefits under Title 5, section 1124, subsection 1, paragraph B, may elect paragraph C benefits, if eligible, in lieu thereof.

For participating local districts, benefit recomputation and payments for all persons, if any, electing benefits under paragraph C shall become effective as of the first day of the month following notification of the board of trustees as provided in this section.

Unallocated Sections

Sec. 4. Participating local districts. This Act shall only apply to participating local districts who elect to adopt its provisions as provided in Title 5, section 1033 and 1092.

Appropriation section

Sec. 5. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	1979-80
MAINE STATE RETIREMENT SYSTEM	
Survivor Benefit Fund	
State Employees	
All Other	$188,070
Teachers	
All Other	662,657
Total	$850,727

STATEMENT OF FACT

This bill allows the spouse, or other designated beneficiary, to choose a reduced retirement allowance, based on the deceased member's contribution to the retirement system, when that deceased member has more than 20 years of service, but less than 25 years of service and was not eligible for retirement at the time of death. Local option provisions allow the participating districts to limit the designated beneficiaries and to limit the retroactive application of this provision.

Enactment of this bill will require an appropriation of $850,727 from the General Fund for the fiscal year 1979-80; and $238,273 will be required from other state funds. Funding for future years will be included in the employer percentage applied to payrolls in the case of state employees and through an appropriation request in the case of teachers.

2nd example:

Title

AN ACT Concerning the Continuation of Pilot Projects for More Effective and Efficient Delivery of Services to Preschool Handicapped Children.

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 current funding for pilot sites established in June, 1978, expires on June 30, 1979; and

Whereas, these sites cannot continue unless sufficient funds are appropriated before that date; 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:

Body of Bill

Sec. 1. Purpose. The pilot sites, which were established by P&SL 1977, c. 104 and which are in effect as of the date of the enactment of this legislation, may be continued until June 30, 1980. In addition, the position of an early childhood consultant to the Division of Special Education of the Department of Educational

and Cultural Services, shall be continued. The duties of this position include the specific responsibility to serve as staff to the State Interdepartmental Coordinating Committee for Preschool Handicapped Children.

Sec. 2. Interdepartmental coordination. The Commissioners of Human Services, Educational and Cultural Services and Mental Health and Corrections shall continue the interdepartmental coordinating committee established under P&SL 1977, c. 104, for preschool handicapped children in order to complete the task of monitoring the pilot sites and to develop a plan, using the results of the pilot projects, for the effective delivery of services to preschool handicapped children.

Sec. 3. Final report. In compliance with P&SL 1977, c. 104, the 3 commissioners shall present to the Legislature a final report prior to December 15, 1979. This report shall provide an evaluation summary of the pilot projects and recommendations, including legislation, necessary to initiate a service delivery system with an implementation schedule to begin July 1, 1980.

Sec. 4. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

		1979-80
EDUCATIONAL AND CULTURAL SERVICES, DEPARTMENT OF		
Personal Services	(2)	$ 27,000
All Other		170,000
	Total	$197,000

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

STATEMENT OF FACT

There is an undisputed need to serve handicapped children as early in life as possible. The informal evaluation of the function of the State Interdepartmental Coordinating Committee for Preschool Handicapped Children and the progress of the pilot sites indicates a need to continue the pilot sites with the necessary administrative support. This continuation is also needed to determine the structure which will most effectively serve these children while making the most of existing resources. It is the intent of this legislation to continue the original pilot sites presently in operation in order to provide the best data base possible for making this determination and to continue the administrative support necessary to accomplish this task.

CHAPTER 3

RESOLVES

A resolve has the same basic parts as a bill and a drafter preparing a resolve should be familiar with the chapter dealing with the drafting of bills. Since, however, a resolve is generally very restricted in its application, there are several differences between a resolve and a bill which should be noted. Occasionally attempts will be made in a resolve to amend or alter the public or general law. This practice should be avoided since the resolve is not traditionally viewed as effecting the general law and such an attempt would create interpretation and application problems. (See Attorney General's opinion concerning resolves contained in Appendix IV).

A. PARTS BEFORE THE MAIN BODY

The parts of a resolve before the main body are the title and the emergency clause. Unlike a bill, a resolve has no enacting clause.

1. The Title

The title of a resolve begins "Resolve,...." followed by a short and concise statement of the contents of the resolve. The same rules set out for drafting titles of bills should be followed when drafting resolves. The following are examples of titles of resolves.

> RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Sagadahoc County for the Year 1980.

> 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.

2. Emergency preamble

The emergency preamble in a resolve is the same as that used in a bill. The drafter should consult the chapter on bills before drafting an emergency preamble for a resolve. As in the case of a bill the first and last paragraphs of the preamble are standard paragraphs and appear in all emergency preambles for resolves. The following is an example of an emergency preamble used on a resolve.

> Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and
>
> Whereas, Piscataquis County has certain expenses and liabilities which must be met as they become due; and
>
> Whereas, it is necessary that the taxes for the year 1980 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

B. THE MAIN BODY OF THE RESOLVE

Unlike that of a bill, the main body of a resolve is not divided into numbered sections. Instead, the body is divided into unnumbered paragraphs. 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 paragraph of the resolve. The first paragraph of a resolve should have a headnote which will briefly indicate the subject content of the

resolve. Each paragraph begins with the words "Resolved: That..." followed by the substantive provisions of the paragraph. At the end of each paragraph, if there is another paragraph which will follow, the following words are used "....; and be it further".

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

> Director of Bureau of Public Lands to convey interest in lot. Resolved: That the Director of the Bureau of Public Lands, Department of Conservation, is authorized to grant to Nate Smith of Bangor by quitclaim deed for $1 all right, title and interest of the State in the lot described in the deed from Town of Trescott to Lewis B. McFadden, dated January 31, 1931 and recorded in Washington County registry of deeds in book 387, page 411; and be it further
>
> Resolved: That the Director of the Bureau of Public Lands, Department of Conservation, is authorized to lease, sell or otherwise convey the interest of the State in a certain parcel of land located in the Town of Richmond, County of Sagadahoc and described as follows: Approximately one acre of land located on the west side of the River Road, Route 24, about 5 miles south of Gardiner and about 2/10 of a mile south of Department of Transportation Station 5079 with a building located thereon all more particularly described in Sagadahoc County registry of deeds, book 402, page 96, upon such terms and conditions and for such consideration as he deems reasonable.

A resolve may contain any of the types of sections which have been discussed as possible sections of a bill (appropriation clauses; effective date clauses; etc.) and that chapter should be consulted for the wording of any particular type of provision which a drafter may need to include in a resolve. The only difference will be that they should be drafted as paragraphs of the resolve rather than as sections of the bill. Also, if the word "Act" is used in any of those particular sections, it should be changed to the word "Resolve" when being used in a resolve.

C. PARTS AFTER THE MAIN BODY

Those parts of a resolve following the main body are the same as those of a bill and a drafter of a resolve should consult the chapter dealing with bills before drafting any of those parts.

The following is an example of a complete resolve with the various parts of the resolve labeled.

Title

RESOLVE, Providing for a Study to Determine the Need for and Location of an Additional River Crossing Between the City of Bath and the Town of Woolwich.

Emergency Preamble

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

Whereas, traffic continues to increase on U.S. Route 1 in the Bath-Woolwich area; and

Whereas, there appears to be a need for additional capacity across the Kennebec River in this area; and

Whereas, in the judgment of the Legislature these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Body of resolve

Department of Transportation authorized to study river crossing. Resolved: That the Department of Transportation is authorized and directed to conduct a study to determine the need for and location of an additional river crossing between the City of Bath and the Town of Woolwich; and be it further

Resolved: That the Department of Transportation shall report its findings to the First Regular Session of the 110th Legislature convening in January 1981; and be it further

Resolved: That there is allocated from the General Highway Fund the sum of $50,000 for the fiscal year ending June 30, 1980, to carry out the purpose of this resolve. Any unexpended balance shall not lapse but shall remain a continuing carrying account until the purpose of this resolve has been accomplished.

Effective date; Emergency clause

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

Statement of Fact

STATEMENT OF FACT

The purpose of this resolve is reflected in the title.

This resolve requires an allocation from the General Highway Fund in the amount of $50,000.

CHAPTER 4

CONSTITUTIONAL RESOLUTIONS

A constitutional resolution is a legislative instrument proposing a change in the existing language of the Constitution of Maine or an addition to the Constitution of Maine. Unlike a bill or resolve, a constitutional resolution, upon passage by the Legislature, is not submitted to the Governor for his signature but is submitted to the voters of the State for acceptance at a referendum. For this reason a constitutional resolution should contain only proposed changes to the State Constitution. 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. In form, a constitutional resolution is quite different from a bill or a resolve, although there are still three parts into which the constitutional resolution can be divided.

A. PARTS BEFORE MAIN BODY

The parts of a constitutional resolution before the main body are the title and the introductory clause. The title of the constitutional resolution 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 in drafting the title to a constitutional resolution. The following is an example of a title to a typical constitutional resolution:

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for Determination of Inability of the Governor to Discharge the Powers and Duties of his Office.

Following the title is a standard introductory clause which 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 this State be proposed:

B. MAIN BODY OF THE CONSTITUTIONAL RESOLUTION

The main body of a constitutional resolution is divided into paragraphs, each one dealing with a proposed amendment or addition to the Constitution of Maine. These paragraphs are arranged by order of the constitutional provision which 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 like those of a resolve are not given section designations.

The following is an example of the main body of a constitutional resolution.

> Constitution, Art. IV, Pt. 1, §2, first sentence, is amended to read:
>
> The House of Representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the ~~biennial meeting of the Legislature~~ first Wednesday after the first Tuesday in January following the general election.

Constitution, Art. IV. Pt. 2, §4 is amended to read:

Section 4. Examination of lists; summons to persons who appear to be elected. The Governor shall, as soon as may be, examine the copies of such lists, and at least twenty days before the said first Wednesday after the first Tuesday of January, issue a summons to such persons, as shall appear to be elected by a plurality of the votes in each senatorial district, to attend that day and take their seats.

Proposed additions to the Constitution of Maine should be allocated to the Constitution in a logical manner in that part of the Constitution which deals with the general subject covered by the proposed addition. Other general rules which apply to the drafting of new statutory provisions and to the arrangement of the substance of these provisions should be consulted when drafting new provisions in a constitutional resolution.

C. PARTS AFTER THE MAIN BODY

Following the main body of a constitutional resolution are the referendum provisions, the effective date provisions and the statement of fact. The Constitution of Maine, Article X, Section 4, provides that the Legislature may by a two-thirds vote of both Houses, propose amendments to the Constitution. The amendments must, however, go out to referendum and do not become part of the Constitution unless and until accepted by a majority of the voters in the State voting on the referendum issue. Thus, all constitutional resolutions should contain a referendum provision following the main body of the resolution. The referendum provision

is generally set out in a standardized form but it may be varied to meet particular needs. However, any variation from the standard form should be carefully considered to insure that it complies with all constitutional and statutory provisions dealing with constitutional amendments and voting on such amendments by referenda. The standard referendum forms are as follows (the first form is to be used for a resolution proposed at the first regular session of the Legislature to be voted on at a special statewide election and the second form is to be used for a resolution proposed at the second regular session of the Legislature to be voted on at the general election):

1ST EXAMPLE:

> Constitutional referendum procedure; form of question; effective date. Resolved: That the city aldermen, town selectmen and plantation assessors 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 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)
>
> The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots shall 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 in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on the date of the proclamation.

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 referendum.

2ND EXAMPLE:

Constitutional referendum procedure; form of question; effective date. Resolved: That the city aldermen, town selectman and plantation assessors 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 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)

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No". The ballots shall 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 in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on the date of the proclamation.

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.

The effective date provisions in a constitutional resolution are generally incorporated in the referendum provisions. (See form on previous pages). While the most frequently used effective date for constitutional resolutions is upon proclamation by the Governor, this need not always be used. A specific date following the referendum may be set out on which the amendment will become part of the Constitution. The following is an example of such a case. (This form would be used by substituting the following language or similar language for the last sentence of the 2nd paragraph of the referendum provision form set out in this chapter).

> The Governor shall review the returns and, if it appears that a majority of the legal votes are in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on January 1, 1985.

As in a bill, a constitutional resolution contains a statement of fact. The drafter should consult the chapter on bills for rules on drafting statements of fact.

The following is an example of a complete constitutional resolution with the parts of the resolution labeled:

Title

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require the State to Reimburse Municipalities from State Tax Sources for 50% of Losses Caused by Property Tax Exemptions and Credits Enacted after April 1, 1978

Introductory Clause

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Amending Clause

Constitution, Art. IV, Pt. 3, §23 is enacted to read:

Main body of the resolution

Sec. 23. Municipalities reimbursed annually. The Legislature shall annually reimburse each municipality from state tax sources for 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of statutory property tax exemptions or credits enacted after April 1, 1978. The Legislature shall enact appropriate legislation to carry out the intent of this section.

Referendum and Effective date provisions

Constitutional referendum procedure; form of question; effective date. Resolved. That the city aldermen, town selectmen and plantation assessors 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 the next general election in the month of November or special statewide election on the Tuesday following the first Monday of November following passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

(Question)

"Shall the Constitution of Maine be amended as proposed by a resolution of the Legislature to require the State to reimburse municipalities from state tax sources for 50% of losses caused by property tax exemptions and credits enacted after April 1, 1978?"

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square

below the words "Yes" or "No." The ballots shall 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 in favor of the amendment the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on January 1, 1978.

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.

Statement of Fact

Statement of Fact

This constitutional resolution, by requiring the Legislature to reimburse municipalities for at least 50% of tax losses suffered by property tax exemptions and to carefully weigh the effect on municipalities of any new property tax exemptions.

CHAPTER 5

RESOLUTIONS

A resolution is basically a formal expression of legislative sentiment, opinion or will or an expression of opinion or petition directed to another branch of state or local government, another state government or the Federal Government or an official of that government. A resolution may be a joint resolution, a memorial, a Senate resolution or a House resolution. However, the vast majority of resolutions are either joint resolutions or memorials and resolutions of a single house are rarely used and should be avoided whenever possible. While joint resolutions are sometimes used to express high sentiment or opinion without petitioning any person or entity, as a general rule a memorial is only used to petition an individual or entity. (See Appendix III covering specialized joint resolutions).

A resolution may be divided into three basic parts: The title, the preamble and the body of the resolution.

The title of a resolution is similar to the title of any of the other major types of legislative instruments. It should be a short, concise description of the contents of the resolution. The title of a joint resolution generally begins "Joint Resolution...." The title of a memorial usually starts "Joint Resolution memorializing..." followed by the name of the person or entity being memorialized and the purpose of the memorial. A Senate resolution or a House resolution simply begins "Resolution..."

The following are examples of various resolution titles:

JOINT RESOLUTION PROTESTING THE THREATENED REDUCTIONS AT LORING AIR FORCE BASE (This is an example of a joint resolution title)

JOINT RESOLUTION MEMORIALIZING THE HONORABLE RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, TO ABOLISH THE OIL IMPORT QUOTA (This is an example of a memorial title)

RESOLUTION EXPRESSING SYMPATHY OF THE STATE SENATE TO THE HONORABLE HERALD JAMES BECKETT (This is an example of a Senate resolution title)

Following the title in a resolution is the preamble which consists of several paragraphs each beginning with "Whereas,..." which set out the reasons for the issuance of the resolution or the events which give rise to the sentiment or opinion being expressed in the resolution. Each paragraph in the preamble of a resolution (except the last paragraph) should end with ";and" which will provide a lead-in to the next paragraph of the preamble. The last paragraph of the preamble should end with "; now, therefore, be it".

The only exception to this general rule is in the case of the memorial which generally has an introductory paragraph before the preamble. The introductory paragraph in a memorial generally reads as follows:

> We, your Memorialists, the House of Representatives and Senate of the State of Maine, the (number and session of the current Legislature), now assembled, most respectfully present and petition (set out the name or title of the entity being memorialized), as follows:

The following are examples of resolution preambles.

EXAMPLE OF A PREAMBLE TO A JOINT RESOLUTION:

> Whereas, the Legislature has learned that the Air Force is recommending inactivation of the 42nd Strategic Air Command Wing of the 69th Bomb Squardron at Loring Air Force Base, and in addition, is recommending severe cuts in the manning levels of the base; and
>
> Whereas, grave doubts have been publicly raised about the strategic wisdom of inactivating the 42nd Strategic Air Command Wing; and

Whereas, it is estimated that 83% of the Air Force personnel stationed at Loring Air Force Base would be transferred because of this recommended cut and that 70% of the civilians employed at the base would lose their jobs; and

Whereas, the inactivation of the 42nd Strategic Air Command Wing and the cut back in personnel would be an extremely damaging blow to the economy of Aroostook County and the State of Maine; and

Whereas, the Air Force has indicated that the decision concerning this reduction is not yet final; and

Whereas, if these reductions are necessary to the federal defense budget they should be equitably apportioned among all Air Force bases in the United States rather than concentrated at Loring Air Force Base; and

Whereas, federal law requires the Council on Environmental Quality and the Air Force to weigh carefully evidence of environmental and economic damage which these reductions might cause; now, therefore, be it

EXAMPLE OF A PREAMBLE TO A MEMORIAL:

We, your Memorialists, the Senate and House of Representatives of the State of Maine in the One Hundred and Sixth Legislative Session now assembled, most respectfully present and petition the Honorable Richard M. Nixon, President of the United States, as follows:

Whereas, the Oil Import Administration was established by presidential proclamation on March 10, 1959 to adjust imports of petroleum and petroleum products into the United States; and

Whereas, the Oil Import Administration, acting in conjunction with an Oil Import Appeals Board, discharges the responsibilities imposed upon the Secretary of the Interior for regulating oil imports; and

Whereas, the purposes for which these functions were originally established, such as protecting the interests of national security, have become hollow in meaning and lack any current relevance; and

Whereas, major burdens have been placed on both industry and consumers through high prices and shortages pursuant

to oil import policies which can no longer be tolerated; now, therefore, be it

EXAMPLE OF A PREAMBLE TO A SENATE RESOLUTION:

Whereas, the Senate has learned with regret of the illness of our esteemed good friend and former colleague, Herald J. Beckett of Eastport; and

Whereas, the members of the Senate of the 105th Maine State Legislature sorely miss Herald's sage advice and good humor and wish to avail themselves of those sterling qualities through his quick return to the ahlls of the Legislature; now, therefore, be it

The body of a resolution is used to set out the action which the Legislature desires to be taken or sets out the sentiment or opinion which the Legislature wishes to convey. The body of a joint resolution, a Senate resolution or a House resolution begins "Resolved: That..." If more than one paragraph is needed in the body of the resolution, the first paragraph should be ended with " ; and be it further" and the next paragraph should begin with "Resolved: That..." The body of a memorial is set out in a format like that of a joint resolution except that the first paragraph should generally begin "Resolved: That We, your Memorialists, respectfully urge (or respectfully request and urge).."

The following are examples of the body of several resolutions.

EXAMPLE OF THE BODY OF A JOINT RESOLUTION:

Resolved: That We, the Members of the 107th Legislature assembled in Special Session, do hereby respectfully protest the recommended reductions at Loring Air Force Base; and be it further

Resolved: That duly attested copies of the Resolution be immediately transmitted to the Department of Defense and to the members of the Maine Congressional Delegation,

EXAMPLE OF THE BODY OF A MEMORIAL:

Resolved: That We, your Memorialists, respectfully urge and request the Honorable Richard M. Nixon, President of the United States to take immediate action to abolish all oil import regulation, administration and control which has been carried on under the guise of national security to the detriment of certain states; and be it further

Resolved: That a copy of this Resolution, duly authenticated by the Secretary of State, be transmitted forthwith by the Secretary of State to the Honorable Richard M. Nixon, President of the United States and to the Members of the United States Congress from the State of Maine.

EXAMPLE OF THE BODY OF A SENATE RESOLUTION:

Resolved: That we, the Members of the Senate, hereby extend our sincere best wishes to the Honorable Herald J. Beckett for a speedy recovery; and be it further

Resolved: That a suitable copy of this Senate Resolution signed by the President of the Senate, be immediately transmitted to Senator Beckett at Eastport.

One special type of joint resolution should be mentioned. This is a standardized joint resolution used to express sympathy on the death of prominent local or state figures. The standard form is as follows.

S T A T E O F M A I N E

IN MEMORIAM
WHEREAS, THE LEGISLATURE HAS LEARNED
WITH DEEP REGRET OF THE DEATH OF

(name and municipality of deceased and any special honors or accomplishments consisting of no more than 16 words and 2 lines)

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.

SPONSORED BY: FROM:

The following are examples of complete resolutions with the parts of the resolutions labeled.

EXAMPLE OF JOINT RESOLUTION:

Title (Joint Resolution) JOINT RESOLUTION IN OBSERVANCE OF THE BICENTENNIAL OF COLONEL BENEDICT ARNOLD'S MARCH TO QUEBEC

Preamble - Whereas, a small army of 1100 patriots inspired and fired with love of liberty and their country struggled up this very valley of Kennebec in the fall and winter of 1775; and

Whereas, this force led by Colonel Benedict Arnold traveled through some 600 miles of wilderness in 8 weeks in one of the most heartbreaking and most grueling military expeditions of our War for Independence; and

Whereas, history records this daring but ill-fated attempt to wrest Quebec from the British as a campaign without parallel in the American Revolution; now, therefore, be it

Body of the Resolution

Resolved: That We, the Members of the 107th Legislature, now assembled in Special Session in this Bicentennial Year, on behalf of the People of Maine, recognize and commemorate in appropriate ceremony at this time the anniversary of this great historic event and in doing so, pause to reflect and to rededicate ourselves, like those patriots of the past who marched to Quebec so long ago, to the cause of liberty which led to the founding of our great nation; and be it further

Resolved: That suitable copies of this Joint Resolution be prepared and transmitted forthwith by the Secretary of State to the National and State Bicentennial Commissions for the purpose of calling this important event to the attention of all citizens.

EXAMPLE OF MEMORIAL:

Title (Memorial) -

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO EXTEND THE UNITED STATES FISHERIES MANAGEMENT JURISDICTION 200 MILES SEAWARD FROM ITS BOUNDARIES

Introductory paragraph -

We, your Memorialists, the House of Representatives and Senate of the State of Maine of the One Hundred and Seventh Legislature, now assembled, most respectfully present and petition your Honorable Body, as follows:

Preamble -

Whereas, Maine fishermen are currently losing the livelihood of generations through federal failure to control excessive foreign fishing off the coast; and

Whereas, Federal negotiations at the "law of the sea" conference even if successful will take 6 to 10 years to ratify and implement leaving little or no protection during the interim; and

Whereas, this inaction has prompted the Maine Legislature to declare Maine's fisheries management jurisdiction 200 miles seaward from its boundaries or to the edge of the continental shelf; and

Whereas, the Congress of the United States must act now to extend United States fisheries management jurisdiction beyond 12 miles to the 200 mile limit before fishing stocks are exhausted; now, therefore, be it

Body of the Memorial

Resolved: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to use every possible means at its command to extend the fisheries management jurisdiction of the United States without interfereing with Canada 200 miles seaward or to the edge of the continental shelf and thus reduce the chances of certain depletion of fishing stocks by overfishing; and be it further

Resolved: That a duly authenticated copy of this Memorial be immediately submitted by the Secretary of State to the Honorable Gerald R. Ford, President of the United States, the President of the Senate and Speaker of the House of the Congress of the United States and to each Member of the Senate and House of Representatives in the Congress of the United States from this State.

EXAMPLE OF A SENATE RESOLUTION:

Title (Senate Resolution)

RESOLUTION EXPRESSING SYMPATHY OF THE STATE SENATE TO THE HONORABLE HERALD JAMES BECKETT

Preamble -

Whereas, the Senate has learned with regret of the illness of our esteemed good friend and former colleague, Herald J. Beckett of Eastport; and

Whereas, the members of the Senate of the 105th Maine State Legislature sorely miss Herald's sage advice and good humor and wish to avail themselves of those sterling qualities through his quick return to the halls of the Legislature; now, therefore, be it

Body of Resolution -

Resolved: That we, the members of the Senate, hereby extend our sincere best wishes to the Honorable Herald J. Beckett for a speedy recovery; and be it further

Resolved: That an engrossed copy of this Senate Resolution signed by the President of the Senate and duly attested by the Secretary of State, be immediately transmitted by the Secretary of State to Senator Beckett at Eastport.

CHAPTER 6

ORDERS

A. GENERAL USE AND FORM OF ORDERS

An order is an expression of the will of one or both of the branches of the Legislature that a certain action be taken by someone subject to the immediate control of one or both of the branches of the Legislature or is an expression of sentiment or opinion of one or both of the branches of the Legislature. An order may be a joint order, a Senate order or a House order.

If the order is a Senate order, it will appear on a Senate order form sheet (which is white). If the order is a House order, it will appear on a House order form sheet (which is blue). If the order is a joint order, it will appear on the order form sheet of the body in which it originates.

B. PARTS OF AN ORDER

Orders generally consist of a preamble (eliminated in simple orders where no explanation of the background for the order is needed), an introductory phrase and the body of the order.

The preamble for an order is written in the same manner as that for a joint resolution. The form is as follows:

Whereas,_____; and

Whereas,_____; and

Whereas,_____; now, therefore, be it

The form of the introductory phrase depends on whether or not the order is a joint order and if it is, in which branch of the Legislature the order originates. If the order is a joint order

originating in the Senate the introductory phrase is "Ordered, the House concurring, that..." If the order is a joint order originating in the House the introductory phrase is "Ordered, the Senate concurring, that..." If the order is a Senate or a House order, the phrase is "Ordered, that..."

Following the introductory phrase is the substance of the order. The wording of the body of an order depends on the action which is being requested or the sentiment which is being expressed. In this chapter we will deal only with the wording of the most frequently used types of orders. A drafter writing any other type of order should consult with the Legislative Research Office. before preceeding with the drafting of the order.

C. CONGRATULATORY ORDERS

The most common use of orders is to congratulate a person, group or other entity for an outstanding achievement. This use should be limited as much as possible since the drafting of congratulatory orders takes the time of office personnel which could be spent drafting and preparing other types of legislation. The Legislative Research Office has developed a standardized form for this purpose. The form is as follows:

S T A T E O F M A I N E

BE IT KNOWN TO ALL THAT
WE, THE MEMBERS OF THE SENATE AND
HOUSE OF REPRESENTATIVES
JOIN IN RECOGNIZING

(set out in no more than 25 words and 3 lines the name and municipality of the individual, group or other entity being congratulated and the action or event for which the individual, group or other entity is being congratulated)

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

SPONSORED BY: FROM:

D. STUDY ORDERS

Another common type of legislative order is the study order. This order is used to direct a joint standing committe of the Legislature or a special or select committee to study a particular topic in order to determine whether legislation is necessary for that topic and report its findings to the Legislature together with any suggested legislation on that topic. The form for study orders is as follows:

Whereas, ; and

Whereas, ; and

Whereas, ; now, therefore, be it

Ordered, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on _____ shall study _____ _____; and be it further

Ordered, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the _____ Regular Session of the _____ Legislature; and be it further

Ordered, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further (Note: Delete this paragraph when funding is provided)

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

E. ORDERS TO RECALL BILLS

Occasionally, the Legislature wishes to reconsider its actions on a bill which has either gone to the Governor for his signature or which has been killed and placed in the legislative files. An order may be used to recall this bill and the form for such an order is as follows:

Form for recalling bill from legislative files:

> Ordered, the Senate concurring, (or House concurring if the order is to originate in the Senate) that Bill, "AN ACT (set out the title of the bill), "House Paper (or Senate Paper if the bill originated in the Senate)_____, Legislative Document_____, be recalled from the legislative files to the House (or Senate if the sponsor is a Senator).

Form for recalling bill from Governor's desk:

> Ordered, the Senate concurring (or House concurring) that Bill, "AN ACT (set out title of bill), House Paper (or Senate Paper)_____, Legislative Document_____, be recalled from the Governor's desk to the House (or Senate).

F. ORDERS TO REPORT OUT BILLS

The Legislature may wish to have a joint standing committee of the Legislature prepare and report out a bill on a particular subject which is not addressed in any bill already before the Legislature. The form of such an order is as follows:

> Ordered, the Senate concurring, (or the House concurring) that the Joint Standing Committee on (name of joint standing committee) report out a bill (set out the subject matter and content of the bill).

G. ORDERS OF ADJOURNMENT

Orders may be used to control the adjournment of the Legislature to a certain time or may direct that the Legislature adjourn without day (used when the Legislature is finished with its session). The form for these orders is as follows:

Form for adjournment to a day certain:

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

Form for adjournment without day:

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

H. ORDERS TO AMEND THE RULES

Orders may be used to change or amend the rules of either branch or the joint rules. The form of these orders is as follows:

Form for changing joint rules.

Ordered, the Senate concurring (or the House concurring), that Joine Rule (number of joint rule) be (adopted, repealed or amended) (if the rule is being adopted as a new rule or amended, the new rule or the proposed change must be set out here).

Form for changing Senate Rules.

Ordered, that Senate Rule_____be (adopted, repealed or amended) (set out proposed new rule or amendment).

Form for changing House Rules.

Ordered, that House Rule_____be (adopted, repealed or amended) (set out proposed new rule or amendment).

I. OTHER USES OF ORDERS

Finally, orders are used for many purposes such as ordering the printing of documents received by either House, authorizing the issuance of stamps, regulating the use of legislative facilities, etc. Anyone unsure of the proper form for a particular order should consult the Office of Legislative Research, the Secretary of the Senate or Clerk of the House.

CHAPTER 7

AMENDMENTS

An amendment is a proposed change to a bill, resolve, constitutional resolution, resolution, order or another amendment. An amendment may be a commitee amendment (reported by one or more members of the joint standing committee to which the legislative instrument was referred), a Senate amendment (sponsored by a Senator), a House amendment (sponsored by a Representative) or a Committee of Conference amendment (reported by a committee of conference which is appointed by the Senate President and the Speaker of the House upon a request for a conference committee by both branches to try to reconcile disagreement on the instrument between the two branches). Amendments are drafted in the Legislative Research Office, signed by the sponsor or received by the committee clerk and filed with either the Clerk of the House or Secretary of the Senate (depending upon where the instrument being amended is at the time) and reproduced for distribution. When amendments are photocopied for distribution, they are photocopied on colored paper, the color corresponding to the amendment's origin. If the amendment originates in committee, the paper is pink. If the amendment originates in the Senate, the paper is yellow. If the amendment originates in the House, the paper is blue. Committee of Conference amendments are photocopied on pink paper since they are committee amendments.

All amendments consist of the following parts:

(1) A heading;
(2) An introductory paragraph;
(3) The body of the amendment;
(4) A statement of fact; and
(5) A signature line if the amendment has individual sponsors.

The heading of an amendment is centered at the top of the first page of the amendment. The first line of the heading reads "STATE OF MAINE". The second line gives the House of origin of the amendment (i.e., "SENATE" or "HOUSE OF REPRESENTATIVES"). The third line gives the Legislature at which the amendment is being introduced (e.g. "109TH LEGISLATURE"). The final line gives the session of the Legislature (e.g., "SECOND REGULAR SESSION:" "FIRST REGULAR SESSION;" "FIRST SPECIAL SESSION:" etc.). The following are examples of amendment headings:

FIRST EXAMPLE:

STATE OF MAINE
SENATE
108TH LEGISLATURE
SECOND REGULAR SESSION

2ND EXAMPLE:

STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

In the case of committee amendments, the House of origin set out in the heading is the House in which the instrument being amended originated. In the case of Committee of Conference amendments the House of origin set out in the heading is the House which first requested the Committee of Conference.

After the heading is the introductory paragraph. This sets out the type of amendment, the instrument being amended and the title of the instrument being amended. The following are examples of introductory paragraphs to amendments:

FIRST EXAMPLE:

COMMITTEE AMENDMENT " " to S.P. 672, L.D. 2076, Bill "AN ACT to Facilitate Recruitment and Retention of Outstanding Persons for Policy-making Positions in State Service."

2ND EXAMPLE:

SENATE AMENDMENT " " to H.P. 131, L.D. 142, Bill, "AN ACT to Increase the Salaries of Constitutional Officers and the State Auditor by $5,000."

3RD EXAMPLE:

HOUSE AMENDMENT " " to Joint Order relating to the establishment of a Select Committee on Fisheries and Wildlife, H.P. 1517.

4TH EXAMPLE:

HOUSE AMENDMENT " " to COMMITTEE AMENDMENT "A" to H.P. 1483, L.D. 1670, Resolve, for Paying of the County Taxes and Authorizing Expenditures of Penobscot County for the Year 1979.

5TH EXAMPLE:

COMMITTEE OF CONFERENCE AMENDMENT " " to S.P. 672, L.D. 2076, Bill, "AN ACT to Facilitate Recruitment and Retention of Outstanding Persons for Policy-making Positions in State Service."

When amendments are signed and introduced, they are given a letter designation before being reproduced. Each type of amendment is assigned a letter by the Clerk of the House or Secretary of the Senate (the first amendment of a certain type being "A" and each subsequent amendment of that type to the same legislative instrument is assigned the next letter in sequence).

Following the introductory paragraph is the body of the amendment. The amendment may do a number of things to the instrument it is amending. It may merely make one or more changes to the instrument or it may strike out all of the original instrument and replace it with new material. An amendment must be germane to the instrument to which it is offered, or it will not be entertained on the floor of the House or Senate (the Speaker of the House and the President of the Senate rule on the germaneness of amendments).

The important thing to remember about amendments is that the drafter is actually preparing instructions for the printer. The instructions should be as clear as possible to insure that the proper changes were made in the bill when the engrossed copy is prepared.

The body of an amendment consists of paragraphs setting out where the instrument is to be amended. The first paragraph begins "Amend the bill (or other instrument)" and the following paragraphs begin "Further amend the bill (or other instrument)". If an amendment changes only a few words in the original bill, usually the paragraph or section, etc., is named and the lines counted. The amendment is always drawn to the original bill rather than to theprinted L.D. with the corresponding number of lines, etc. of the L.D. put in parentheses.

The following are examples of amendments and the usual language used in them:

FIRST EXAMPLE:

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

'Sec. 1.....'

2ND EXAMPLE:

Amend the bill by inserting before the enacting clause the following:

'Emergency preamble.....'

3RD EXAMPLE:

Amend the bill by inserting at the end before the Statement of Fact the following:

'Emergency clause.....'

4TH EXAMPLE:

Amend the amendment by inserting after the 2nd paragraph, which begins with the words "Further amend the bill by," the following:

'Further amend the bill.....'

5TH EXAMPLE:

Amend the Resolve in the 6th line (5th line of L.D.) by inserting after the word "fir" the words 'wood of all sizes' and after the word "wood" the words 'in excess of 12 1/2 D.B.H.'

6TH EXAMPLE:

Amend the bill in section 1 in that part designated "§671." in the 3rd and 9th lines (5th and 7th lines in L.D.) by striking out the underlined figure "$300" and inserting in its place the underlined figure '$100'

Note that when words are to be deleted they are always "double quoted" in an amendment and when words are to be added they are always 'single quoted'.

The body of an amendment should be drafted with caution to insure that persons reading the amendment can determine what changes the amendment makes in the instrument being amended and to avoid mistakes in printing and engrossing the instrument. To insure that the proper amendatory language is used, a drafter should always consult with the Legislative Research Office when drafting any amendment.

Like most legislative instruments, an amendment should have a statement of fact to assist Legislators and members of the public in understanding what the intent of the amendment is. The statement of fact to an amendment is drafted in the same way as a statement of fact for a bill and a drafter should consult that chapter before drafting a statement of fact for an amendment.

The following are examples of the various types of amendments.

EXAMPLE OF A COMMITTEE AMENDMENT TO A BILL:

STATE OF MAINE
SENATE
108TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 672, L.D. 2076, Bill, "AN ACT to Facilitate Recruitment and Retention of Outstanding Persons for Policy-making Positions in State Service."

Amend the Bill by striking out everything after the title and before the Statement of Fact and inserting in its place the following:

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

Sec. 1. 2 MRSA §7, sub-§1, last 2 lines, as enacted by P&SL 1975, c. 147, Part C, §4, are amended to read:

State Auditor.....~~17,500~~ 20,000;

Treasurer of State.....~~15,000~~ 18,000;

Sec. 2. 2 MRSA §7, sub-§2, last 3 lines, as enacted by P&SL 1975, c. 147, Part C, §4, are amended to read:

Public Utilities Commission

Chairman.....~~22,050~~ 28,000;

Members other than Chairman...~~18,900~~ 25,000;

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1978-79
AUDIT, DEPARTMENT OF	
State Auditor	
Personal Services	$ 2,500

PUBLIC UTILITIES COMMISSION

Personal Services 12,050

TREASURY DEPARTMENT

Treasurer of State

Personal Services 3,000'

Statement of Fact

This amendment provides for salary adjustments for the stated employees to facilitate recruitment and retention of outstanding persons for these posisions.

An appropriation is included for the full-year cost of the increases in salaries.

EXAMPLE OF A SENATE AMENDMENT TO A COMMITTEE AMENDMENT TO A BILL:

STATE OF MAINE
SENATE
108TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to S.P. 672, L.D. 2076, Bill, "AN ACT to Facilitate Recruitment and Retention of Outstanding Persons for Policy-making Positions in State Service."

Amend the Amendment in section 1 in that part designated "§6." in the 6th line by inserting after the underlined word "law" the following: ', except that the Governor shall not reduce the salary of any incumbent Commissioner of the Public Utilities Commission'

Statement of Fact

The purpose of this amendment is to prevent the Governor from reducing the salary of any Commissioner of the Public Utilities Commission while the commissioner is serving on the Public Utilities Commission.

An example of a House Amendment to a Comittee Amendment is set forth on this and the following page. Note that the forms are similar for amendments to Committee amendments, Senate amendments, House amendments and Committee of Conference amendments.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 672, L.D. 2076, Bill, "AN ACT to Facilitate Recruitment of Retention of Outstanding Persons for Policy-making Positions in State Service."

Amend the amendment by striking out all of section 3 and inserting in its place the following:

'Sec. 3. 30 MRSA §2, sub-§2, first sentence, as enacted by PL 1977, c. 67, §3, is amended to read:

The district attorney for each of the prosecutorial districts, as described in section 553-A, shall receive an annual salary of ~~$23,500~~ $27,000.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1978-79
ATTORNEY GENERAL, DEPARTMENT OF	
District Attorneys Salaries	
Personal Services	$31,424
DEPARTMENT OF AUDIT	
State Auditor	
Personal Services	2,500
PUBLIC UTILITIES COMMISSION	
Personal Services	12,050
TREASURY DEPARTMENT	
Treasurer of State	
Personal Services	3,000'

Statement of Fact

This amendment provides for a $3,500 salary increase for the district attorneys.

EXAMPLE OF A CONFERENCE COMMITTEE AMENDMENT TO A BILL:

STATE OF MAINE
SENATE
108TH LEGISLATURE
SECOND REGULAR SESSION

CONFERENCE COMMITTEE AMENDMENT "A" to S.P. 672, L.D. 2076, Bill, "AN ACT to Facilitate Recruitment and Retention of Outstanding Persons for Policy-making Positions in State Service."

Amend the Bill by striking out everything after the title and inserting in its place the following:

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

Sec. 1. 2 MRSA §6, as last amended by PL 1977, c. 553, §1, is repealed and the following enacted in its place:

§6. Salaries subject to adjustment by Governor

Notwithstanding any other provisions of law, the Governor is authorized to adjust the salaries of the following state officials within the salary ranges indicated herein. The adjustment may be at the time of appointment of the official and subsequently as provided by law. The salary ranges shall be as provided by law; except that for the purposes of this section, each salary range shall be increased by 2 steps in addition to and of an identical percentage increase as the steps in the range otherwise provided by law. No other state salary shall be paid to these officials.

1. Range 91. The salaries of the following state officials and employees shall be within salary range 91:

Commissioner of Transportation;
Commissioner of Conservation;
Commissioner of Commerce and Industry;
Commissioner of Finance and Administration;
Commissioner of Educational and Cultural Services;
Commissioner of Environmental Protection;
Commissioner of Human Services;
Commissioner of Mental Health and Corrections;
Commissioner of Public Safety;
Commissioner of Business Regulation;
Commissioner of Manpower Affairs;
Commissioner of Personnel.

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Bank Superintendent;
Bureau of Consumer Protection Superintendent;
State Tax Assessor.

3. Range 89. The salaries of the following state officials and employees shall be within salary range 89:

State Director of Public Improvements;
State Budget Officer;
State Controller;
Insurance Superintendent;
Director of the Bureau of Forestry;
Chief of the State Police;
Director, State Planning Office.

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

Commissioner of Inland Fisheries and Wildlife;
Commissioner of Marine Resources;
State Purchasing Agent;
Director, Arts and Humanities Bureau;
Director, State Museum Bureau;
Director of the Bureau of Parks and Recreation;
Commissioner of Agriculture;
State Director of Alcoholic Beverages;
Executive Director, Retirement System;
Director of Public Lands.

5. Range 86. The salaries of the following state officials and employees shall be within salary range 86:

Adjutant General;
Director of Labor;
General Counsel of the Public Utilities Commission;
Deputy Chief of the State Police;
Director of Transportation of the Public Utilities Commission;
Director of State Lotteries;
State Archivist;
Director of Geology;
Executive Director, Land Use Regulation Commission;
Executive Director of the Public Employees Labor Relations Board;
Director of Finance of the Public Utilities Commission.

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

	1978-79
DEPARTMENT OF AUDIT	
State Auditor	
Personal Services	$1,250
PUBLIC UTILITIES COMMISSION	
Personal Services	7,210
TREASURY DEPARTMENT	
Treasurer of State	
Personal Services	1,500

CONFERENCE COMMITTEE AMENDMENT "A" to S. P. 672, L.D. 2076

Sec. 3. Effective date. This Act shall become effective on January 8, 1979.

Sec. 4. Transition. Beginning on the effective date of this Act, the salaries of incumbents in the positions of chairman and members of the Public Utilities Commission shall be at Range 91, step C, and Range 89, step B, respectively. Persons appointed subsequently to these positions shall be paid salaries as provided elsewhere in this Act.'

Statement of Fact

This is a Conference Committee amendment which replaces both the bill and amendments to the bill. It amends the current law which compensates major policy-making positions (i.e. Title 2, MRSA sections 6 and 7) as follows:

1. It establishes in one place in the statutes the salary ranges which may be paid to such positions.

2. It increases each of the ranges of salaries which may be paid to persons in those positions by 2 additional steps, about 10%, permitting the Governor to use this improved range to attract and retain persons for these positions.

3. It increases the salaries that may be paid to the Public Utilities Commission, chairman from $22,050 to range 91, $27,290 - $40,131 and Public Utilities Commission members from $18,900 to range 89, $24,149 - $35,475. It provides that for the Public Utilities Commission chairman and members, the Governor may establish their salary at the time of their appointment only and not subsequently to maintain commission independence; and it establishes specific salaries for the individuals who are chairman and members on the effective date of this Act.

4. It increases the salaries of the State Auditor from $17,500 to $20,000 and the Treasurer of State from $15,000 to $18,000.

5. It provides an effective date of January 8, 1979 and an appropriation to fund the Act for the fiscal year 1978-79.

PART IV

STYLE AND GRAMMAR

IN

DRAFTING

CHAPTER I

INTRODUCTION

Expressing the sponsor's idea in a manner which is clear, concise and organized involves a multi-step process. As indicated previously, methodical research and the organization of ideas are a necessary prelude to the actual writing stage. This Part of the manual is designed to provide rules of thumb for the drafter when he reaches the writing stage.

As a general matter, the drafter should now be attempting to eliminate the obstacles which could block communication between him and those the law is designed to affect. Early drafts should be concerned with putting the substance of the bill in writing, with the most emphasis on matters of arrangement and avoidance of substantive errors. In later drafts the emphasis shifts to polishing and refining the work, at which time style and form become the important considerations.

CHAPTER 2

MECHANICAL STYLE

A. BREAKDOWN OF MRSA

The Maine Revised Statutes (1964 Revision) represents the 10th and latest revision of the general and permanent laws of the State. The body of these laws is divided into 39 Titles, each covering a separate general subject. The first four Titles cover general provisions and the three branches of government. The remaining Titles are arranged alphabetically.

The Titles are subdivided into smaller groupings to permit maximum convenience in arranging subject matter logically and systematically. The mechanical breakdown runs as follows, with the method of designation shown in parenthesis:

TITLE (1, 2, . .)
SUBTITLE (1, 2, . .)
PART (1, 2, . .)
SUBPART (1, 2, . .)
CHAPTER (1, 2, . .)
SUBCHAPTER (I, II,..)
ARTICLE (I, II,..)
SECTION (§1, §2, . .)
SUBSECTION (1, 2, . .)
PARAGRAPH (A., B., . .)
SUBPARAGRAPH ((1), (2), . .)
DIVISION ((a), (b), . .)
SUBDIVISION ((i), (ii), . .)

When a particular Title is long and complex it is broken down into Parts, each chapter of which can be logically grouped together. This same technique should be applied for any grouping which is long and complex--it should be broken down into logical subgroupings.

Each subgrouping is numbered or lettered consecutively within the larger grouping. For instance, sections are numbered consecutively within a chapter. The first section of any chapter should be given a numerical designation the last digit of which is "1", e.g. §21, §5221, §381, etc. (See also Part III, chapter 2 for rules to follow when enacting new statutory provisions).

When a Title, subtitle, Part, etc., must be inserted between two existing consecutively numbered or lettered groupings, the inserted Title, subtitle, Part, etc., is numbered or lettered the same as the immediately preceding grouping, followed by a hyphen and:

(a) Where the preceding grouping ends in a number, the letter A:

SECTION 21

SECTION 21-A

SECTION 22

(b) Where the preceding grouping ends in a letter, the number 1:

(PAR.) A.

(PAR.) B.

(PAR.) B-1.

(PAR) C.

If more than one grouping is to be inserted, use consecutive numbering or lettering, as the case may be:

SECTION 21

SECTION 21-A

SECTION 21-B

SECTION 21-C

SECTION 22

A good example of this technique can be found in Title 18, Part 5 (FIDUCIARY RELATIONS), chapter 501 (GUARDIAN AND WARD), where subchapters III-A (GUARDIANSHIP OF MENTALLY RETARDED PERSONS) and III-B (GUARDIANSHIP OF INCAPACIPATED ADULTS IN NEED OF PROTECTIVE SERVICES) were inserted between subchapters III and IV.

This technique must be used when an entire grouping (Title, chapter, etc.) is going to be repealed and replaced by material which is different or not in substantially the same sequence as the material to be replaced. For example, PL 1977, c. 410 repealed 17 MRSA c. 93 (OBSCENITY) and replaced it with 17 MRSA, c. 93-A (OBSCENITY). Although the general heading remained the same, the old chapter 93 had section designations as follows:

Sec. 2901. Making or circulating books and pictures

Sec. 2902. Notices for cure of venereal diseases, etc

Sec. 2903. Circulation among minors of criminal news and obscene pictures

Sec. 2904. Use of phonographs for profane or obscene language

Sec. 2905. Obscene or impure shows

Sec. 2906. Magazines containing obscene material on their covers not to be displayed to minors

The new law had one section designation as follows:

Sec. 2911. Dissemination of obscene matter to minors

If the new chapter on obscenity had dealt with the same material, using similar headnotes as the old chapter, it could have used the old chapter number. This technique prevents gaps in the history of a grouping.

B. BREAKDOWN OF CONSTITUTION OF MAINE

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 fitted into the body of the Constitution and not placed at the end. The hierarchy of the Constitution is:

PREAMBLE

ARTICLE

PART (Used only in ARTICLE IV)

SECTION

SUBSECTION

C. TECHNICAL STYLE FOR AMENDING EXISTING LAW OR ENACTING NEW LAW (PUBLIC AND PRIVATE)

As a technical matter, whether the drafter is amending existing law or enacting new law, the style of construction is as follows:

New Language is underscored
Language to be amended out is stricken through.

When the bill is printed the underscored words are changed to bold face type. The following is an example of this style:

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

29 MRSA § 106, 3rd ¶ from the end, last sentence, as enacted by PL 1977, c. 481, § 5, is amended to read:

~~However~~ **Except as herein provided,** when application for reregistration of an automobile is made after the registration for the previous year has been expired for ~~2 months or~~ more **than 30 days**, the expiration date of the renewal shall be at the end of the month, one year from the month of issuance **of the previous registration. If the applicant provides satisfactory evidence and certifies in writing to the Secretary of State that the vehicle has not been operated on a public way during the period of expired registration, the registration expiration date, upon renewal, is at the end of the month one year from the month of issuance of the registration renewal.**

Notice that after the enacting clause, the specific provision of the Maine Revised Statutes (or Private and Special Law) to be affected by the change is clearly indicated. Drafters need not be concerned with the historical reference ("as enacted by PL 1977, c. 481, §5"). That will be taken care of by technicians in the Legislative Research Office. The drafter should use one of the following types of clauses when submitting proposed legislation:

a) For amending existing law:

29 MRSA §106, 3rd ¶ from the end, last sentence is amended to read:

or

P&SL 1969, c. 92, §14, first ¶ is amended to read:

b) For repealing and replacing existing law:

29 MRSA §106 is repealed, and the following enacted in its place:

or

P&SL 1969, c. 92, §14, first ¶ is repealed and the following enacted in its place:

c) When enacting new law:

29 MRSA §106 is enacted to read:

or

P&SL 1969, c. 92, §14-A is enacted to read:

D. ARRANGEMENT OF NEW MRSA MATERIAL

Drafters of bills which merely repeal or amend provisions of existing law need not be concerned with arrangement, except for the internal arrangement of the bill (See Part III, chapter 2, subchapter B). Drafters who are enacting new material into the Maine Revised Statutes must be concerned with selecting the appropriate spot for the new material. The Director of Legislative Research reserves the right to review, and, if necessary, change allocations contained in bills submitted to the office in order to preserve the orderly arrangement of the Maine Revised Statutes.

New material should be allocated to the Title of the Maine Revised Statutes in which it would most logically fit. The general arrangement was created by the 1964 revision and is arranged by subject matter. Volume 1, pages XVII - LXV sets out a list of Titles and chapters and can be consulted to determine the logical position of new material.

E. HEADNOTES

Each portion of the Maine Revised Statutes must, excepting certain codes and uniform laws, have a "title" or "headnote", down to and including subsections. Each section and subsection of any private and special law must have a headnote. While most drafters will entitle every statutory portion down to section, invariably they will forget to put headnotes before each subsection.

A headnote does not have the force of law, serving merely as a finding device for the reader, but a drafter should revise a headnote when an amendment makes the existing one obsolete or misleading. (Since headnotes do not have the force of law, formal amendments should not be made to headnotes. They will be corrected by repealing and replacing the statutory section when drafting the bill or as a part of the ongoing revision process following enactment of the bill). A uniform law may appear without headnotes in order to make it conform to the law enacted in other states. (See Part V, chapter 6, Drafting to Uniform Laws).

On the other hand, no portion of a statute below subsection should have headnotes. Therefore, a drafter should not headnote a paragraph, subparagraph, division or subdivision.

Any unallocated section of a public law should have a headnote. (For rules concerning headnotes in Resolves, see Part III, chapter 3, subchapter B).

Make headnotes short and concise. They should act as a catchline, enabling the reader to get a quick idea of the nature of material contained in the grouping which is headnoted. If a section headnote cannot be made both concise and illuminating, it may indicate that the section covers too much territory and should be divided into several sections.

F. BREAKDOWN OF SECTION

As noted earlier, a section can be broken down as follows:

SECTION

SUBSECTION

PARAGRAPH

SUBPARAGRAPH

DIVISION

SUBDIVISION

The general rules of drafting suggest that the contents of a section should correspond to the contents of a paragraph in ordinary English composition. In other words, each distinct concept should be in a separate section.

Quite often, while it may be possible to include a distinct concept in one section, for organizational purposes it becomes appropriate to split the section into subsections and even smaller subgroupings. This use of the tabular style of arrangement can help to make the material in a section clearer and easier to locate. Consider the following section which deals with a single concept--the duties of a particular board:

§6. Duties of board

The board shall issue rules and prescribe fees for hunting and fishing of halibut and salmon which is steelhead trout or coho.

The section could be broken down into subgroupings in the following manner:

§6. Duties of board

The board shall:

1. Rules. Issue rules; and

2. Fees. Prescribe fees for:

A. Hunting; and

B. Fishing for the following types of fish:

(1) Halibut; and

(2) The following types of salmon:

(a) Steelhead trout; and

(b) Coho.

When using the tabular style, the drafter should keep the content of a subsection distinct from that of other subsections. The tabular style is not used properly if it results in creating a subsection or subsections having only headnotes.

When using the tabular style within a section it is permissible to break a section into subsections and omit any lead line after the section headnote, as follows:

§2705. Board for Barrier Free Design

1. Created. There is hereby created...
2. Members. The board shall consist...

However, when a subsection is broken down into lettered paragraphs, there should be a lead or introductory line of text after the subsection headnote, as follows:

2. Members. The board shall consist of:
A. The following 7 voting members...
B. The following 3 nonvoting members...

20 MRSA §911, prior to being repealed and replaced by PL 1979, c. 475, §1, read as follows (Only subsections 1 and 2 have been used as examples):

§911. Compulsory education; work permits for certain children; 16-year-old pupils

1. Attendance. Every child between his 7th and 17th birthdays shall attend a public day school during the time it is in session. An abscence therefrom of 1/2 day or more shall be deemed a violation of this requirement. This subsection shall not apply to a child who has graduated from high school before his 17th birthday.

2. Excusable absences. For the purposes of this chapter excusable absence shall mean an absence from school for one of the following reasons:

A. Personal illness;
B. Appointments with health professionals that cannot be made outside of the regular school day;
C. Observance of recognized religious holidays when the observance is required during a regular school day;
D. Emergency family situations; or
E. Planned absences for personal or educational purposes which have been approved in advance.

This was an example of a proper use of the tabular style.

PL 1979, c. 475, §1 reads as follows:

> Sec. 1. 20 MRSA §911, sub-§1, as enacted by PL 1977, c. 499, §1, is repealed and the following enacted in its place:
>
> 1. Attendance; appealed.
>
> A. Every child between his 7th and 17th birthdays shall attend a public day school during the time it is in session. An absence therefrom of 1/2 day or more shall be deemed a violation of this requirement. This subsection shall not apply to a child who has graduated from high school before his 17th birthday, nor to a child who:
>
> (1) Has attained age 15 or has completed the 9th grade;
>
> (2) Has permission from his parent or legal guardian;
>
> (3) Has permission from the local school committee or board of directors, or its designee; and
>
> (4) Has made an agreement, in writing, with his parents or legal guardian and the designee of the local school committee or board of directors to meet at least once annually until he reaches the age of 17 for the purpose of reviewing the possibility of the student's return to day school or attendance in evening school.
>
> 2. Appeal. If a child has fulfilled the requirements under subsection 1, paragraph A, subparagraphs (1) and (2) and has been denied permission to leave school by the local school committee or board of directors, the child may file an appeal with the commissioner.

Several problems are apparent. The drafter, in the lead line, indicated that he was only repealing and replacing subsection 1. Yet he drafted a new subsection 2 (Appeal). It would seem that the drafter intended the "Appeal" provision to apply to subsection 1. This is evidenced by the subsection 1 headnote: "Attendance; appealed". The drafter begins the text of subsection 1 with "A. Every child..." The subsection has no lead sentence. In addition, there is only one lettered paragraph (A) under the subsection. This practice should be avoided. Do not break a

grouping into only one subgrouping. If you cannot use at least two subgroupings there is no need to break up the grouping. The subsection could have been replaced as follows:

> 1. Attendance; appealed. Attendance requirements for public schools are as follows:
>
> A. Every child...:
>
> (1) Has attained...;
>
> (2) Has permission...;
>
> (3) Has permission...; and
>
> (4) Has made an agreement...;and
>
> B. If a child has fulfilled...

The following rules of construction apply to paragraphs in a section.

A. Blocked paragraphs. The text of a blocked but unnumbered or unlettered paragraph relates to the numbered or lettered paragraph, with the same margin, preceding it.

B. Indented paragraphs. The text of an unnumbered or unlettered paragraph with the first line indented relates to the section as a whole.

A drafter should pay careful attention to these rules, particularly the second one.

An example of inattention to this rule can be found in 34 MRSA §2334, where an indented paragraph was placed between 2 subsections:

> 8. Transportation to hospital. Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place to provide transportation to any hospital to which the court has committed the patient.
>
> With the exception of expenses incurred by the applicant pursuant to subsection 4, paragraph F, the District Court shall

be responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the patient.

9. Appeals. A person ordered by the District Court to be committed to a hospital may appeal from that order to the Superior Court. The appeal shall be on questions of law only. Any findings of fact of the District Court shall not be set aside unless clearly erroneous. The order of the District Court shall remain in effect pending the appeal. The District Court Civil Rules of Procedure and the Maine Rules of Civil Procedure shall apply to the conduct of such appeals, except as otherwise specified in this subsection.

As the text of the indented paragraph indicates that it was intended to apply to the entire section, as a matter of proper form and style, the paragraph should be made into subsection 8-A. Expenses.

A section should not be drafted to contain several indented paragraphs, a series of subsections and finally an indented paragraph.

§201. _____

_____

_____

_____

_____:

1. _____

_____

2. _____

_____

_____

_____

The indented paragraphs should be made subsections and the subsections changed to lettered paragraphs.

§201. _____

1. _____

_____

2. _____

_____

3. _____

_____:

A. _____

B. _____

C. _____

4. _____

_____

G. "FLUSHING LEFT"

Avoid the use of 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. Any person under 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. It is a Class E crime for any person under the age of 20 years to:
>
> A. Consume alcohol in a public place; or
>
> B. Operate a school bus without a valid driver's license.

While a single sentence should usually be blocked, a drafter may want a single sentence, appearing at the end of a section which has several subsections, to apply to the entire section. If the single sentence is indented, the drafter achieves this result through operation of the rule.

H. INTERNAL REFERENCES

1. Generally

As a general rule, internal references within the Maine Revised Statutes should be made to the specific Title, Part, chapter or section involved, depending upon usage. For example:

> If the person is the holder of dealer or transporter registration plates under Title 29, section 321 or 332...

This general rule does not necessarily apply to statutory Acts which, by specific statutory authority, may be cited by a short title or common name. For example, 17-A MRSA §1, subsection 1 provides:

> Title 17-A shall be known and may be cited as the Maine Criminal Code.

When this authority is given, the preferred method, when cross referencing a provision of law more than once within a section, is to cite the formal name of the Act and give its numerical cite once at the beginning of the section and to use the numerical cite thereafter, thus avoiding redundancy and additional text.

2. Within the Same Grouping

Drafters should be familiar with 1 MRSA §71, subsection 11, the text of which can be found in the Appendix. One rule which emerges from that provision is as follows:

> Whenever, within the MRSA, an indefinite reference is made to a grouping smaller than Title (e.g. chapter, section, etc.), it refers to the grouping with the same common denominator as that in which the reference is found. For instance, 5 MRSA §551 states:
>
> > "Chapters 51 to 67 and all acts amendatory thereof shall be known and may be cited as the Personnel Law."

Although the reference does not indicate in what Title chapters 51 and 67 can be found, because the section in which the reference appears is contained in Title 5 and Title 5 contains chapters numbered 51 to 67, it is not necessary to repeat "Title 5" again, as it is presumed that the reference is to Title 5, chapters 51 and 67.

As another example, look at the provision of the last sentence of 36 MRSA §653, subsection 1, paragraph D-3:

> "The exemption provided in this paragraph shall be in lieu of any exemption under paragraph D to which the person may be eligible."

The common denominator for paragraph D-3 and paragraph D referred to is subsection 1. (Note: Paragraph D is followed by paragraphs D-1, D-2 and D-3 which were inserted between paragraph D and paragraph E.)

When reference is made to several consecutive sections, e.g. "section 230 to 235" it is unnecessary to use the word "inclusive." By using the word "to" you indicate that the first and last sections are included in the reference.

When you do make a cross-reference, phrase it as follows:

"under section 631"
"under chapters 30-35"
"under paragraph F"

Do not say:

"pursuant to section 631"

I. TEXTUAL CITATIONS OF CONSTITUTION OF MAINE; MAINE REVISED STATUTES; PUBLIC LAWS; PRIVATE AND SPECIAL LAWS AND RESOLVES.

The forms of textual citations differ from the form for amendatory clause citations. Only textual citations are dealt with here.

The general rule for textual citation to a portion of the Constitution of Maine, Maine Revised Statutes, public laws, private and special laws or resolves 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 portion of that item, followed by a citation to the next largest portion and so forth.

This principle is evident in the following examples of textual citations:

1. Citations contained in the Revised Statutes

-- Citations to the Constitution of Maine:

Constitution of Maine, Article IX, Section 14-A
Constitution of Maine, Article IV, Part 1st, Section 3

-- Citations to another portion of the Revised Statutes appearing in a Title other than the one containing the citation:

Title 5, chapter 341
Title 29, section 251
Title 9-A, section 6-106 (Citation to a Uniform Law)

-- Citation to another portion of the Revised Statutes appearing in the same Title as the portion containing the citation:

section 4562 (This citation is contained in 36 MRSA §4572 and cites 36 MRSA §4562)

-- Citations to a public law:

Public Law 1975, chapter 55

-- Citations to a private and special law:

Private and Special Law, 1975, chapter 33

-- Citations to a resolve:

Resolve, 1975, chapter 44

-- Citations to a Maine court rule:

Maine Rules of Civil Procedure, Rule 80B
Maine District Court Civil Rules, Rule 41(b)
Maine Rules of Criminal Procedure, Rule 39E(b)
Maine District Court Civil Rules, Rule 37
Maine Rules for Probate Court, Rule 7
Maine Rules of Evidence, Rule 501

2. Citations Contained in the Text of a Public Law

Citations contained in the text of a public law not allocated to the Maine Revised Statutes are the same as citations appearing in the text of the Revised Statutes, except that the words "Revised Statutes" appear before the citation.

For example, citation to a portion of the Revised Statutes appearing in the public law:

"Revised Statutes, Title 5, section 1510, subsection 1"

3. Citations Contained in the Text of a Private and Special Law

Citations contained in the text of a private and special law are the same as citations appearing in the unallocated text of the public laws.

4. Citations Contained in the Text of a Resolve

Citations contained in the text of a resolve are the same as citations appearing in the unallocated text of a public law.

5. Points for the Drafter to Note

Any person citing a portion of the Maine Revised Statutes

must be familiar with 1 MRSA §71, subsection 11.

In citing a section of the Maine Revised Statutes, a citation of the Title and section is sufficient, and as pointed out in 1 MRSA §71, subsection 11, in some cases a citation of the section only is sufficient.

Title and section is sufficient, and as pointed out in 1 MRSA §71, subsection 11, in some cases a citation of the section only is sufficient.

While private and special laws are normally arranged in sections, there are private and special laws having unusual internal arrangements, and no clear rule for citation to internal portions of a private and special law can be given. A drafter must cite, in the clearest way possible, the internal portion of the private law with which he is concerned.

Most resolves are so short that it is unnecessary to refer to an internal portion of a resolve; rather, the resolve itself is cited. However, if it is necessary to refer to resolves, a drafter should note the following. While resolves are normally arranged by "resolved clauses," there are resolves having unusual internal arrangements, and no one rule for citation to internal portions of a resolve can be given. A preferred method of citation is by:

> Either citing the ordinal number of the resolve clause and then the line of the resolved clause with which the drafter is concerned. For example:
>
> Resolves 1977, chapter 44, the second resolve clause, 5th line

or

for county budget resolves, citing the appropriation line number, and then the line of that appropriation line number. For example:

Resolves 1977, chapter 68, §3, 8th line from the end

or

citing the appropriation account number and the line under that appropriation account number. For example:

The line "Contractual Services" under Appropriation Account Number 2045

Drafters should note that all public laws, private and special laws, resolves and constitutional resolutions enacted or passed during a biennium of the Legislature are referred to by the first year of the biennium. For example:

Public Law 1977, (e.g., P. L. 1977, c. 686, enacted in 1978)

Private and Special Law 1977, (e.g., P&SL, 1977, c. 77, enacted in 1978)

Resolve 1977, (e.g., Resolve 1977, c. 88, passed in 1978)

Constitutional Resolution 1977, (e.g., Cons. Res. 1977, c. 6, passed in 1978)

(Each item in this example was enacted or adopted by the 108th Legislature, which sat during the biennium which began with 1977)

Drafters should further note that all public laws enacted by a Legislature during a biennium are numbered consecutively, beginning with the first public law passed by that Legislature, e.g., Public Law 1977, chapter 1 and ending with the last public law passed by

that Legislature, e.g., Public Law 1977, chapter, 720, regardless of which session of the Legislature of the biennium enacted the public law. Private and special laws, resolves and constitutional resolutions are also numbered consecutively within their respective categories throughout the biennium.

When a drafter refers, in a public law, to another portion of that public law, there is no need to cite "Public Law __, chapter __ ", as it is assumed that any reference without a public law and chapter reference refers to another portion of the public law which contains the reference. The same rule holds true for private and special laws, resolves and constitutional resolutions.

J. CITATIONS TO THE CONSTITUTION OF THE UNITED STATES AND TO FEDERAL STATUTES

1. Citations to the Constitution of the United States

The Constitution of the United States is composed of a preamble, 7 Articles and 26 amendments. The breakdown is:

Preamble

Article (e.g., Article II)

Section (e.g., Section 3)

Amendment (e.g., Amendment XV)

Section (e.g., Section 1)

While amendments are called Articles by their own terms, they are generally carried in copies of the Constitution of the United States as amendments, and not as Articles.

Citations to portions of the Constitution of the United States should be cited in the same form as citations to portions of the Constitution of Maine, that is, the name "Constitution of the United States" followed by the largest division of that constitution , which is either "Article __" or "Amendment __", followed by the next largest division, which is "Section ". For example:

Constitution of the United States, Article I, Section 8

2. Citations to Federal Statutes

To ensure clarity and uniformity, citations to statutes of the United States should appear in one of two forms:

United States Code, Title 38, Section 801

or

United States Disaster Relief Act, Public Law 93-288

Citations should be made to a Title and section of the United States Code if the material cited appears in one of the Titles of the United States Code enacted by Congress into positive law. As of December 1977, these Titles were:

Title	1	General Provisions
Title	3	The President
Title	4	Flag and Seal, Seat of Government, and the States
Title	5	Government Organization and Employees
Title	6	Surety Bonds
Title	9	Arbitration
Title	10	Armed Forces
Title	13	Census
Title	14	Coast Guard
Title	17	Copyrights
Title	18	Crimes and Criminal Procedure
Title	23	Highways
Title	28	Judiciary and Judicial Procedure
Title	32	National Guard
Title	35	Patents
Title	37	Pay and Allowances of the Uniformed Services
Title	38	Veterans Benefits
Title	39	Postal Service
Title	44	Public Printing and Documents

The Internal Revenue Code, although it has not yet been enacted into positive law as Title 26, was enacted as a code. Therefore, it should be cited:

The United States Internal Revenue Code, Section __.

For example:

The United States Internal Revenue Code, Section 665.

By United States Code, Title 1, Section 204, the House of Representative's Committee on the Judiciary supervises the publication of the United States Code, which includes codifying all federal statutes into 50 Titles. This codificiation,however, is only prima facie evidence of the federal statutes it contains, excepting the titles listed above which have been enacted into positive law. Therefore, the usual procedure in citing a federal statute which is not part of a positive law title is to cite it by "United States" followed by its name and public law number, i.e.:

The United States (name of Act), Public Law __-__.

For example:

The United States Safe Water Drinking Water Act, Public Law 93-523.

K. INCORPORATION BY REFERENCE

In order to save time and space, it may frequently appear convenient to merely incorporate material from another statute or source into the bill being drafted. More often than not, this is a dangerous convenience, at best, unless certain precautions are taken.

The drafter should carefully identify the material being incorporated and make certain that it accurately deals with the situation at hand. By making a vague reference, the drafter not only confuses the reader, but invites litigation.

If some material is being incorporated by reference, it is important to make sure that the material referred to is in existence. Two problems frequently arise in this respect. Drafters often make one instrument contingent upon another, during the same session of the Legislature. Such an arrangement could result in one instrument being enacted while the other is not, creating an unworkable situation. Consequently, all parts of a legislative program should be included in one bill.

The other problem with contingent incorporation takes on constitutional dimensions. The Attorney General has issued an opinion stating that the Legislature cannot adopt legislation which incorporates by reference material as it will be changed in the future. The Attorney General ruled that such an incorporation would be unlawful delegation of legislative authority to whichever body made the later changes in the incorporated material. The opinion states in part:

> There is clearly no constitutional impediment to the adoption by the Maine State Legislature of rules and regulations already in existence which were promulgated by an outside body. There may, however, be constitutional problems arising from the adoption of provisions which purport to adopt future amendments in addition to existing laws or regulations. The question of adoption of rules and regulations of an outside body was addressed in State v.s. Vino Medical Company, 121 Me. 438 (1922). In that case the court was faced with the situation in which the Maine Legislature had adopted a definition of intoxicating liquor which provided the definition under Maine Law would change "based upon the presence of a specified percentage of alcohol, then or thereafter declared by Congressional enactment or by decision of the Supreme Court of the United States." The first question which the court was asked was whether there was any objection on constitutional grounds to the adoption by legislative enactment of any existing definition or standard enacted by Congress which definition would become fixed law in the State of Maine. The court responded that it was aware of no such objection.
>
> With regard to the question of whether the Maine legislation was valid insofar as it purported to incorporate future enactments of Congress establishing a rule, test or definition, however, the court answered the question in the negative. The court found that "Such legislation constitutes an unlawful delegation of legislative power, and an abrogation by the respresentatives of the people of their power, privilege and duty to enact laws." Vino, supra, 443. The position taken by the court in the Vino case was incorporated in an opinion of this office to the Director of the Aeronautics Commission dated December 5, 1950, in which it was stated "To the extent such legislation contemplates that the law may change from time to time without further action of the Maine Legislature, such statute in Maine is definitely unconstitutional.

Thus when incorporation by reference is used in drafting, the drafter should be careful to insure that only the material in existence on the effective date of the statute is incorporated and that future changes in the referenced material are not incorporated in the statute.

CHAPTER 3

THE LEGISLATIVE SENTENCE

The best type of sentence to use when drafting is the short sentence. Long sentences tend to lose a proper construction pattern and become ambiguous and frequently unreadable. Invariably, a long legislative sentence can be broken down into several shorter sentences without a loss of meaning or continuity.

A. LEGAL RULE

In expressing legislative policy, simplicity is of primary importance. By following a strict pattern of statutory expression and avoiding variation in sentence form, the drafter can more easily state the statutory objective.

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 and then sets forth the action which the statute directs.

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

B. LEGAL SUBJECT

The legal subject identifies the person who is required or permitted to do something or prohibited from doing something.

The description of the legal subject determines the person whom the law will cover, consequently this description should be precise.

Because legal duties, liabilities, rights, privileges and powers can reside only in person, the legal sentence should be drafted in the personal form. It is illogical to direct a command at a "thing" because it has no responsibility. (See VOICE, pg. 195.)

Consider the following sentence:

> "Whenever a structure is in disrepair it shall be ordered demolished."

The sentence does not tell us who is to issue the order. It would seem that the intent was to place a duty on someone to order the demolition. (Such ambiguity creates difficulties for courts seeking to issue orders in the nature of mandamus.) The person under the duty should be identified. Compare this sentence:

> "The inspector of buildings shall order any structure in disrepair to be demolished."

C. LEGAL ACTION

This directs the legal subject to act in a particular manner, describing the particular act permitted or required to be done or prohibited from being done. It is the verb which directs or permits action or inaction. The greatest problem for the drafter is the selection of the proper verb form.

If the legal rule (subject, plus action) is permissive

(confers a right, privilege or power that is to be exercised at the will of the legal subject) use the word "may" in the legal action. If the rule is imperative (imposes a duty or liability on the legal subject) use the word "shall." (For more information on the correct use of "may" and "shall" see pg. 193.) Never use "may or "shall" in any part of the rule except in the legal action. Consider the following sentence:

SUBJECT	ACTION
"A record of the hearing	is to be kept by the secretary."

A "thing" is the subject. The sentence is narrative rather than imperative because of the form of verb used. Properly written the sentence should read:

SUBJECT	ACTION
"The secretary	shall keep a record of the hearing."

D. LIMITATIONS ON APPLICATION

Frequently, the rule which legislation seeks to impose is not designed to be of general or uniform application. If there is a limitation on the 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. The Case

Ordinarily introduced by the word "when," the case sets out the state of facts which confine the legal rule's extent or application.

For example:

CASE When an emergency exists,
SUBJECT the director,
ACTION may restrict licensees' operations.

The case has indicated under what circumstances the power granted by the legal rule may be excercised.

-- State the Case at the Beginning

As a general matter, this advice should be followed. The reader is immediately notified of the rule's limited application. However, if a single rule applies to different cases, it may be more convenient to use the tabular form and list the cases after the rule:

SUBJECT the director,
ACTION may restrict licensees' operations:

CASES
1. When an emergency exists;
2. When a licensee has been indicted; or
3. When a licensee has been adjudicated as bankrupt.

-- Use the Word "When"

Avoid introducing a case with the words "in case," "in the event" or "where".

-- Use Correct Tense

Always use the present or past tense of the verb in stating the case, never the future.

Do not say: "Where the director shall have found..."

Say: "When the director finds..." or
"When the director has found..."

depending on whether the facts stated in the case must occur

before or at the same time as the legal action.

2. The Condition

Until fulfilled, a condition suspends the operation of the 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.

As an example, consider the following:

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

-- When the Legal Action is Stated Affirmatively, Introduce a Condition with "if" or "until"

The preceding sentence is a good example.

-- When the Legal Action is Stated Negatively, Introduce a Condition with "unless"

As an example consider the following:

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

-- Do not use the Future Tense of a Verb to State a Condition

3. The Exception

The inappropriate use of exceptions, commonly in the form of "provisos" does more to confuse legislation than any other

element of a legislative sentence. Generally, an exception is used to exempt from the application of the law some matter that otherwise would be within the scope of the rule. Exceptions should not be drafted in the form of a case or condition for this will lead to a complicated and unintelligible statute.

When properly used, the exception will ordinarily precede the case and condition, if any, and the rule. An example:

EXCEPTION Except as provided in section 2,

CASE When an emergency exists,

RULE the director may...

The preferred method 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.

E. PUTTING THE SENTENCE TOGETHER

In its most complicated form a legislative sentence is made up of the following parts:

EXCEPTION
CASE
CONDITION
Legal Subject
RULE:
Legal Action

Normally, these parts should be stated in the order given, because it is best to state the circumstances in which the rule is to apply before stating the rule itself. 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 tabular form.

An example:

RULE

Subject — The Legislature

Action — may not extend a tax increase

unless:

CONDITIONS

(1) The Governor prepares a report on the economic and inflationary effects of an increase; and

(2) The Legislature reviews that report prior to the extension.

The technique of limiting a statute's scope or application by use of the case or condition should be modified if the result is an unreadable sentence. In such an instance it is better to state the law in its generality and provide in separate sections for the limitations that the drafter desires.

CHAPTER 4

GRAMMAR, WORDS AND PHRASES

A. GENERALLY

There are many points of style in legislative drafting which are covered in standard authorities such as Reed Dickerson's Legislative Drafting that may not appear here. Primarily, a good statutory style requires that each word in a statute have a clear, consistent and necessary use, and that no statutory word is overly complicated or superfluous.

1. Brevity

While conciseness is desirable, it is better to state the obvious than to achieve brevity at the expense of clarity. As a general matter, short words are preferred to long words. A simple sentence is easier to comprehend than a complex or compound sentence. If the meaning of a complex sentence can be as precisely stated in 2 or more simple sentences, use the simple sentences. Sentences should be straightforward and in simple words. Using short sentences can help avoid the common faults of verbosity, redundancy and circumlocution. Avoid long, neverending sentences with clauses connected by "and", which require punctuation to help interpretation. Long sentences have to be studied. Short sentences can be read. If a word has the same meaning as a phrase, use the word. Adjectives are preferred to adjective phrases and adverbs to adverbial phrases. Strike out every needless word. Ambiguity often arises from verbosity.

Each portion of a statute should be fairly brief, as page-long sentences or page-long statutory sections are usually difficult to understand. If a section is too long, it should be broken down into subsections having a clear interrelationship, or should be broken into a number of sections.

The Legislature has recently enacted laws requiring simple language for insurance policies and consumer loan agreements. There is no reason why the laws themselves cannot be written in simple language.

2. Consistency

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.

Be consistent in the approach taken. If you are establishing an administrative mechanism for licensing a particular profession, for example, check the chapters of Title 32 for a possible model to follow.

Synonyms seldom have exactly the same meanings. If synonyms have precisely the same meaning, one of them is enough. If the synonyms have variable meanings (and that is commonly the case) pick the one which most precisely carries the intended sense and use that one exclusively. A study of synonyms is of great aid to the drafter in finding the right word with which to express

the legislative intent.

B. WORDS AND PHRASES

1. Forbidden Words

The drafter should avoid altogether the words found in the following list. Abbreviations used next to certain words have the following meaning:

(adj)-when used in its adjective form
(R) -redundancy or circumlocution
(*) -use the broader or narrower term as the context directs
(+) -don't use unless a fiction is intended

above (adj)
aforesaid
afore-mentioned
and/or
any and all (*)
authorize and direct (*)
before-mentioned
below (adj)
by and with (R)
by and under (*)
deemed to be (+)
desire and require (*)
each and all (R)
each and every (R)
final and conclusive (R)
following (adj)
from and after (R)
full and complete (R)
full force and effect (R)
have the effect of (+)
herein
herinafter
hereinbefore
made and entered into (R)
may be treated as (+)
means and includes (*)
none whatsoever
null and void (R)
order and direct (R)
over and above (R)
preceding (adj)
provided, however
provided that
said
same
shall be considered to be (+)
shall be construed to mean (+)
sole and exclusive (R)
to wit
type and kind (R)
unless and until (R)
whatsoever
whensoever
wheresoever
whosoever

2. Preferred Expressions

The following list includes some words and phrases the drafter should avoid. Preferred words and phrases are in the right-hand column.

DON'T SAY	SAY
absolutely null and void	void
accorded	given
admit of	allow
afforded	given
all of the _____	all the _____
an adequate number of	enough
an excessive number of	too many
approximately	about
a sufficient number of	enough
attains the age of	becomes___ years of age
at the time	when
attempt (v.)	try
be and the same hereby is	is
by means of	by
calculate	compute
category	kind, class or group
cause it to be done	have it done
cease	stop
commence	begin or start
complete (v.)	finish
conceal	hide
consequence	result
constitute and appoint	appoint
contiguous to	next to
deem	consider
does not operate to	does not
donate	give
during such time as	while
during the course of	during
each and all	each or all
each and every	each or every
effectuate	carry out
employ (meaning "use")	use
endeavor (v.)	try
enter into a contract with	contract with
evidence, documentary or otherwise	evidence
evince	show
examine witnesses and takes testimony	take testimony
expedite	hasten, speed up
expend	spend
expiration	end
fail, refuse or neglect	fail
feasible	possible
final and conclusive	final
for the duration of	during
for the purpose of _____	to_____
for the reason that	because
forthwith	immediately
frequent	often
from and after	after
full force and effect	force or effect

DON'T SAY	SAY
hereafter	after__takes effect
heretofore	before__takes effect
in case	if
in cases in which	when
in lieu of	instead of
in order to	to
indicate	show
inform	tell
inquire	ask
institute (v.)	begin or start
interrogate	question
in the case of	when
in the event that	if
in the interests of	for
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is required to	shall
is unable to	cannot
it is directed	shall
it is his duty to	shall
it is lawful to	may
it is the duty	shall
it shall be lawful	may
law passed	law enacted
matter transmitted thru the mail	mail
maximum	most
means and includes	means or includes
member of a partnership	partner
minimum	least
modify	change
necessitate	require
negotiate (as in "__ a contract")	make
none whatsoever	none
not later than	before
null and void	void
obtain	get
occasion (v.)	cause
of a technical nature	technical
on and after July 1	after June 30
on his own application	at his request
on the part of	by
ordered, adjudged and decreed	adjudged
or, in the alternative	or

DON'T SAY	SAY
per annum	each year
per centum	percent
per day	a day
per foot	a foot
period of time	period
portion	part
possess	have
preserve	keep
prior	earlier
prior to	before
proceed	go, go ahead
prosecute its business	carry on its business
provision of law	law
purchase (v.)	buy
pursuant to	under
remainder	rest
render (meaning "give")	give
render (meaning "cause to be")	make
require (meaning "need")	need
retain	keep
rules and regulations	rules
shall have the power to	may
sole and exclusive	exclusive
specified (meaning "listed")	named
subsequent to	after
suffer (meaning "allowed")	allow
summon	send for, call
terminate	end
the place of his abode	his abode
to the effect that	that
transmit	send
under the provisions	under
unless and until	unless or until
until such time as	until
utilize (meaning "use")	use
whenever	when
with the object of____	to_____
with reference to	for

3. Use of "shall" and "may"

The general rule is that "shall" is used to command someone to take action; "may" is used to grant permission, but not to command. This obvious difference in usage can be easily illustrated:

The commissioner shall adopt rules.

The commissioner may adopt rules.

There should be little confusion in interpreting these different sentences. Note that interpre tion is aided by the fact that the sentences are both active.

The following paragraphs demonstrate that "may" and "shall" are frequently misused or misconstrued for reasons other than the clasic distinction between command and permission.

-- Mood

"Shall" and "shall not" normally are used in sentences that prescribe a rule of conduct. They are frequently used incorrectly to declare a legal result, creating the so-called "false imperative". Consequently, when drafting declaratory provisions, use the indicative rather than the imperative mood. Consider the following:

"Every partner shall be an agent."

The rule is not trying to say that every partner is required to become an agent. In proper form the rule would read:

"Every partner is an agent."

A corollary to this problem appears in Title 14, section 1901:

> .....(any) party shall appeal from a District Court judgment in an action of foreclosure and sale directly to the Supreme Judicial Court within 30 days (after judgment).

Technically, this commands the party to appeal. The rule is attempting to establish a time period during which an appeal may be filed. Properly worded, it should read:

> No party may appeal from a ....judgment.... more than 30 days after entry of the judgment.

-- Tense

Don't use "shall" to write a sentence in the future tense when the present tense will do (See Tense pg. 207).

By changing the tense the drafter must make sure that he doesn't change the meaning of the sentence. Compare these two sentences:

> Failure to provide conveyance shall be considered a violation of the truancy law and shall be punished accordingly.

> Failure to provide conveyance is a violation of the truancy law and is punishable accordingly.

The change in tense from future to present may affect the second clause. The drafter may have intended "shall" be punished accordingly "to be a mandatory rule." Obviously "is punishable accordingly" suggests discretion.

-- Voice

If you can use the active voice, do so. Use of the passive voice frequently creates ambiguity, particularly if a double negative is present. Consider the following:

The power to arrest shall not be exercised by a deputy without probable cause.

The rule is trying to indicate that a deputy is authorized to arrest only if he has probable cause to arrest. Correctly worded the sentence would read (See pg. 180, LEGAL SENTENCE):

CONDITION Unless he has probable cause,

SUBJECT a deputy,

RULE

ACTION may not make an arrest.

Use of the active voice forces the drafter to name, in the legal subject, the person given power or on whom the duty is imposed. Consider the following:

"The director shall be appointed by the Governor." Correctly worded the sentence would read:

SUBJECT The Governor,

RULE

ACTION shall appoint the director.

By correctly using the active voice, the drafter can minimize the possibility that a "shall be...." verbal form, intended as mandatory, could be interpreted as merely directory.

-- Command or Permission

The classic distinction between "shall" and "may" indicates that the use of "shall" is limited to statutory commands or prohibitions, while "may" is used to grant permission, but not to command. Put another way, the use of "shall" as opposed to "may" is frequently used as aid in determining whether the statutory rule is intended as mandatory or merely directory.

Before determining whether to use "shall" or "may" in a legislative sentence, the drafter must have a clear understanding of what the sentence is designed to do. Will it confer a right, create a power or immunity, impose a duty or liability? In order to create a proper legal sentence, one written in the active voice, whom should the legal subject be? Will the legal action be affirmative or negative? These are just a few of the questions that should be at least entertained by the drafter before he writes the sentence.

Traditionally, drafting manuals have suggested the following rules:

1. If a right, privilege or power is conferred, use "may".
2. If a right, privilege or power is abridged use "may not".
3. If an intended right might be construed as merely an unenforceable privilege, use "is entitled".
4. If an obligation to act is imposed, use "shall".
5. If an obligation not to act is imposed use "shall not".

These rules may appear fairly clear cut. Unfortunately they are not. The problem comes when the drafter fails to analyze the nature of the provision he is drafting. Assume that he is drafting a provision which will prevent people from picketing without a permit(leaving constitutional

problems aside). He determines that the provision will impose an obligation not to act, so he drafts it this way:

> No person shall conduct a picket line without a permit issued under this section.

It sounds clear. However, he has failed to comply with a well-recognized rule:

> 6. Do not use a negative subject with an affirmative "shall". Although the phrase "No person shall" has a long history, literally it is the equivalent of saying "No person is required to", negating the obligation, but not the permission, to act.

Consequently, if the drafter feels compelled to use the negative subject "no person" he should draft the sentence this way:

> No person may conduct a picket line without a permit issued under this section.

If this all sounds confusing, it is. Consider the following provision of law:

34 MRSA §1675:

> When a parolee violates a condition of his parole or violates the law, a member of the board may authorize the director in writing to issue a warrant for his arrest. A probation-parole officer,...may arrest the parolee on the warrant and return him to the institution from which he was paroled.....

In State v. Collins 161 Me, 445 (1965) the first may was construed as discretionary, while the second may was construed as mandatory, essentially changing its meaning to shall. This was because the Law Court, in

a previous case, had held as a general matter that an arrest warrant must be executed promptly, fully and precisely. So, the law dealing with the execution of criminal process required that the second may be interpreted as must or shall. The probation-parole officer had no discretion not to arrest the parolee, although the provision clearly stated that he "may arrest the parolee...."

Did the drafter fail to pay attention to one of the rules? It wouldn't appear so. It seems that he intended to confer a right, privilege or power to arrest, so he used the word "may". Consider the following sentences:

1. No license fee may be imposed on aliens.
2. No license fee shall be imposed on aliens.
3. A license fee may not be imposed on aliens.
4. A license fee shall not be imposed on aliens.
5. The commissioner may not impose a license fee on aliens.
6. The commissioner shall not impose a license fee on aliens.

The drafter wishes to write a legal rule preventing the commissioner from imposing a license fee on aliens. All 6 alternatives appear to achieve that goal. Which is the most precise? Does the answer depend on whether, in the absence of this sentence, the commissioner would have the right, privilege or power to impose a license fee on aliens? (The difficulty of analyzing the difference between rights-duties, powers-liabilities, etc. is beyond the scope of this manual. Anyone interested in pursuing that analysis should begin with, "Fundamental Legal Conceptions", ..W.N. Hohfeld 23 Yale Law Journal 16). In any event, the last

two alternatives are preferable to either of the first four, primarily because the subject of the rule, the commissioner, is correctly stated at the beginning of the sentence. It seems that the answer may very well depend on whether the commissioner would otherwise have the right, privilege or power to impose the license fee. If he would, alternative 5 is correct. If he would not, or it is unclear whether he would not, alternative 6 is the best choice. Obviously the drafter may not have time to research the question and consequently may be forced to use alternative 6.

In any event, the drafter should not use a series of words, if either "shall" or "may" alone, would suffice.

Don't say		Say	
The Director	[is authorized [shall have the right [is empowered	The Director	[may

Don't say		Say	
The Director	[is directed to [has the duty to [is required to	The Director	[shall

-- Use of must and will

Although "shall" is generally preferred to "must" which probably denotes a command, there may be situations where the use of "must" is appropriate. Consider the following:

> When a person does not pay the penalty fee during the first month of suspension, upon reapplication he shall not only pay the fee but he shall also receive a grade of 90 or better in the reexamination.

This sentence is absurb unless the "shall also receive" means "must also receive".

The word "will" shall not be used as a command word. The proper word is "shall". "Will" should be used rarely, and then only when describing something which happens because of a preceding action. An example of the proper use of "will" is the following:

> If spending under this section will result in a budget shortfall, the commissioner may reduce department allotment levels.

4. Any, Each, Every, Etc.

Generally, these adjectives (known as "pronominal indefinite adjectives") should be avoided. Simple words such as "a", "an" or "the" nearly always can be used instead. There are certain rules which should be followed if it becomes necessary to use these words.

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.

-- Any

If a right, privilege or power is conferred, use "any":

> Any employee may.....

-- Each or Every

If an obligation is imposed, use "each" or "every":

> Each employee shall.....

-- No

If a command to refrain is imposed use "no":

> No employee may.....

5. "Said" and "Such"

Don't use the terms "such" and "said" to replace "that", "the", "those", etc., although it may seem that "such" or "said" more properly refers to the subject previously mentioned. (e.g. "Said judicial officer shall...." is an incorrect use of the word).

6. "Person" and "Individual"

As defined in 1 MRSA §72, subsection 15, the word "person" may include a body corporate. If you want to refer only to humans and not to business entitles, use "individuals". The drafter should keep this in mind when making provisions for membership on a board or agency.

7. "Respectively" and "As the case may be"

These terms are important in establishing the correct relationship between 2 sets or groups. 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 it:

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

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 it:

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

8. "And"; "Or"

Never use the term "and/or", as it has no definite meaning. "And" is conjunctive. If the legislative intend is that all requirements are to be fulfilled, the drafter should use "and". "Or" is disjunctive. If the fulfillment of any one of several requirements is sufficient, use "or". (See also punctuation, pg. 209 ; and Appendix VI , on statutory rules of construction).

9. Dates, Time Periods and Age

-- 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.

DON'T SAY	SAY
120 days after the time when....	120 days after the day on which.....

Dates in the Maine Revised Statutes, containing a year, appear in the form:

MONTH, DAY, YEAR. For example:

> The commission shall submit its final report no later than June 30, 1977.

Dates not containing a year appear either in the form: "February 1st", "June 30th", "the first of February" or "the 30th of June".

-- Time; Time Periods

Times in the Maine Revised Statutes are expressed as a number followed by "a.m.", "p.m.", "noon" or "midnight". (e.g., "6:00 a.m.", "6:32 p. m." or "noon").

In specifying a period of time, to clearly express what

the first and last days are, avoid words such as "until", "by", "to" and "from". Use:

before July 1, 1970;
after June 30, 1970;
after June 30, 1970, and before July 1, 1971; and
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:

(1) May be done before the designated period begins, as in "not later than the 90th day after the end of the tax year or

(2) Must be done within the designated period, as in "within the 90-day period immediately following the end of the tax year"

-- Age

Ambiguities which 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 Include Both Ages:

DON'T SAY	SAY
between the ages of 21 and 30	21 years of age or older and under 31

-- To Include the Age Listed:

DON'T SAY	SAY
who is over 17 years of age	who is 17 years of age or older

-- To Exclude the Age:

DON'T SAY	SAY
who is over 17	who is 18 years or older

10. Abbreviations

In general, abbreviations should not appear in the text of the Maine Revised Statutes. There are 2 exceptions to this rule:

-- Common Abbreviations

The following common abbreviations may be used:

"$" "¢" "°" "a.m." "p.m." "%"

-- Defined Abbreviations

Abbreviations specifically defined in a statute may be used:

"F.O.B." is specifically defined abbreviation used in the U.C.C., Title 11.

"FIFRA" is a specifically defined abbreviation used in the Maine Pesticide Control Act of 1975, 7 MRSA c. 103, subchapter II-A.

11. Use of Non-English Terms

Although a non-English term or phrase may have a definite meaning to the drafter and present an attractive short-hand expression to aid in reducing the length of a section, its use may cause confusion. Consequently, the drafter should avoid the temptation. Phrases such as "in loco parentis" can be easily misunderstood by the public.

If, however, the use of non-English terms is necessary for specific identification (for example, binomial nomenclature used for identifying genus and species), the drafter may deviate from the general rule.

12. Numbers

Cardinal numbers appear in the text of the Maine Revised Statutes in numerical form, unless the cardinal number is "one", the first word in a sentence or the first word following a colon. For example:

"The authority shall consist of 9 members, including the Commissioner of Economic Development and 8 members at large. . ."
"For 10 days"
"At least 30%"
"In 24 hours"
"Of 108 cubic feet"
"Of 2 ounces avoirdupois"

Ordinal numbers appear in the text of the Maine Revised Statutes in numerical form, unless the ordinal number is "first", the first word in a sentence or the first word following a colon. For example:

"On the first Monday after the 2nd Wednesday of December"
"Or to a 3rd person designated in the application request"

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

Fractions, both cardinal and ordinal, appear in numerical form. For example:

"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"

Percentages appear in the form: 50%, 0.5%.

C. GRAMMAR

1. Tense

-- Present Tense

Use the present tense of a verb rather than the future tense. Statutes should speak in the present tense. Consider the following:

"It shall be unlawful...."

This use of the word "shall" both as mandatory and as an expression of the future tense creates difficulty in interpretation. The proper wording is:

"It is unlawful..." or better still "No person may..." This makes the statute speak when read, not at some future time. A statute should be a continuing command. Consider the following:

> "There shall be within the Department of Human Services an advisory board which shall consist of 21 members who shall be appointed by the commissioner and shall represent equally doctors, dentists and consumers."

Besides violating other rules mentioned in this Part (See "shall" and "may" pg. 193) the sentence is confusing because of the inappropriate use of the future tense. It is much clearer when redrafted:

> "The Commissioner of Human Services shall appoint 21 individuals, equally representative of doctors, dentists and consumers, to serve on an advisory board within the department."

Sentences become more difficult to read when infected by the future perfect tense. Consider the following mass of confusion.

> "When the officers who shall have canvassed the election returns shall have found that a majority of the voters shall have voted in favor..."

Unless it is necessary to express a time relationship, the simple present tense makes the sentence easier to read:

> "When the officers who canvass the election returns find that a majority of the voters have voted in favor..."

-- Expressing Time Relationships

The past tense may be used when the present tense is also used if you want to express a time relationship between 2 or more acts or circumstances. In such a case, recite facts concurrent with the operation of the law as if they were present facts and facts precedent to its operation as if they were past facts. Consider the following:

> "If a person shall be convicted and if he shall have been convicted previously of the same offense, but shall not have undergone the punishment that he should have undergone for the offense of which he shall have been convicted previously, then..."

Expressed correctly, the sentence reads:

> "When a person is convicted and if he was convicted previously of the same offense, but has not undergone the punishment that he should have undergone for the offense of which he was convicted previously, then..."

2. Number, Gender, Person

Whenever possible use the singular instead of the plural. This should make the meaning clearer. 1 MRSA §71, subsection 9, states: "Words of the singular number may include the plural; and words of the plural number may include the singular."

Because it is easier to refer to one gender, instead of saying "any person who loses his or her license" and because 1 MRSA §71, subsection 7 states: "Words of the masculine gender may include the feminine", most of the Maine Revised Statutes are written in the masculine gender. This is the rule to follow unless the statute being drafted applies exclusively to women.

Use the third person.

3. Punctuation

Use punctuation sparingly and then only to clarify a thought. Good drafting eliminates the need for extensive punctuation. As a bill's punctuation sometimes changes as it progresses through the legislative process, a statute's meaning should not depend upon punctuation. Certain rules of punctuation are observed.

-- Series

There is no comma between the next to the last and the last item of a series. For example:

DON'T SAY	SAY
"Trailers, semitrailers, and pole trailers"	"Trailers, semitrailers and pole trailers"

Drafters must use caution if an item in the series is modified. For example:

> Trailers, semitrailers and pole trailers of 3,000 lbs. gross weight or less are exempt from the licensing provisions.

Does the 3,000 lbs. limit apply to trailers and semi-trailers 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 lbs. gross weight or less, trailers and semitrailers...

If the limit is intended to apply to all 3, the provision should read:

> If a trailer, semitrailer or pole trailer has a gross weight of 3,000 lbs. or less, it is not required to be licensed.

-- Clauses

As a general rule, clauses beginning with the words "if" or "unless" are set off by a comma.

-- Quotations

In drafting legislation put punctuation inside quotation marks.

-- Disjunctive v. Conjunctive Listings

Generally, there must be an "and" or an "or" after the punctuation in the next to the last item in a list and before the last item. If the drafter merely lists the items without the "and" or "or", a reader may not be sure whether the items are meant to be disjunctive or conjunctive. Compare the following:

He shall be;	He shall be:
A. dismissed;	A. dismissed;
B. fined; or	B. fined; and
C. imprisoned.	C. imprisoned.

If it is clear that all items of the list are conjunctive, no "and" is necessary. This will occur only if each item in the list forms a complete sentence:

1. Duties. The following are duties of the commissioner.

A. He shall administer the department.
B. He shall appoint the heads of bureaus.
C. He shall be responsible for department funds.

Notice that in the last example, the prefatory material ended with a period, as did each item in the list. Unless this is true, whenever material is listed in the disjunctive or conjunctive, there is a colon placed at the end of the prefatory material and each item in the list ends with a semicolon (except the last, which ends with a period).

-- Remember:

- punctuation is not a science, and teachers of the art often disagree on its application;
- styles in punctuation change with the times; statute meaning does not;
- the words should control the punctuation, not the punctuation the words;
- commas should not be relied on to convey a meaning; when in doubt, drop the comma and a smoother flow of words probably will result; and
- bill drafters and codifiers have a duty to clarify sentences so they can "stand up" without the aid of punctuation props.

PART V

SPECIALIZED DRAFTING PROBLEMS

CHAPTER 1

INTRODUCTION

This Part deals with several specialized drafting situations which require drafting forms different from the standard forms. Although the situations set out in this Part do not represent all of the specialized situations with which a drafter may be faced, they do represent the situations which a drafter is more likely to encounter. If a drafter is faced with a drafting problem which he does not seem to be able to handle using the standardized drafting formats set out in this manual and which is not covered in this Part, he should consult the Legislative Research Office for assistance before proceeding to draft the legislation.

CHAPTER 2

INITIATED BILLS

Under the Constitution of Maine, Article IV, Part Third, Sections 18, 19 and 20, Maine voters may, by gathering a sufficient number of signatures of Maine voters, require the introduction of a "bill, resolve or resolution" into the Maine Legislature. Unless the Legislature enacts the bill, resolve or resolution "without change", the bill, resolve or resolution is submitted, together with any legislative recommendation or any substitute measure enacted by the Legislature to the voters in order to permit them to choose which measure, if any, they want.

Maine constitutional provisions concerning the procedures required to initiate a measure, the method of handling "competing" initiated bills, the calling of an election to consider initiated bills, gubernatorial vetos of initiated bills approved by the Legislature, the effective date of initiated bills, the funding of initiated bills approved by the people and definitions of certain terms concerning initiated bills are set out in Article IV, Part Third, Sections 18, 19 and 20.

A drafter should not confuse an initiated bill with a measure voted on at referendum. A measure may be voted on at referendum for two reasons: First, because the Legislature, in passing a measure, provides that its effectiveness is conditioned upon "the people's ratification by a referendum vote" (see Constitution of Maine, Article IV, Part Third,

Section 19, last sentence) or second, because Maine voters have gathered a sufficient number of signatures within a specified period of time after an Act, bill, resolve or resolution has been enacted by the Legislature to suspend the effectiveness of that Act, bill, resolve or resolution until it is ratified by a majority of voters at a special or general election. (Constitution of Maine, Article IV, Part Third, Section 17) The ability to suspend an Act, bill, resolve or resolution also includes the ability to suspend any part or parts of an Act, bill, resolve or resolution. In both referendum situations, the Legislature, without any prior action of the voters, enacts an Act, bill, resolve or resolution and then that measure is sent to the voters; an initiated bill, on the other hand, is first petitioned for by a certain number of Maine voters and only then is acted upon by the Legislature and later, if necessary, by the voters at a general or special election.

A drafter should also remember that the Constitution of Maine, Article IV, Part Third, Section 18, prohibits using an initiated bill to propose an amendment to the Constitution. Only the Legislature may recommend a constitutional resolution for approval of the voters.

The Legislative Research Office considers initiated bills as private matters originating outside the Legislature. Therefore, while the office will give limited advice on the form of drafting them, it does not draft them, but rather directs them to the Secretary of State or recommends that they be drafted by a private

attorney familiar with the subject matter of the initiated bill. After an initiated bill is drafted, the office will, however, check the bill for correctness of form on the request of the Secretary of State. This is done because if the initiated bill goes to an election and is approved by a majority of the voters, it will appear in the Laws of Maine as it appears on the original petition. As the office has responsibilities concerning the correct form of Maine statutes, it is concerned with the form of initiated bills.

The following is a copy of an initiated bill, "AN ACT to Establish a Public Preserve in the Bigelow Mountain Area," which was approved by Maine voters in 1976 at the June election. This initiated bill is only an example, not a model. It has faults: The funding provisions are unclear and there are differences of opinion on whether the action is a policy to be accomplished as time permits or whether it is an order which must be accomplished as soon as possible. In addition, the Act is drafted as a private and special law, when it might have been partially allocated to the Maine Revised Statutes. In any case, the Act is a good example of an initiated bill which was approved by the people and that approval may be the ultimate test of the effectiveness of an initiated bill.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-SIX

AN ACT to Establish a Public Preserve in the Bigelow Mountain Area.

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

Sec. 1. Bigelow Preserve. The Department of Conservation, including the several bureaus and agencies therein, and the Department of Inland Fisheries and Wildlife are hereby authorized and directed to acquire approximately 40,000 acres of land on and around Bigelow Mountain in Franklin and Somerset Counties for a public preserve to be known as the Bigelow Preserve. The Preserve shall include generally all land in Wyman and North One Half township north of Stratton Brook and Stratton Brook Pond, and all land in Dead River township south and east of Flagstaff Lake. All public lots within or continguous to this area shall be included within the Bigelow Preserve.

Sec. 2. Administration and acquisition. The preserve shall be administered by the Departments of Conservation and Inland Fisheries and Wildlife. These Departments shall seek and use funds for the acquisition of the land necessary for the Bigelow Preserve from state bond issues and appropriations, federal funds and other sources now or hereafter available to them. Acquisition shall be coordinated by the Department of Conservation. Sufficient property rights and interests shall be acquired to accomplish the purposes of this Act.

Sec. 3. Purpose. The purpose of this Act is to set aside land to be retained in its natural state for the use and enjoyment of the public. The preserve shall be managed for outdoor recreation such as hiking, fishing and hunting, and for timber harvesting. Timber harvesting within the preserve shall be carried out in a manner a-proved by the Bureau of Forestry and consistent with the area's scenic beauty and natural features. All motor vehicles, not including vehicles engaged in timber harvesting, shall be restricted to roads designated for their use, except that snowmobiles shall also be allowed on designated trails. Designated roads shall be limited to those easily accessible to automobiles as of the effective date of this Act. No buildings, ski lifts, power transmission facilities, or other structures shall be built in the Preserve except for open trail shelters, essential service facilities, temporary structures used in timber harvesting, small signs and other small structures that are in keeping with the undeveloped character of the Preserve.

CHAPTER 3

STATEWIDE BOND ISSUES

Frequently, the Legislature will authorize, subject to approval of the voters, the issuance of bonds to finance certain projects. The following is an example of the standard form which is used for such bond issues. This form can be varied according to the specific circumstances. It should be pointed out that state bond issues are subject to the provisions and restrictions found in the Maine Constitution, Article IX, Section 14 and anyone drafting such a proposal should be familiar with those provisions.

AN ACT to Authorize General Fund Bond Issue in the Amount of $ for

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 for the purpose of _____.

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

Sec. 1. Bond issue authorized. The Treasurer of State is authorized, under the direction of the Governor, to issue from time to time, serial coupon bonds in the name and behalf of the State to an amount not exceeding $ payable serially at the State Treasury within years from date of issue. Such bonds and coupons shall be of such denominations and form and upon such terms and conditions, not inconsistent herewith, as the Governor shall direct.

Sec. 2. Sale, how negotiated; proceeds appropriated. The Treasurer of State may negotiate the sale of such bonds by direction of the Governor, but no such bond shall be loaned, pledged or hypothecated in behalf of the State. The proceeds of the sales of such bonds, which shall be held by the Treasurer of State and paid by him upon warrants drawn by the Governor, are appropriated to be used solely for the purpose set forth in this Act. Any unencumbered balances remaining at the completion of the projects listed in section shall lapse to the debt service account established for the retirement of these bonds.

Sec. 3. Interest and debt retirement. Interest due or accruing upon any bonds issued under this Act and all sums coming due for payment of bonds at maturity shall be paid by the Treasurer of State.

Sec. 4. Disbursement of bond proceeds. The proceeds of such bonds shall be expended under the direction and supervision of the with the approval of the .

Sec. 5. Other sources of funds. This Act shall not in any manner preclude the Treasurer of State from accepting from any authorized agency of the Federal Government or other nonstate sources construction aid fund grants, debt service grant funds or other grants for the planning, construction, equipping or property acquisition for any of the projects provided for in this Act, or from entering into agreements with such agency or agencies respecting any such grants.

Sec. 6. Proceeds of bonds not available for other purposes; must be kept separate from other funds. The proceeds of all bonds issued under the authority of this Act and the funds made available for interest and debt retirement thereunder shall at all times be kept distinct from all other moneys of the State and shall not be drawn upon or be available for any other purpose.

Sec. 7. Records of bonds issued to be kept by State Auditor and Treasurer of State. The State Auditor shall keep an account of such bonds, showing the number and amount of each, the date when payable and the date of delivery thereof to the Treasurer of State, who shall keep an account of each bond, showing the number thereof, the name of the person to whom sold, the amount received for the same, the date of sale and the date when payable.

Sec. 8. Appropriations from General Fund bond issue. The funds appropriated by this section shall be expended for the following:

Sec. 9. Appropriation balances at year end. At the end of each fiscal year, all unencumbered appropriation balances representing state moneys shall carry forward from year to year.

Sec. 10. Contingent upon ratification of bond issue. Sections to of this Act shall not become effective unless and until the people of the State of Maine shall have ratified the issuance of bonds as set forth in this Act.

Sec. 11. Referendum for ratification. The aldermen of cities, the selectmen of towns and the assessors of the several plantations of this State are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at the next general or special statewide election to give in their votes upon the acceptance or rejection of the foregoing Act, and the question shall be:

"Shall a Bond Issue in the Amount of $ be Authorized for ?"

The inhabitants of said cities, towns and plantations shall indicate by a cross or check mark placed within a square upon

their ballots their opinion of the same, those in favor of ratification voting "Yes" and those opposed to ratification voting "No" and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings, and return made to the office of the Secretary of State in the same manner as votes for Governor and members of the Legislature, and the Governor shall review the same and if it shall appear that a majority of the inhabitants voting on the question are in favor of the Act, the Governor shall forthwith make known the fact by his proclamation, and the Act shall thereupon become effective in 30 days after the date of said proclamation.

Secretary of State shall prepare ballots. The Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing Act, accompanied by a copy thereof.

CHAPTER 4

CRIMINAL PENALTIES, CIVIL VIOLATIONS, CIVIL PENALTIES AND CONFORMITY WITH THE MAINE CRIMINAL CODE

A. THE MAINE CRIMINAL CODE IN GENERAL

In 1975 Maine adopted a new Criminal Code (Title 17-A of the Maine Revised Statutes) which went into effect on May 1, 1976. The Maine Criminal Code is intended to be a systematic revision of Maine's criminal law. As such, the Code 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. As the Criminal Law Revision Commission stated in the introduction to the proposed Code, "It would be both impractical and confusing to have one set of rules...govern the crimes defined in the Code, and another distinctly different set apply to crimes defined elsewhere in the statutes."

If the integrity of the Maine Criminal Code as a general revision of Maine's criminal law is to survive, criminal statutes drafted in the future must conform as much as is possible to the general principals and guidelines set out in the Code.

For these reasons the Maine Criminal Code should serve as the basic model for drafting any proposed statute which deals with crimes, civil violations or civil penalties.

B. CLASSIFICATION SYSTEM OF THE CRIMINAL CODE

The Maine Revised Statutes, 17-A MRSA §4, provides that all crimes defined by the Code, except murder, shall be classified as Class A, Class B, Class C, Class D and Class E crimes. The term of imprisonment for each class of crime, found in 17-A MRSA §1252, is as follows:

Class of Crime	Term of Imprisonment
A	Definite period not to exceed 20 years
B	Definite period not to exceed 10 years
C	Definite period not to exceed 5 years
D	Definite period not to exceed 1 year
E	Definite period not to exceed 6 months

The maximum authorized fine for each class of crime (found in 17-A MRSA §1301) is as follows:

Class of Crime	Natural Persons	Organizations
A	No fine authorized	$50,000
B	$10,000	$20,000
C	$ 2,500	$10,000
D	$ 1,000	$ 5,000
E	$ 500	$ 5,000

Criminal penalty provisions which are to be included in the Maine Criminal Code should be drafted using the following language in order to ensure that these provisions conform to the requirements set in 17-A MRSA §4.

"(Name of crime) is a Class (classification letter) crime."

EXAMPLE: "Kidnapping is a Class A crime."

An alternative method of drafting a criminal panalty provision is as follows:

"A person who (set out prohibited conduct) is guilty of a Class (classification letter) crime."

EXAMPLE: "Any person possessing contraband cigarettes at the time of seizure is guilty of a Class E crime".

C. CRIMINAL PROVISIONS OUTSIDE THE CODE

17-A MRSA §4-A provides that a statute outside the Code which defines criminal conduct but which does not classify that crime according to the Code's classification system, is either automatically converted into a classified crime or into a civil violation. Statutes outside the Code which prohibit defined conduct but do not provide an imprisonment penalty are converted into civil violations. Those statutes outside the Code which provide for imprisonment for their violation are converted into classified crimes according to the following conversion schedule which is found in 17-A MRSA §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 Office of Legislative Research is presently attempting to convert the language of criminal statutes outside the Code to language that conforms to the Code. Because of the large number of these statutes, this conversion process will take several years to complete).

The provisions of 17-A MRSA §4-A and their effect on statutes outside the Code make it important that criminal penalties

outside the Code be drafted to conform to the classification system set out in the Code. If this is not done, 17-A MRSA §4-A will operate to convert that offense into a classified crime or into a civil violation which may alter the original intent of the statute.

The language which should be used to draft a criminal penalty provision outside the Code which conforms to the Code is the same as the language set out in subchapter B for drafting penalty provisions within the Code.

While all criminal penalty provisions outside the Code should conform to the classification system of the Code in order to help insure the uniformity of that system, it is possible in exceptional circumstances to exempt penalty provisions from conformity with the Code. For example, the Legislature may desire to provide that a certain type of conduct be defined as criminal conduct but the Legislature may feel that an imprisonment penalty for that conduct may not be desirable. Since 17-A MRSA §4-A provides that if a statute outside the Code does not contain an imprisonment penalty it is classified as a civil violation, an exemption is needed to prevent conversion of that crime into a civil violation. The following language should be used when exempting a criminal provision outside the Code from the classification system set up in the Code:

"Notwithstanding the provisions of Title 17-A, section 4-A..."

EXAMPLE: "Notwithstanding Title 17-A,

section 4-A, whoever violates or fails to comply with this section, shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not more than 90 days, or both."

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 his being convicted of a felony. The Code no longer uses these terms when referring to types of crimes and their use should be avoided when drafting statutes outside the Code. Instead of referring to a felony, a drafter should refer to "a crime punishable by a maximum term of imprisonment equal to or exceeding one year". Similarly, instead of referring to a misdemeanor, the drafter should refer to "a crime punishable by a maximum term of imprisonment of less than one year".

D. CIVIL VIOLATIONS AND CIVIL PENALTIES

As has already been stated, 17-A MRSA §4-A provides that all statutes and ordinances outside the Code which prohibit defined conduct but which do not provide an imprisonment penalty are declared to be civil violations. If proposed legislation is being drafted which intends to provide a fine or penalty for certain conduct but does not provide for imprisonment as a possible penalty, the legislation must either contain a specific provision exempting that statute from 17-A MRSA §4-A (as set out in subchapter C or the legislation must be drafted as a civil violation rather than as a criminal provision. The

language for a civil violation is as follows:

> "Any person who (set out prohibited conduct) commits a civil violation for which a forfeiture not to exceed (maximum dollar amount of forfeiture) may be adjudged."
>
> EXAMPLE: "Any person, copartnership, association or corporation who violates any rule or regulation promulgated under sections 1302 to 1307, or neglects or refuses to comply with any of the provisions thereof, commits a civil violation for which a forfeiture not to exceed $50 may be adjudged."

The civil violation classification should only be used, however, when the maximum amount of forfeiture equals or is less than $1,000. When the amount of forfeiture exceeds $1,000 the provision should be drafted as a civil penalty. There are 2 reasons for this distinction: (1) The new civil violation rule (District Court Civil Rule 80H) is limited to civil violations "where the amount of the fine, penalty, forfeiture or other sanction that may be assessed for each separate violation is $1,000 or less ". Accordingly, there is likely to be considerable confusion as to the appropriate procedure for enforcing a civil violation with a forfeiture in excess of $1,000. (2) The amount of a forfeiture should be kept relatively low to prevent the civil violation from being constitutionally challenged as a disguised criminal statute. The higher the forfeiture, the more likely such a challenge becomes.

The civil penalty classification is also used when the entity who is to bring suit to collect the penalty is one other than the State or representative of the State or where the provisions of the statute do not fit the ordinary civil violation situation.

The wording for a civil penalty provision is as follows:

"Any person who (set out prohibited conduct) shall be subject to a civil penalty not to exceed (maximum dollar amount of penalty), payable to the State (if the penalty is to be made payable to an entity or person other than the State the words "payable to the State" should be removed and the provisions for payment to the proper entity or person inserted), to be recovered in a civil action."

EXAMPLE: "Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this section, shall be subject to a civil penalty of not more than $5,000, payable to the State, to be recovered in a civil action."

E. MISCELLANEOUS DRAFTING PROBLEMS

1. Minimum Terms of Imprisonment

One problem in drafting criminal provisions which conform to the Code is that the classification system established by the Code does not provide for the imposition of minimum terms of imprisonment. If a minimum term of imprisonment which 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 any person convicted of this crime shall 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."

EXAMPLE: "Dissemination of sexually explicit material is a Class B crime, except that any person convicted of this crime shall be sentenced to a term of imprisonment of not less than 5 years. The minimum term of imprisonment may not be suspended nor may probation be granted."

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

"(Set out name of offense) is a Class (classification letter)

crime, except that any person convicted of this crime shall 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 only suspend the minimum term of imprisonment if it 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 any person convicted of this crime shall 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, 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."

In the area of civil violations, if there is to be a minimum forfeiture which is to be imposed for a violation (i.e. a forfeiture of not less than a stated dollar amount) the wording should be as follows:

"Any 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) shall be adjudged."

EXAMPLE: "If any owner of that orchard, field or garden neglects or refuses to comply with that written order, he commits a civil violation for which a forfeiture of not less than $10 nor more than $50 shall be adjudged for each violation."

For civil penalties the minimum penalty provision should be worded as follows:

"Any person who (set out prohibited conduct) shall be subject to a civil penalty of not less than (minimum dollar amount of penalty) nor more than (maximum dollar amount of penalty), payable to the State, to be recovered in a civil action."

EXAMPLE: "Any person violating this section shall be subject to a civil penalty of not less than $1,000 nor more than $2,000, payable to the State, to be recovered in a civil action."

2. States of Mind

The Maine Criminal Code makes several important changes in the area of criminal states of mind of which the drafter should be aware. The Code specifies that no person may be convicted of a crime unless he acted "intentionally", "knowingly", "recklessly" or "negligently". 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 in any criminal statute which do not conform to one of the states of mind set out in the Code are automatically converted by 17-A MRSA §11 to "intentionally" or "knowingly". However, a culpable mental state does not need to be included with respect to any element of a crime as to which it is expressly stated that that element must "in fact" exist, since the "in fact" existence of that element requires no culpable mental state on the part of the defendant. for example:

"A person is guilty of rape if he engages in sexual intercourse with a person, not his spouse, who has not in fact attained his 14th birthday."

While those states of mind set out in the Code are intended to encompass all culpable mental states necessary in the area of

criminal law, if exceptional circumstances arise which require that a statute be drafted with a state of mind other than one of those set out in the Code, an exemption should be included in the statute to prevent that state of mind from being converted into "intentionally" or "knowingly" by 17-A MRSA §11. The exemption should be worded as follows:

"Notwithstanding Title 17-A, section 11..."

EXAMPLE: "Notwithstanding Title 17-A, section 11, whoever maliciously violates any of the provisions of this section is guilty of a Class E crime."

3. Headnotes

It should be noted that when the Maine Criminal Code was prepared, headnotes were inadvertently omitted for the subsections in the Code. This represents a slight deviation in form from the statutory format generally used in drafting subsections. Since the headnote is not a substantive part of the law, but only serves as a finding device, it is not a fatal defect of form. Hopefully, this defect can be corrected in future revisions, but until such time, drafters should omit the use of headnotes on subsections when preparing legislation for the Code.

F. CONCLUSION

While the drafting provisions discussed here are by no means the only ones that will be encountered by a person drafting a criminal statute, they do represent the major technical factors which should be used to avoid legislation which conflicts with or is at odds with the provisions of the Maine Criminal Code. As stated earlier, since the Code is a comprehensive and uniform

approach to the criminal law of Maine, the Code should serve as the major guide and model for any drafting which is done in the criminal law area. A thorough knowledge of the Code and its provisions and limitations will assist the drafter in avoiding conflicts with the Code and will help to maintain the integrity of the Code.

CHAPTER 5

CONVERTING A PLANTATION INTO A TOWN

One frequently used type of legislation is the bill converting a plantation into a town. This is done through a private and special law bill and the bill follows a specialized format. The following is the standard form for a bill converting a plantation into a town.

AN ACT Converting (Name of Plantation) Plantation into the Town of (Name of new Town).

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

Whereas, the voters of (Name of Plantation) Plantation desire to hold a referendum to determine whether (Name of Plantation) Plantation should be converted into the Town of (Name of Town); and

Whereas, if the voters approve the referendum, it is desirable to organize the new town government as soon as possible so that the new Town of (Name of Town) may begin to govern itself in a manner that a majority of the voters have chosen; and

Whereas, the actual incorporation cannot be accomplished until the provisions of this Act take effect; 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. 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 which the inhabitants of towns within the State do or may enjoy. The town created shall take the effects belonging to (Name of Plantation) Plantation and shall also assume all of its obligations.

Sec. 2. Legislative district. Until the next legislative apportionment of Representatives, the Town of (Name of Town) shall remain in the same legislative district in which (Name of Plantation) Plantation is now classed.

Sec. 3. First meeting; how called. Upon acceptance of this Act by referendum as provided in section 4, the board of assessors of the plantation shall issue a warrant, in accordance with the general laws, for the first town meeting, to be held within (number of days) days of the referendum. Notification of the town meeting shall be filed by the plantation clerk with the Secretary of State for determining the effective date of sections 1 and 2.

Sec. 4. Referendum; certificate to Secretary of State. The board of assessors of the plantation shall submit this Act to the legal voters within the territory embraced within the limits of the proposed Town of (Name of Town), by ballot at a special election to be held (in March, 19-- or within 30 days after passage of this Act). This election shall be called, advertised and conducted according to the Revised Statutes, Title 30, sections 2061 and 2065. The plantation clerk shall prepare the required ballots, on which he shall reduce the subject matter of sections 1 and 2 of this Act to the following question: "Shall (Name of Plantation) Plantation become 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 shall be approved by a majority of the legal voters voting at the special election, provided that the total number of votes cast for and against the acceptance of sections 1 and 2 of this Act at the election equaled or exceeded 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The result of the vote shall be declared by the board of assessors of (Name of Plantation) Plantation and due certificate shall be filed by the plantation clerk with the Secretary of State.

Emergency clause. In view of the emergency set out in the preamble, section 3 of this Act shall take effect upon its acceptance by a majority of the legal voters at the special election. Sections 1 and 2 of this Act shall take effect for all purposes hereof at the first town meeting.

Statement of Fact

This bill authorizes the incorporation of the Town of (Name of Town) upon approval by the voters of (Name of Plantation) Plantation.

A referendum must be held no later than (Time of referendum). If approved, the first town meeting must be held within (number of days) days of the referendum.

CHAPTER 6

DRAFTING TO UNIFORM LAWS

Uniform laws, that is laws recommended for enactment in each state by the National Conference of Commissioners on Uniform State Laws, often appear in the Maine Revised Statutes in a different form than other statutes. The reason for this difference is to encourage ease of uniform interpretation between Maine and other states by keeping the text of complex uniform statutes adopted by Maine as similar as possible to the text recommended by the conference.

Therefore, when complex uniform laws are enacted as Maine statutes, it is customary to retain the basic numbering system recommended by the National Conference of Commissioners on Uniform State Laws, and in addition to retain the mechanical breakdown and internal organization recommended by the conference even when these matters differ from Maine Revised Statutes' standards. (Under the Constitution and bylaws of the National conference, the Director of Research is an associate member of the conference. Drafters may direct any questions on form or procedure to him).

Amendment to uniform statutes are handled in 2 basic ways. If recommended by the conference, it will be in the form and style recommended by the conference and will be 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 will conform as closely as possible to the style of the uniform law being amended, but will be allocated as any other amendment to the Maine Revised Statutes: i.e., 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 will be allocated to a section or subsection number different than the section or subsection it replaces. This policy ensures uniformity of numbering where uniformity exists and highlights non-uniform changes where they are inserted into a uniform law.

The following are rules established by the national conference for use in drafting uniform laws.

1. INTRODUCTION

> The essentials of good bill drafting are accuracy, brevity, clearness and simplicity. The purpose and effect of a statute should be evident from its language; the language should convey one meaning only.
>
> If a statute is of universal application, this objective is not difficult to attain; but most statutes are subject to conditions, qualifications, limitations or exceptions. The clearness and precision of a statute depend mainly on a plain and orderly expression of these details. If the law is intended to operate only in certain circumstances, the circumstances should be described before any other part of the enactment is expressed. If the circumstances are numerous, it may be preferable to give notice of their existence at the beginning of the Act and to set them forth in separate clauses later. If this rule is observed, doubt cannot arise except through faulty choice of words used to describe the situations in which the law is intended to apply.
>
> The choice of words is important. They should be plain and well understood. No unnecessary word should be used.
>
> The principal functions of a statute are (1) to create, (2) to impose a duty or obligation, (3) to prohibit and (4) to confer a power or privilege. A duty or obligation is best expressed by shall or must; a power or privilege by may and a prohibition by may not or must not. As so used, these words are auxiliary verbs qualifying other verbs, giving to them those special meanings. Shall, as so used, does not denote the future tense, any more than may does.

The following drafting rules will serve as a guide in the preparation of uniform and model Acts. It must always be borne in mind that a good preliminary draft is essential as a starting point for consideration by the special committee and the review committee.

2. SPECIFIC RULES

RULE 1. Language. Use correct English. Use language so clear that it conveys the same meaning to every intelligent reader.

COMMENT

Language is used here in its broadest sense. Details that make up language are treated separately in other rules.

RULE 2. Tense, mood and voice. Use the present tense and the indicative mood. State a condition precedent in the perfect tense if its happening is required to be completed. Avoid use of the passive voice.

COMMENT

A statute is regarded as speaking in the present and constantly. The use of the word shall in imposing a duty or prohibition does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is not in the future tense.

In speaking in the present, a circumstance putting a provision of an Act in operation, if continuing to exist is in the present tense, if completed is in the perfect tense, but is never in the future or future perfect.

The subjunctive mood has no place in an Act. Statutes deal with facts, not with hypothetical cases.

The passive voice is used in the uniformity of construction and application section of all uniform Acts. It should be limited to this use.

RULE 3. Consistency. Use the same arrangement and form of expression throughout, unless the meaning requires variations.

COMMENT

Consistency helps to avoid having different constructions placed on similar provisions.

RULE 4. Choice of words and phrases.

(a) Select short, familiar words and phrases that best express the intended meaning according to common and approved usage.

(b) Do not use a synonym and do not use the same word in different senses.

(c) Use a pronoun only if its antecedent is unmistakable.

(d) Make free yet careful use of possessive nouns and pronouns.

(e) Do not use said, aforesaid, hereinabove, beforementioned whatsoever or similar words of reference or emphasis.

(f) Do not use such if an article may be used.

(g) Do not use and/or.

RULE 5. Brevity.

(a) Omit needless words.

(b) If a word has the same meaning as a phrase, use the word.

(c) Use the shortest sentence that conveys the intended meaning.

(d) Use a single or to indicate the disjunctive and a single and to indicate the conjunctive at the end of the penultimate item, paragraph or subparagraph in a list or a series of paragraphs or subparagraphs.

COMMENT

In construing statutes, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

RULE 6. Punctuation.

(a) Punctuate carefully. Consider recasting a sentence if a change in punctuation might change its meaning.

(b) Use a comma preceding the word or to separate the last of a disjunctive series of three or more items in a sentence.

(c) Use a comma preceding the word and to separate the last of a conjunctive series of three or more items in a sentence if the last two items will be confused in meaning without it.

(d) Use a colon to introduce a series of items listed by paragraphs; this usage is optional as to subparagraphs.

(e) Use a semicolon at the end of each paragraph or subparagraph in a series unless the context is a complete sentence.

COMMENT

In conference drafts, brackets have a special significance (see Rule 16 below). Therefore, they should never be used as punctuation.

For a full discussion of traditional and historical concepts of punctuation, see 1938 Handbook of National Conference of Commissioners on Uniform State Laws, p. 227. (Same article in 24 Ore. Law Review 157 and New Jersey Law Journal, Vol. 69).

RULE 7. Definitions

(a) Use a definition only:

(1) If the word is used in a sense other than its dictionary meaning or in the sense of one of several dictionary meanings;

(2) To avoid repetition of a phrase; or

(3) To limit or extend the provisions of the Act.

(b) Do not write substantive provisions or artificial concepts into definitions.

(c) Place general definitions at the beginning of the Act.

(d) Use the defined word, not the definition.

COMMENT

There may be some question whether an Act should ever use a word other than in its proper dictionary meaning. There are, however, instances where this is justified, for example, municipality, which properly includes only incorporated places, can be defined to include enumerated unincorporated political

subdivisions as well. This differs widely from the artificial concept prohibited by subsection (b) using a word in a sense wholly foreign to any dictionary meaning, which inevitably leads to confusion.

RULE 8. Expressions of limitation

(a) If a provision is limited in its application or is subject to an exception or condition, it frequently promotes clarity to begin the sentence with the limitation, exception, or condition, or with an expression calling attention to any limitation that follows.

(b) If the application of a provision of the Act is limited by the single occurrence of a condition that may never occur, use if to introduce the condition, not when or where. Illustration: "If the suspect resists arrest, the officer may use force to subdue him." If the condition may occur more than once with respect to the object to which it applies, use whenever, not if, when or where. Illustration: "Whenever the officer receives a call, he must note the time in his supplement." If the condition is certain to occur, use when, not if, where or whenever. Illustration: "When the statute takes effect, all pending proceedings must be dismissed."

COMMENT

It is important at the outset to know the scope of the coverage of the Act and the conditions placed on its application

RULE 9. Provisos. Use a proviso only for taking a special case out of a general enactment and providing specially for it.

COMMENT

Provided, that, provided, however that and similar phrases are much abused. They are meaningless if used to introduce an additional provision that should be expressed by a direct statement.

RULE 10. Numbering sections. Number sections by arabic numerals consecutively or progressively throughout the Act.

COMMENT

Progressive or "skip" numbering should be used only in an Act divided into articles, chapters or parts. This permits distinctive numbering for each division, so long as the numbering is uniform and progressive throughout the Act.

RULE 11. Length of sections. Do not use long sections.

RULE 12. Section breakdown.

(a) If a section covers a number of contingencies, alternatives, requirements or conditions, break it down, as necessary, into subsections, paragraphs and subparagraphs. Designate each section with the word section in capitals followed by arabic numerals. Designate subsections by small arabic letters in parentheses. Designate paragraphs by arabic numerals in parentheses. Designate subparagraphs by small roman numerals in parentheses. See sample form for Acts, below.

(b) Use separate sections for separable provisions.

RULE 13. References to other provisions of Act. Avoid specific references to other articles, parts or sections of an Act. Do not make specific reference to another article, part or section by number or letter unless the nature of the provision referenced is indicated by the context or descriptive language. Use an initial capital letter in referring to a specific article, part or section number; use lower case in referring to a specific subsection, paragraph or subparagraph.

COMMENT

Part and section numbers and letters are frequently changed without changing references to them.

RULE 14. Section headings. Enclose each section heading in brackets, using small italicized letters (underscoring if by typewriter) and initial capitals on words other than prepositions and conjunctions.

COMMENT

Some states have rules against section headings. Brackets should serve to make conference draftsmen aware of this fact and warn them that the sense of the section must be complete without considering the heading.

RULE 15. Articles, Chapters and Parts. A lengthy Act may be divided into articles and subdivided into chapters and parts.

COMMENT

This was done in the Uniform Commercial Code and the Uniform Consumer Credit Code.

RULE 16. Use of Brackets. If a choice is given between or among two or more expressions, in adopting or omitting any language, or in the name of an office or place, bracket all the language affected by the choice so that each state adopting the Act may adapt the choice to its own usage or requirements.

RULE 17. Purpose clauses. Do not include language stating the purpose of an Act or recital of facts upon whcih the Act is predicated.

COMMENT

A well drafted Act requires no extraneous statement within itself of what it seeks to accomplish nor the reasons prompting its enactment. Comments and annotations supply this in detail to aid in its passage and interpretation.

The use of the preamble of a bygone day with its numerous Whereas clauses has long since fallen into disrepute. The practice of resorting to Purpose clauses is but a revival of the tried and convicted preamble.

RULE 18. Procedural provisions. Do not include procedural provisions as to administrative procedure or review, court procedure, or appellate procedure in a substantive Act unless essential to effectuate its purposes.

COMMENT

The incorporation of unnecessary procedural provisions in uniform and model Acts has affected their acceptability.

RULE 19. Severability clause. Do not use a severability clause unless there is a possibility of a partial invalidity. If used, it is to be in the following language: "If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable."

RULE 20. Titles to Acts.

(a) Provide a descriptive short title for every uniform Act, beginning with the word Uniform and ending with the word Act or, if a short title is unwieldy, provide a title such as "Uniform Act [on] [for] [to] [relating to]..."

(b) Provide a descriptive short title for every model Act, beginning with the words Uniform Law Commissioners' model,

and ending with the word Act or, if a short title is unwieldy, a title such as "Uniform Law Commissioners' Model Act [on] [for] [to] [relating to]..."

(c) If a comprehensive title to precede the Act is suggested, use the form "An Act concerning (or relating to)... and to make uniform the law with reference thereto." Write the title after the text of the Act is completed. Place all suggested titles within brackets to indicate that they should be revised to conform to the requirements of the adopting state.

COMMENT

Each state has its own standards and practices as to what titles require, many of them prescribed by the state constitution. Accordingly, there is a growing tendency on the part of conference draftsmen to suggest only short titles for Acts they prepare. If a full title is suggested, great care is necessary to be accurate and precise in describing what the statute purports to do.

RULE 21. Revision. After the draft of an Act has been completed, revise it carefully and critically. Lay the revision aside for a time. Then revise the revision.

COMMENT

There is no substitute for time and thoroughness.

RULE 22. Order of formal sections. Arrange the closing sections of every Act in the following order: (a) Uniformity of Construction and Application, (b) Short Title, (c) Severability, if used, (d) Effective Date, if any, and (e) Repeals, if any.

COMMENT

Although this order has been indicated in the sample form for Acts in use for some time, it has not been adhered to with any degree of uniformity.

RULE 23. Amendments to Uniform and Model Acts. In drafting amendment to approved uniform or model Acts for submission to the Conference, delete language in ~~strike-out type~~ and underscore new language.

COMMENT

Much time of the conference is consumed in debating existing language having no relation to the amendment proposed.

SAMPLE FORM FOR ACTS

Title if one is suggested

SECTION 1 [Section Heading.] [Reference as Section 1.]

(a) [Reference as subsection (a).]

[Return to margin]

(b) [Reference as subsection (b).]

[Return to margin]

(1) [Reference as paragraph (1).]

[Return to margin]

(2) [Reference as paragraph (2).]

[Return to margin]

(i) [Reference as subparagraph (i).]

[Return to margin]

(ii) [Reference as subparagraph (ii).]

[Return to margin]

SECTION __. [Uniformity of Construction and Application.]

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION __. [Short title.] This Act may be cited as the Uniform...

COMMENT

See Rule 20 above. The Uniformity of Construction and Application and Short Title sections should not be included in model Acts.

SECTION __. [Severability.]

COMMENT

See Rule 19 above for text.

SECTION __. [Time of taking effect.] This Act takes effect.....

SECTION __. [Repeal.] The following acts and parts of acts are repealed:

(1)
(2)
(3)

4. DRAFTS FOR PRESENTATION TO CONFERENCE

On each draft to be presented to the conference the lines of the text of the Act must be numbered, each section being numbered separately, beginning with 1.

With the exception of the draft to be voted on by states for final adoption, each draft, from the first through each successive draft submitted to the conference, in addition to the text of the Act, as nearly as practicable should contain or be accompanied by:

(1) A statement of the history of the Act in the Conference;
(2) A brief of the contents of the Act; and
(3) Comments following each section if comments are needed or may be helpful.

The statement of the history of the Act should cover:

(1) The decision that a Uniform or Model Act on the subject is desirable and the reason therefor;

(2) The extent of the preliminary research;

(3) Consideration and approval by the Special Committee and the Review Committee;

(4) Submission to and editing by the Committee on Style;

(5) Whether or not the Act has been considered by the Conference;

(6) If it has, the number of times it has been considered and what action was taken with regard to it pursuant to each consideration; and

(7) If there has been a submission of a question of policy, or of approach to the problem involved, to the Conference or to the Executive Committee, and a decision by either, a note of the question, the decision and what has been done to carry it out.

The brief of the contents of the Act should show:

(1) The state of the law to which the Act is directed;

(2) The desirability of uniformity;

(3) What the Act would accomplish (it may be desirable to include as illustrations types of cases to which the Act or a clause of the Act applies and some to which it does not apply);

(4) The extent to which the Act changes existing law;

(5) The reason for the change;

(6) Whether or not the draft in whole or in part is based on the law of a particular state and if so, naming the state;

(7) The experience of that state as well as the experience in states having similar or different statutory provisions; and

(8) The paramount reasons for adoption of the Act by the states.

Comments following sections. If comments are needed or may be helpful, a wide latitude is necessarily given as to what the comments should contain. If applicable to a single section, much of the information required in the brief accompanying the Act should be included in the comments; in all cases a reference to the source from which the provision was taken should be included. The comments on all drafts that have previously been submitted to the Conference must show:

(1) Tentative approval of the Conference and the extent to which it was given;

(2) All changes in form and substance made since the prior draft and the reason for each change; and

(3) The reason for not having made a change suggested at the previous Conference.

UNIFORM ACTS APPROVED BY NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFOMR STATE LAWS AND ENACTED IN MAINE

TITLE	SECTION	UNIFORM ACT
1	§ 251 - 256	Uniform Flag Act
4	§1011 - 1019	Uniform Recognition of Acknowledgment Act
5	§8001 -11008	Maine Administrative Procedure Act
9-A	§1-101 -6-415	Uniform Consumer Credit Code
10	§1211 - 1216	Uniform Deceptive Trade Practices Act

TITLE	SECTION	UNIFORM ACT
11	§1-101 - 10-108	Uniform Commercial Code
13	§ 641 - 651	Uniform Act for Simplification of Fiduciary Security Transfers
13	§ 1771 - 1965	Uniform Agricultural Cooperative Association Act (withdrawn in 1943)
14	§ 5927 - 5949	Uniform Arbitration Act
14	§ 5951 - 5963	Uniform Declaratory Judgment Act
14	§ 8001 - 8008	Uniform Enforcement of Foreign Judgments Act
15	§ 201 - 229	Uniform Criminal Extradition Act
15	§ 1411 - 1415	Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings
15	§ 1461 - 1471	Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act
16	§ 401 - 406	Uniform Judicial Notice of Foreign Law Act
16	§ 456	Uniform Photographic Copies of Business and Public Records as Evidence Act
18	§ 7	Uniform Testamentary Additions to Trusts Act
18	§ 1101 - 1108	Uniform Simultaneous Death Act
18	§ 1251 - 1258	Uniform Disclaimers of Transfers Under Nontestamentary Instruments Act
18	§ 1271 - 1278	Uniform Disclaimers of Transfers by Will, Intestacy or Appointments Act
18	§ 4101 - 4103	Uniform Common Trust Fund Act
19	§ 271 - 287	Uniform Act on Paternity
19	§ 331 - 420	Uniform Reciprocal Enforcement of Support Act
19	§ 441 - 453	Uniform Civil Liability for Support Act
21	§ 281 - 320	Act for Voting by New Residents in Presidential Elections (Repealed by PL 1971, c. 153,§1)
22	§ 1361 - 1383	Uniform Alcoholism and Intoxication Treatment Act
22	§ 2901 - 2909	Uniform Anatomical Gift Act
22	§ 3102	Uniform Transfer of Dependents Act
29	§ 2350 - 2447	Uniform Motor Vehicle Certificate of Title and Anti-theft Act
31	§ 151 - 181	Uniform Limited Partnership Act
31	§ 281 - 323	Uniform Partnership Act
33	§ 1001 - 1010	Uniform Gifts to Minors Act
36	§ 3911 - 3924	Uniform Act on Interstate Arbitration of Death Taxes
36	§ 3981 - 3985	Uniform Act on Interstate Compromise of Death Taxes

TITLE	SECTION	UNIFORM ACT
36	§5210 - 5211	Uniform Division of Income for Tax Purposes Act
37	§ 201 - 221	Uniform Veterans' Guardianship Act

CHAPTER 7

ADVISORY REFERENDA

Occasionally a Legislator may wish to submit an issue to the voters of the State to determine their feelings on the issue 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.

The following are examples of the forms which are used for advisory referenda. The first example should be used when submitting an issue to referendum in November following a first regular session of the Legislature. The second should be used for submitting an issue to referendum in November following a second regular session of the Legislature.

1ST 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 the special statewide election on the Tuesday following the first Monday 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 election. This advisory referendum shall be submitted to the legal voters of the State of Maine at a special statewide election to be held on the Tuesday following the first Monday of November following passage of this Act. The city aldermen, town selectmen and plantation assessors 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:

"Shall (subject of referendum or proposed action)?"

The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots shall 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 purposes of this advisory referendum.

2ND EXAMPLE:

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

Sec. 1. Advisory referendum on (subject of referendum). The Secretary of State shall, at the next general election in the month of November following passage of this Act, hold an 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 general election. This advisory referendum shall be submitted to the legal voters of the State of Maine at the next general election in the month of November following passage of this Act. The city aldermen, town selectmen and plantation assessors 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:

"Shall (subject of referendum or proposed action)?"

The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots shall 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 purposes of this advisory referendum.

CHAPTER 8

DRAFTING SUNSET PROVISIONS

An increasingly popular means of dealing with the growth of state agencies and programs is by "Sunset" legislation. "Sunset" provisions consist of formal legislative provisions for the review or termination of individual agencies or programs. This most often involves setting a date upon which a given agency or program will terminate unless renewed by the Legislature and may provide for the review of the agency or program to that date.

The initial problem with provisions calling for sunset review or termination is the proliferation and scattering of these provisions throughout the statutes, making it extremely difficult to monitor which agencies and programs come up for review or termination at any particular point.

In order to meet this problem, the Office of Legislative Research has attempted to standardize the treatment of sunset provisions to assist in the orderly review of those agencies and programs involved. The purpose of this standardization is to provide a single location in the statutes where all agencies and programs expiring or coming up for review can be listed. This procedure eliminates the necessity of having to compile and maintain a listing of the agencies and programs coming up for termination or review. It also eliminates the necessity of having to scan the entire statutes to determine if a particular agency or program is subject to any sunset provision.

A second problem with sunset provisions is the diversity of review procedures which these provisions set out for the conducting of the review which they authorize. Without some form of standardization, each sunset law might establish an entirely different review procedure. This would result in various agancies and programs being subject to widely diverse types of review. As the number of agencies and programs subject to review or termination increases, this diversity would create legislative and executive confusion and would hamper the smooth-flowing, efficient process of reviewing the agencies and programs.

To correct this second problem, the Office of Legislative Research has attempted to develop a general, uniform review procedure which may be used, when applicable, to provide for investigation and reporting on programs, agencies and other laws subject to sunset legislation. This uniform procedure does not, however, prevent the use of specialized procedures when the unique problems of an agency or program require a different type of review. Specifically tailored review procedures, applicable to a single agency or program may still be included elsewhere in the statutes to replace or supplement the procedures set out in the standard sunset provisions.

A. SUNSET OF STATE AGENCIES

State agencies which are to be terminated under sunset legislation unless renewed by the Legislature should be placed in 1 MRSA chapter 27-A (since no legislation of this type has yet been passed this chapter has not yet been enacted. It will be enacted by the first bill of this type which is enacted) or in 3 MRSA chapter 23. The substance of 1 MRSA chapter 27-A is

set out as follows:

CHAPTER 27-A

TERMINATION OF STATE AGENCIES

§2001. Termination date

The following state agencies shall terminate on the dates set out in this section.

35. Title 35. Agencies.

A. The Office of Consumer Complaints, established under Title 35, section 15, shall terminate on June 39, 1980.

The provisions of Title 3, chapter 23 are as follows:

CHAPTER 23

JUSTIFICATION OF STATE GOVERNMENT PROGRAMS

§501. Short title

This Act may be referred to as the "Maine Sunset Act."

§502. Purpose

The number and size of state departments and independent agencies have increased without sufficient legislative oversight and governmental accountability. The purpose of this Act is to establish a system for periodic justification of departments and agencies of State Government and for the termination of agencies which have outlived their purpose. The Act requires the Legislature to evaluate the need for and performance of present and future departments and agencies on a periodic basis.

§503. Definitions

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

1. Department. "Department" means any of the organizations specified in section 507, subsections 1, 3, 5, 7 and 9, including any bureau, agency, office, commission or other body or official which is within or advisory to any of these organizations.

2. Independent agency. "Independent agency" means any bureau, agency, office, commission or other body or official of State Government which is listed in section 507, subsections 2, 4, 6, 8 and 10, or which is not, or is not part of, the Legislature, the judicial branch, a county, a municipality or a special district.

3. Regulatory function. "Regulatory function" means the function of:

A. Licensing or otherwise regulating initial entry into a profession, occupation, business, industry or other endeavor; or

B. Controlling or directing by regulation, on a continuing basis, the performance of a profession, occupation, business, industry or other endeavor.

4. Report. "Report" means any justification report prepared or submitted pursuant to the provisions of this Act.

§504. Justification reports

1. Report required. Each department and independent agency shall prepare and submit to the Legislature a justification report according to the schedule set forth in subsection 3. If, after submitting its first justification report, a department or independent agency has not been terminated by this Act or any other Act of the Legislature, it shall prepare and submit to the Legislature a justification report, pursuant to the provisions of this Act, at least once every 10 years.

2. Contents of justification reports. Each report shall include the following information, presented in as concise a manner as may be reasonably expected.

A. Each report shall include a description of each program and activity of and each advisory body to the department or independent agency, including references to authorizing legislation, organizational charts and a description of objectives.

B. Each report shall either account for or estimate the amount of, whichever is applicable, all moneys received or expected to be received, by source and all moneys disbursed or expected to be disbursed, by program, by the department or independent agency, for the fiscal year immediately preceding, the fiscal year of and the fiscal year immediately following the submittal of the report.

C. Each report shall include an identification and description of other government and private programs and activities having the same, similar or complementary objectives as the department or independent agency.

D. Each report shall include an analysis, quantified as much as possible, of the extent to which the objectives of the department or independent agency have been reached. In addition, each report shall include a prospective analysis of how the department or independent agency plans to meet its objectives during the next 10 years.

3. Submittal or justification reports. Departments and independent agencies designated in section 507 shall submit their justification reports to the Legislature, through the Legislative Administrative Director, according to the following schedule: Group A, no later than October 31, 1978; Group B, no later than October 31, 1980; Group C, no later than October 31, 1982; Group D, no later than October 31, 1984; and Group E, no later than October 31, 1986.

§505. Analysis and recommendations by the Joint Standing Committee on Performance Audit

1. Objectives. For each department and independent agency which has submitted a justification report, the Joint Standing Committee on Performance Audit shall evaluate the analysis in the report and may conduct its own analysis which shall include, but shall not be limited to, an analysis to the extent to which the objectives of the department or independent agency have been reached. The Legislative Finance Office shall provide the Joint Standing Committee on Performance Audit with whatever assistance is requested for the purposes of this subsection.

2. Submittal of analyses. The Joint Standing Committee on Audit and Program Review shall submit to the Legislature the evaluations and analyses prepared pursuant to this section of the departments and independent agencies listed in section 507 and its recommendations and any legislation required to implement them according to the following schedule:

Group A-1, no later than December 31, 1979; Group A-2, no later than December 31, 1980; Group B, no later than October 31, 1981; Group C, no later than October 31, 1983; Group D, no later than October 31, 1985; and Group E, no later than October 31, 1987.

The Joint Standing Committee on Audit and Program Review shall submit to the Legislature its evaluations and analyses of justification reports submitted pursuant to section 507-A no later than 14 months after those reports are submitted to the Legislature.

§506. Termination of independent agencies

1. Termination. Unless continued or modified by law or unless otherwise provided under section 507, each independent agency shall terminate according to the schedule set forth in that section. Any independent agency not terminated according to that schedule, not exempted from the termination provisions under this chapter, or not terminated by any other Act of the Legislature shall be subject to the termination provisions of this Act at least once every 10 years.

2. Grace period. Each independent agency terminated under this chapter shall have a grace period, not to exceed one year from the date of its termination, in which to complete its duties. During the grace period, termination shall not reduce or otherwise limit the powers or authority of the agency.

3. Expiration of grace period. Upon the expiration of the grace period for any terminated independent agency, the following actions shall occur.

A. The agency shall cease all its activities.

B. The Legislature shall repeal or amend, as necessary, all laws related to the agency.

4. Disposition of property, funds and records. Prior to the expiration of the grace period for any terminated independent agency, the Legislature shall, by law, determine the disposition of:

A. All property, including any land, buildings, equipment and supplies used by the agency;

B. All funds remaining in any account of the agency; and

C. All records resulting from the activities of the agency.

§507. Justification and termination dates

For the following departments and independent agencies, the justification or termination schedule shall be as provided in this section.

1. Group A-1 and A-2 departments.

A. The evaluations and analyses of the justification reports for the programs of the following Group A-1 departments shall be reviewed by the Legislature no later than June 30, 1980:

(1) Department of Agriculture; and

(2) Department of Defense and Veterans Services.

B. The evaluations and analyses of the justification reports for the programs of the following Group A-2 departments shall be reviewed by the Legislature no later than June 30, 1981:

(1) Department of Transportation;

(2) Department of Public Safety; and

(3) Department of the Secretary of State.

2. Group A-1 and A-2 independent agencies.

A. Unless continued or modified by law, the following Group A-1 independent agencies shall terminate, not including the grace period, no later than June 30, 1980:

(1) Maine Blueberry Commission;

(2) Blueberry Industry Advisory Board;

(3) Seed Potato Board;

(4) Maine Milk Commission;

(5) State Harness Racing Commission;

(6) Maine Agricultural Bargaining Board;

(7) Board of Veterinary Medicine;

(8) Maine Milk Tax Committee;

(9) Maine Dairy and Nutrition Council Committee;

(10) Board of Pesticide Control;

(11) State Planning Office; and

(12) State Lottery Commission.

B. Unless continued or modified by law, the following Group A-2 independent agencies shall terminate, not including the grace period, no later than June 30, 1981. The Maine Turnpike Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1981:

(1) Maine Turnpike Authority;

(2) Penobscot Bay and River Pilotage Commission;

(3) State Board of Registration for Professional Engineers; and

(4) State Board of Registration for Land Surveyors.

3. Group B departments. The justification for the programs of the following Group B departments shall be reviewed by the Legislature no later than June 30, 1982:

A. Department of Business Regulation; and

B. Department of the Attorney General.

4. Group B independent agencies. Unless continued or modified by law, the following Group B independent agencies shall terminate, not including a grace period, no later than June 30, 1982. However, the Maine State Housing Authority, the Penobscot Indian Housing Authority, the Pleasant Point Passamaquoddy Indian Housing Authority and the Indian Township Passamaquoddy Indian Housing Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1982:

A. Board of Accountancy;

B. Arborist Examining Board;

C. Maine State Board for Registration of Architects;

D. Board of Examiners for the Examination of Applicants for Admission to the Bar;

E. State Board of Barbers;

F. State Board of Cosmetology;

G. Plumbers' Examining Board;

H. Real Estate Commission;

I. Maine Athletic Commission;

J. Electricians' Examining Board;

K. Oil Burner Men's Licensing Board;

L. State Claims Board;

M. State Board of Examiners of Psychologists;

N. Board of Examiners on Speech Pathology and Audiology;

O. State Board of Social Worker Registration;

P. Maine Criminal Justice Planning and Assistance Agency;

Q. Maine State Housing Authority;

R. Penobscot Indian Housing Authority;

S. Pleasant Point Passamaquoddy Indian Housing Authority; and

T. Indian Township Passamaquoddy Indian Housing Authority.

5. Group C departments. The justification for the programs of the following Group C departments shall be reviewed by the Legislature no later than June 30, 1984:

A. Department of Conservation;

B. Department of Inland Fisheries and Wildlife;

C. Department of Environmental Protection;

D. Department of Marine Resources; and

E. Department of Manpower Affairs.

6. Group C independent agencies. Unless continued or modified by law, the following Group C independent agencies shall terminate, not including a grace period, no later than June 30, 1984. However, the Baxter State Park Authority and the Mountain Resorts Airport Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1984:

A. State Board of Registration for Professional Foresters;

B. Baxter State Park Authority;

C. Coastal Island Trust Commission;

D. Saco River Corridor Commission;

E. Soil and Water Conservation Commission;

F. Inspector of Dams and Reservoirs;

G. Baord of Certification of Water Treatment Plant Operators;

H. Maine Sardine Council;

I. Atlantic Sea Run Salmon Commission;

J. Mountain Resorts Airport Authority;

K. Public Utilities Commission;

L. State Development Office;

M. Office of Energy Resources;

N. Office of CETA Planning and Coordination; and

O. Maine Labor Relations Board.

7. Group D departments. The justification for the programs of the following Group D departments shall be reviewed by the Legislature no later than June 30, 1986:

A. Department of Human Services;

B. Department of Indian Affairs; and

C. Department of Mental Health and Corrections.

8. Group D independent agencies. Unless continued or modified by law, the following Group D independent agencies shall terminate, not including a grace period, no later than June 30, 1986. However, the Maine Health Facilities Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1986:

A. Board of Chiropractic Examination and Registration;

B. Board of Dental Examiners;

C. State Board of Funeral Services;

D. State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals;

E. Board of Registration in Medicine;

F. State Board of Nursing;

G. State Board of Optometry;

H. Board of Osteopathic Examination and Registration;

I. Board of Commissioners of the Profession of Pharmacy;

J. Board of Examiners in Physical Therapy;

K. Examiners of Podiatrists;

L. Board of Hearing Aid Dealers and Fitters;

M. Maine Health Facilities Authority;

N. Maine Medical Laboratory Commission;

O. State Planning and Advisory Council on Developmental Disabilities;

P. Board of Visitors (to the state institutions);

Q. Maine Committee on Problems of the Mentally Retarded;

R. Industrial Accident Commission;

S. Governor's Committee on Employment of the Handicapped;

T. Division of Community Services;

U. Maine Commission for Women; and

V. Maine Human Rights Commission.

9. Group E departments. The justification for the programs of the following Group E departments shall be reviewed by the Legislature no later than June 30, 1988:

A. Department of Finance and Administration;

B. Department of the Treasurer of State;

C. Department of Audit;

D. Department of Personnel;

E. Department of Educational and Cultural Services;

F. Maine State Retirement System;

G. Board of Trustees of the University of Maine; and

H. Board of Trustees of the Maine Maritime Academy.

10. Group E independent agencies. Unless continued or modified by law, the following Group E independent agencies shall terminate, not including the grace period, no later than June 30, 1988. However, the Board of Emergency Municipal Finance, the Maine Guarantee Authority and the Maine Municipal Bond Bank shall not terminate but shall be reviewed by the Legislature no later than June 30, 1988:

A. Board of Emergency Municipal Finance;

B. Maine Guarantee Authority;

C. Maine Municipal Bond Bank;

D. Municipal Valuation Appeals Board;

E. Land Classification Appeals Board;

F. State Liquor Commission;

G. Capitol Planning Commission;

H. Board of Trustees, Group Accident and Sickness or Health Insurance;

I. Office of State Employee Relations;

J. State Employees Appeals Board;

K. Educational Leave Advisory Board;

L. Maine Vocational Development Commission;

M. Post-secondary Education Commission of Maine;

N. Advisory Committee on Maine Public Broadcasting;

O. State Government Internship Program Advisory Committee;

P. State Historian;

Q. Historic Preservation Commission; and

R. Maine State Commission on the Arts and the Humanities.

§507-A. Special sunset reviews

The Legislature may, by joint resolution passed before May 15th of any year, designate departments or independent agencies for sunset review in addition to those scheduled for review in section 507. All departments and independent agencies so designated shall, pursuant to section 504, subsection 2, submit justification reports to the Legislature no later than October 31st following the passage of the joint resolution.

§508. Future or reorganized departments and independent agencies

The Legislature shall establish schedules for the submittal of periodic justification reports by departments and independent agencies created or substantially reorganized after the effective date of this chapter and for the termination of independent agencies created or substantially reorganized after the effective date of this chapter. All such departments or independent agencies shall be subject to the provisions of this chapter.

§509. Legislative Council

The Legislative Council shall be responsible for and shall, subject to the approval of the Legislature, issue rules necessary for the efficient administration of this chapter.

§510. Legal claims

Termination, modification or establishment of departments or independent agencies as a result of the review required by this chapter shall not extinguish any legal claims against the State, any state employee or state department or independent agency. Specifically, the provisions of this chapter shall not relieve the State or any department or independent agency of responsibility for making timely payment of the principal and interest of any debt issued in the form of a bond or a note.

§511. Review

The Legislature shall review the provisions and effects of this chapter no later than June 30, 1989, and at least once every 10 years thereafter.

All sunset legislation calling for the termination of a state agency at a specific time should be placed in one of those chapters.

In 1 MRSA chapter 27-A, the agencies are arranged in subsections according to the Title of the Maine Revised Statutes under which the agency was established. For example, since the Office of Consumer Complaints is established in Title 35, it would be located in subsection 35 of section 2001. The paragraph in which the agency title is given should set out the correct name of the agency and the date on which the agency is to terminate.

It should also be noted that when the agency is listed under section 2001, the establishing section of the statutes for that agency is also given to facilitate easy cross reference and to avoid confusion among agencies with similar names.

If the Legislature wishes to continue a state agency or postpone its termination, all that is necessary is an amendment to section 2001 repealing or changing the termination date for that particular agency.

Another recommended step is to make reference to the termination of the agency in the section of the statutes which establishes that agency. In the preceding example, 1 MRSA §15 would be amended by adding a sentence similar to the following one somewhere in that section: "The Office of Consumer Complaints shall be terminated pursuant to Title 1, section 2001." This gives notice to persons using the agency statutes that the particular agency is scheduled for termination under the sunset provisions of 1 MRSA chapter 27-A.

3 MRSA chapter 23 requires each state department and independent agency to submit a justification report to the Legislature according to a schedule set out in that chapter. The Joint Standing Committee on Audit and Program Review then evaluates the department or agency and recommends continuation, termination or change in the department or agency. Agencies not continued or modified are automatically terminated. This review process repeats itself at least once every 10 years.

B. SUNSET OF STATE PROGRAMS

State programs and other statutory provisions which are to be subject to sunset review or termination should be placed in 1 MRSA chapter 29. This chapter has been arranged as follows:

CHAPTER 29

TERMINATION OF STATUTORY PROVISIONS

§2501. Repeal of statutory provisions

The following statutory provisions are repealed on the dates set forth in this section.

24. Title 24.

A. Title 24, chapter 21, subchapter 3 shall be repealed on January 1, 1983.

§2502. Committee reports

Any legislative committee having jurisdiction over a statutory provision listed in section 2501 shall prepare and submit to the Legislature, within 30 legislative days after the convening of the last regular session prior to the date set out in section 2501 for repeal of that provision, a report evaluating the advisability of retaining the statutory provision.

§2502. Contents of report

A report prepared pursuant to section 2502 shall include:

1. Past effectiveness. An evaluation of the past effectiveness of the statutory provision;

2. Future need. An evaluation of the future need for the statutory provision;

3. Alternative methods. An examination of alternative methods of attaining the purpose of the provision;

4. Cost of retention. An estimate of the cost of retaining the provision; and

5. Recommendation. A recommendation of the committee as to the amendment, repeal, replacement or retention of the provision.

All sunset legislation calling for the termination or review of a state program or other statutory provision should be allocated to 1 MRSA chapter 27. Chapter 29, section 2501

is organized by subsection, the number of the subsection referring to the number of the title in the Maine Revised Statutes containing the statutory provision subject to sunset. In this case, the program is in Title 24, so the listing is made under subsection 24. Under each subsection, the statutory reference containing the program subject to sunset is listed (in this case, Title 24, chapter 21, subchapter 3). Thus, a drafter creating sunset review for a specific provision would enact a subsection under section 2501 containing a reference to the provision to be repealed and the date of the repeal.

Chapter 29, sections 2502 and 2503 set forth the procedures for review of the statutory provisions listed in section 2501. It is important that these 2 sections not be varied for an individual statutory review unless the variation is intended to apply to all sunset reviews under chapter 29.

A provision listed in section 2501 would be reviewed pursuant to sections 2502 and 2503 prior to the repeal date and if it was found that the provision should continue beyond the repeal date legislation could be introduced amending section 2501 to extend or repeal the repeal date for that particular provision. If it was found that the provision should not be continued, then no further legislative action would be necessary. The provision would be automatically repealed under the terms of section 2501 on the date specified in that section.

Any bill calling for sunset of a particular statutory provision should include language in the portion of the Maine Revised Statutes which set out that provision, a reference to the fact that the provision is subject to repeal pursuant to 1 MRSA chapter 29. It should also set out the joint standing committee which will conduct the legislative review of the provision pursuant to 1 MRSA sections 2502 and 2503. This provides a needed cross reference to the sunset listing in the substantive portions of the statutory provision being reviewed. For example, the program being reviewed in the prior example was 24 MRSA chapter 21, subchapter III, so in 24 MRSA chapter 21, subchapter III a section would be enacted which would read as follows:

§_____. Legislative review

This subchapter is subject to repeal under Title 1, section 2501. The legislative committee having jurisdiction over the review provided in Title 1, section 2502, shall be the Joint Standing Committee on Judiciary.

If a particular statutory provision requires for its review procedures beyond those set out in 1 MRSA chapter 29, the additional review procedures should be set out in the portion of the Maine Revised Statutes containing the statutory provision to be reviewed. In the preceding example, this would mean enacting a new section in 24 MRSA chapter 21, subchapter III, which would read as follows:

§_____. Additional contents of report

In addition to the requirements of Title 1, section 2503, a report on this subchapter prepared pursuant to Title 1, section 2502 shall also include:

1. Provisions in other states. An evaluation of similar statutory provisions in effect in other states and an evaluation of their effectiveness in comparison with the provisions of this subchapter.

Occasionally a drafter may wish to limit the extent of a new statutory provision by indicating that it is to be repealed on a future date. The sentence repealing the provision should be allocated to the same grouping of the Maine Revised Statutes being repealed. Unallocated repealers can create confusion in the application of the law.

An example of an allocated repealer is as follows:

§2129. Limited authority of commissioner.

The commissioner may issue regulations designed to minimize the threat to wildlife during the conduct of the spray program. This section is repealed on January 1, 1981 and regulations issued under this section are ineffective on that date.

CHAPTER 9

MUNICIPAL REFERENDA

Occasionally, a bill will be drafted which affects a single town and the sponsor may wish to make the enactment of the bill subject to approval by the voters of the town. In this case, a specialized referendum clause must be used. The following is an example of a standard municipal referendum clause for a town.

> Sec.____. Referendum; effective date. This Act shall be submitted to the legal voters of the Town of_____at the regular town meeting in 19__ or at a special town meeting to be called and held for the purpose within ___ days of the approval of this Act. That special town meeting shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the selectmen of the town shall not be required to prepare for posting, nor the town clerk to post, a new list of voters and for the purpose of registration of voters the board of voter registration shall be in session on the secular day next preceding the special election. The town clerk of the town shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question:
>
> "(Here set out question to be voted on)?"
>
> The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same.
>
> This Act shall take effect (insert effective date language) provided it is accepted by a majority of the legal voters voting at the election; and further provided that 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 _____ at the next previous gubernatorial election.
>
> The result of the vote shall be declared by the municipal officers of the Town of _____ and due certificate thereof shall be filed by the town clerk with the Secretary of State.

CHAPTER 10

REQUESTS FOR OPINIONS OF THE SUPREME JUDICIAL COURT

The Constitution of Maine, Article VI, Section 3 requires the Supreme Judicial Court to give opinion upon "important questions of law and upon solemn occasions, when required by the Governor, Senate or House of Representatives." On certain occasions either the Senate or the House of Representatives may wish to request that the court give an opinion on a certain issue. This request is made in standardized form by the House or Senate and must be carefully drafted by the Attorney General or subject to his approval. Since the court will only give its opinion on important questions of law and upon solemn occasions, the request must spell out the circumstances which constitute the solemn occasion or raise the important questions of law. If these circumstances are not clearly spelled out the court may rule that the occasion is not a solemn one or that the questions are not important questions of law.

The form generally used to request an opinion is as follows:

> 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
>
> Whereas, (Here in as many paragraphs as is necessary set out the circumstances which give rise to the important questions of law and which make the occasion a solemn one. Each paragraph should begin with "Whereas," and end with "; and", except the last paragraph which should end with "; now, therefore, be it"
>
> Ordered, that in accordance with the provisions of the Constitution of Maine, the (Senate or House of Representatives)

herein submits the following Statement of Fact and (use this phrase only if a separate statement of fact concerning the occasion is set out in the order) 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:

Statement of Fact
(if included)

Questions
(set out question to be addressed to the court)

The form set out in this chapter is merely an example of the general type of form used in requesting an opinion and the form may be varied to meet the needs of each particular case.

APPENDICES

APPENDIX I

LIST OF VOLUMES AND TITLES OF THE MAINE REVISED STATUTES ANNOTATED

ANNOTATED VOLUMES

VOLUME	TITLE	
1		Constitution
2	1	General Provisions
	2	Executive
	3	Legislature
	4	Judiciary
	5	Administrative Procedures and Services
2-A	5	Administrative Procedures and Services
	6	Aeronautics
	7	Agriculture and Animals
3	8	Amusements and Sports
	9	Banks and Financial Institutions
	9-A	Maine Consumer Credit Code
	*9-B	Financial Institutions
	10	Commerce and Trade
4	11	Uniform Commercial Code
5	11	Uniform Commercial Code
6	12	Conservation
6-A	13	Corporations
	13-A	Maine Business Corporation Act
	*13-B	Maine Nonprofit Corporation Act
7	14	Court Procedure - Civil
*8	14	Court Procedure - Civil
	15	Court Procedure - Criminal
9	16	Court Procedure - Evidence
	17	Crimes
	*17-A	Maine Criminal Code
10	18	Decedents' Estates and Fiduciary Relations**
	*18-A	Probate Code ***
	19	Domestic Relations
*11	20	Education
	21	Elections

ANNOTATED VOLUMES

VOLUME	TITLE	
*12	22	Health and Welfare
	23	Highways
13	24	Insurance
	24-A	Maine Insurance Code
13-A	25	Internal Security and Public Safety
	26	Labor
	27	Libraries, History, Culture and Art
	28	Liquors
14	29	Motor Vehicles
	30	Municipalities and Counties
14-A	30	Municipalities and Counties
	31	Partnerships and Associations
15	32	Professions and Occupations
	33	Property
15-A	34	Public Institutions and Corrections
	35	Public Utilities and Carriers
16	36	Taxation
16-A	37	Veterans' Services
	37-A	Dept. of Defense and Veterans' Services
	38	Waters and Navigation
	39	Workers' Compensation
*17		General Index - A to H
*18		General Index - I to Z

* Supplementary Pamphlet
** Repealed - effective 1/1/81
*** Effective 1/1/81

APPENDIX II

CALCULATING GENERAL EFFECTIVE DATE

To calculate the exact day on which the general effective date for legislation passed at a session of the Legislature will fall one must count 90 full days following the recess of the Legislature. (Of course, this can only be done when the date on which the Legislature will recess is known.) The date of recess of the Legislature has been defined by the Supreme Judicial Court of Maine as follows: "The recess of the Legislature is defined to be 'the adjournment without day of a session of the Legislature'". 116 ME 587 (opinion of the Justices of the Maine Supreme Judicial Court, 1917). If 90 full days must elapse after final adjournment, the general effective day is the 91st day following adjournment (immediately after midnight on the 90th day).

EXAMPLE: If the Legislature adjourned sine die on May 31st you would count as follows:

June 1 - 30 = 30 days
July 1 - 31 = 31 days
Aug. 1 - 29 = 29 days
90 days

The general effective date would be August 30th, immediately after midnight on the 90th day.

If the Legislature adjourned sine die on June 14th you would count as follows:

June 15 - 30 = 16 days
July 1 - 31 = 31 days
Aug. 1 - 31 = 31 days
Sept. 1 - 12 = 12 days
90 days

The general effective date would be September 13th, immediately after midnight of the 90th day.

DATES OF LEGISLATIVE SESSION SINCE LAST STATUTORY REVISION WITH THE GENERAL EFFECTIVE DATES FOR ACTS PASSED AT THOSE SESSIONS (10TH REVISION OF THE MAINE REVISED STATUTES: 101ST LEGISLATURE, 1964).

SESSION	CONVENED	ADJOURNED	NORMAL EFFECTIVE DATE
102nd Regular	Jan. 6, 1965	Jun. 4, 1965	Sept. 3, 1965
Special	Jan. 17, 1966	Feb. 9, 1966	May 11, 1966
103rd Regular	Jan. 4, 1967	Jul. 8, 1967	Oct. 7, 1967
Special	Oct. 2, 1967	Oct. 3, 1967	Jan. 2, 1968
Special	Jan. 9, 1968	Jan. 26, 1968	Apr. 26, 1968
Special	Sept. 18, 1968	Sept. 18, 1968	*
104th Regular	Jan. 1, 1969	Jul. 2, 1969	Oct. 1, 1969
Special	Jan. 6, 1970	Feb. 7, 1970	May 9, 1970
105th Regular	Jan. 6, 1971	Jun. 24, 1971	Sept. 23, 1971
Special	Jan. 24, 1972	Mar. 10, 1972	Jun. 9, 1972
106th Regular	Jan. 3, 1973	Jul. 4, 1973	Oct. 3, 1973
Special	Jan. 2, 1974	Mar. 29, 1974	Jun. 28, 1974
107th Regular	Jan. 1, 1975	Jul. 2, 1975	Oct. 1, 1975
Special	Jan. 19, 1976	Apr. 29, 1976	Jul. 29, 1976
Special	Jun. 14, 1976	Jun. 14, 1976	Sept. 13, 1976
108th 1st Regular	Jan. 5, 1977	Jul. 25, 1977	Oct. 24, 1977
2nd Regular	Jan. 3, 1978	Apr. 6, 1978	Jul. 6, 1978
Special	Sept. 6 1978	Sept. 15, 1978	*
Special	Oct. 18, 1978	Oct. 18, 1978	Jan. 17, 1979
Special	Dec. 6, 1978	Dec. 6, 1978	Mar. 7, 1979
109th 1st Regular	Jan. 3, 1979	Jun. 15, 1979	Sept. 14, 1979
Special	Oct. 4, 1979	Oct. 5, 1979	*
Special	Oct. 10, 1979	Oct. 11, 1979	*
2nd Regular	Jan. 2, 1980	Apr. 3, 1980	Jul. 3, 1980
Special	May 22, 1980	May 22, 1980	*

*No nonemergency measures enacted at these sessions.

APPENDIX III

JOINT RESOLUTIONS RATIFYING AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CALLING FOR A CONSTITUTIONAL CONVENTION

Two specialized types of Joint Resolutions are those used to ratify an amendment to the United States Constitution and to make application to Congress for the calling of a constitutional convention to amend the United States Constitution. The following are examples of these types of joint resolutions. The drafter can modify the form used in these examples to fit the circumstances of any particular occasion. The drafter should note that the joint resolution calling for a constitutional convention is drafted in the form of a memorial, while the joint resolution ratifying the amendment to the United States Constitution is drafted as an ordinary joint resolution. These forms should be used whenever possible.

Example of 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.

Example of Joint Resolution making application to Congress for the calling of a Constitution Convention:

MEMORIAL

TO THE HONORABLE SENATE AND HOUSE
OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA
IN CONGRESS ASSEMBLED

Joint Resolution Making Application to the Congress of the United States for the Calling of a Convention to Propose an Amendment to the Constitution of the United States.

We, your Memorialists, the Senate and House of Representatives of the State of Maine in the Ninety-Fifth Legislative Session assembled, most respectfully present and petition your Honorable Body as follows:

Whereas, Article V of the Constitution of the United States reads in part as follows: "The Congress ...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--"; and

Whereas, the Legislature of the State of Maine, in view of the increasing tax problems of the State, caused in large part by the invasion of tax sources by the Federal Government, believes that its problems as well as the problems of other states similarly situated, can be solved only by some restraint upon present unrestrained exercise of the taxing power by the Federal Government; and

Whereas, the Federal Government is using and has been using for a number of years the taxing power to produce revenue beyond a legitimate necessity of a federal government, other than defense needs, and has been using the funds so raised to invade the province of legislation of the states and to appropriate in many fields that which amounts to a dole to the states of the money raised therefrom to accomplish many purposes, most of them worthy,but by the described process making the money available only under conditions which result in a control by the Federal Government from centralized agencies in Washington, in many cases unfit, and in other cases unable to administer the laws according to the local needs because of varying conditions in the country as a whole; resulting in inequities in the administration of the very benefits purported to be granted; and

Whereas, state and local needs are disadvanteaged because the people are already taxed far beyond the real need for any purpose other than forcing the centralization of all government in Washington; and

Whereas, the framers of the Constitution of the United States clearly foresaw the possibility of a condition similar to that herein described, and made provision in the constitution for safeguarding the states against any oppression or invasion of rights by the Federal Government; now, therefore, be it

Resolved: By the Legislature of the State of Maine, that said Legislature hereby and pursuant to Article V of the Constitution of the United States, makes application to the Congress of the United States to call a convention for the proposing of the following amendment to the Constitution of the United States.

ARTICLE

Sec. 1. The power to levy taxes and appropriate the revenues therefrom heretofore granted to the Congress by the states in the several articles of this constitution is hereby limited.

Sec. 2. This article shall be in effect except during a state of war, hereafter declared, when it shall be suspended. The suspension thereof shall end upon the termination of war but not later than 3 months after the cessation of hostilities whichever shall be earlier. The cessation of hostilities may be declared by proclamation of the President or by concurrent resolution of the Congress or by concurrent action of the legislatures of 32 states.

Sec. 3. Notwithstanding the provisions of Article V, this article may be suspended for a time certain or amended at any time by concurrent action of the legislatures of 3/4 of the states.

Sec. 4. There shall be set aside in the treasury of the United States a separate fund into which shall be paid 25% of all taxes collected by authority derived from the sixteenth amendment to this constitution , except as provided in section 5, and 25% of all sums collected by the United States from any other tax levied for revenue.

Sec. 5. There shall be set aside in the treasury of the United States a separate fund into which shall be paid all sums received from taxes levied on personal incomes in excess of 50% thereof and from taxes levied on income or profits of corporations in excess of 38% thereof.

Sec. 6. Before paying any sums into the funds created by sections 4 and 5 hereof, the Treasurer of the United States shall deduct therefrom 20% which shall be used in payment of the principal of the national debt of the United States.

Sec. 7. No tax shall hereafter be imposed on that portion of the incomes of individuals which does not exceed, in the case of unmarried persons the sum of $600 per year, and in the case of married persons the sum of $1,200 per year jointly. A minimum deduction of $600 per year shall be allowed for each dependent.

Sec. 8. The Treasurer of the United States shall once in each year, form the separate fund created by section 4 hereof, pay to each of the several states 1/4 of 1% of said fund and from the remainder of said fund shall pay to each state a portion of such remainder determined by the population of each state in ratio to the entire population of the several states according to the last federal decennial census or any subsequent general census authorized by law.

Sec. 9. The Treasurer of the United States shall, from the separate fund created by section 5 hereof, pay to each state, once in each year, a sum equal to the amount of money in such fund which was collected from persons or corporations within such state.

Sec. 10. Any sums paid hereunder to the several states shall be available for appropriation only by the legislatures thereof. The legislatures may appropriate therefrom for any purpose not forbidden by the constitutions of the respective states and may appropriate therefrom for expenditures within the states for any purpose for which appropriations have heretofore been made by the Congress except such purposes as are specifically reserved by this constitution for the exclusive power of the Congress. The people of each state may limit the expenditures of funds herein made available to the legislature but shall not direct the appropriation thereof.

Sec. 11. Each legislature shall have power by rule or resolution to provide for the assembly thereof in special sessions for the purpose of considering amendments to, the suspension of or the ratification of amendments proposed to this article.

Sec. 12. Each legislature shall have the power to elect one or more persons to represent such legislature in any council or convention of states created by concurrent action of the legislatures of 32 states for the purpose of obtaining uniform action by the legislatures of the several states in any matters connected with the amendment of this article.

Sec. 13. The Congress shall not create, admit or form new states from the territory of the several states as constituted on the first day of January, 1951, and shall not create, form or admit more than 3 states from the territories and insular possessions under the jurisdiction of the United States on the 1st day of January, 1951, or from territory thereafter acquired without the express consent of the legislatures of 3/4 of the several states.

Sec. 14. On and after January 1, 1951, the dollar shall be the unit of the currency. The gold content of the dollar as fixed on January 1, 1951, shall not be decreased.

Sec. 15. Concurrent action of the legislatures of the several states as used herein shall mean the adoption of the same resolution by the required number of legislatures. A limit of time may be fixed by such resolution.

within which such concurrent action shall be taken. No legislatures shall revoke the affirmative action of a preceding legislature taken therein.

Sec. 16. During any period when this article is in effect the Congress may, by concurrent resolution adopted by 2/3 of both houses wherein declaration is made that additional funds are necessary for the defense of the nation, limit the amount of money required by this article to be returned to the several states. Such limitation shall continue until terminated by the Congress or by concurrent action of a majority of the legislatures of the several states. Upon termination of any such limitation the Congress may not thereafter impose a limitation without the express consent by concurrent action of a majority of the legislatures of the several states.

Sec. 17. This article is declared to be self-executing.

and be it further

Resolved: That attested copies of this concurrent resolution be sent to the presiding officers of each House of the Congress, and that printed copies thereof, showing that said concurrent resolution was adopted by the Legislature of Maine, be sent to each House of each legislature of each state of the United States; and be it further

Resolved: That this application hereby made by the Legislature of the State of Maine shall constitute a continuing application in accordance with Article V, of the Constitution of the United States until at least 2/3 of the legislatures of the several states shall have made similar applications pursuant to said Article V; and be it further

Resolved: That since this is an exercise by a state of the United States of a power granted to it under the Constitution, the request is hereby made that the official journals and Record of both Houses of Congress, shall include the resolution or a notice of its receipt by the Congress, together with similar applications from other states, so that the Congress and the various states shall be apprised of the time when the necessary number of states shall have so exercised their power under Article V of the Constitution; and be it further

Resolved: That since this method of proposing amendments to the Constitution has never been completed to the point of calling a convention and no interpretation of the power of the states in the exercise of this right has ever been made by any court or any qualified tribunal, if there be such, and since the exercise of the power is a matter of basic

sovereign rights and the interpretation thereof is primarily in the sovereign government making such exercise and since the power to use such right in full also carries the power to use such right in part the Legislature of the State of Maine interprets Article V to mean that if 2/3 of the states make application for a convention to propose an identical amendment to the constitution for ratification with a limitation that such amendment be the only matter before it, that such convention would have power only to propose the specified amendment and would be limited to such proposal and would not have power to vary the text thereof nor would it have power to propose other amendments on the same or different propositions; and be it further

Resolved: That the Legislature of the State of Maine does not, by this exercise of its power under Article V, authorize the Congress to call a convention for any purpose other than the proposing of the specific amendment which is a part hereof; nor does it authorize any representative of the State of Maine who may participate in such convention to consider or to agree to the proposing of any amendment other than the one made a part hereof; and be it further

Resolved: That by its action in these premises, the Legislature of the State of Maine does not in any way limit in any other proceeding its right to exercise its power to the full extent; and be it further

Resolved: That the Congress, in exercising its power of decision as to the method of ratification of the proposed article by the legislatures or by conventions, is hereby requested to require that the ratification be by the legislatures.

APPENDIX IV

SELECTED ATTORNEY GENERAL'S OPINIONS

The following are selected opinions given by the Attorney General concerning subjects which are of general importance to the legislative drafter. While these opinions do not by any means represent all of the Attorney General's opinions with which a drafter should be familiar, they represent those with which the drafter is most likely to be involved in drafting legislation.

ATTORNEY GENERAL'S OPINION
REGARDING
RESOLUTION OF CONFLICTING STATUTES

December 19, 1975

Your memorandum of November 7, 1975, and accompanying materials, noted the potentially overlapping and conflicting provisions contained in four public laws enacted during the last legislative session. The question is whether these conflicts presently exist and,if so, how they are to be resolved. You indicated your position that there is no present conflict, but that variances in language and conflicts will arise when two of the laws (P.L. 1975, c. 383 and 498) become effective on July 1, 1976, and July 1, 1977. We agree with your position to the extent that variances and conflicts between two statutes do not exist until both statutes become effective. However, we also believe there are present conflicts between the two laws (P.L. 1975, c. 408 and 254) which are now effective, and these conflicts must be resolved.

A statute is a nullity until its effective date, and, conversely, speaks only from that date. Plummer v. Jones, 24 A. 585 (Me. 1891); 82 C.J.S., Statutes, 959 §399. For this reason, an existing statute is amended only when the amending statute becomes effective. Old Tavern Farm, Inc. v. Fickett, 131 A.305 (Me., 1925). Likewise, an existing statute is repealed, either expressly or by implication, only when the repealing statute becomes effective. 2 Sutherland, Statutory Construction, Ch. 34 - "Duration of Statute Laws." Therefore,a conflict between statutes will exist only when the statutes are both effective and part of the law.

The effective date of statutes in Maine is primarily governed by constitutional provision. A statute will become effective 90 days after the recess of the Legislature unless it is an emergency enactment or the Legislature specifies some effective date more than 90 days after its recess. Art.IV, Part 3, § 16, Constitution of Maine; Paine v. State, 258 A.2d 266 (Me., 1969), (See also, Atty. Gen. Rept. 1967-72, p. 73). An emergency enactment becomes effective immediately upon approval by the Governor, or overriding of his "veto." Where the Legislature has otherwise specified the effective date of all or part of an act within the act itself, such specification will govern, so long as the date specified is not within 90 days from the date of recess.

The four laws you cited in your memorandum all have different effective dates, as follows: Chapter 408 (L. D. 1263) was enacted on an emergency basis and became effective when approved by the Governor - June 3, 1975. Chapter 254 (L. D. 671) was not emergency legislation and specified no effective date, and , therefore, be came effective on October 1, 1975 (90 days after recess). Chapter 383 (L.D. 575)

contains a specific provision (Section 30) that the act will become effective July 1, 1976, except for the authority of the Chief Justice to negotiate leases, which will be effective January 1, 1976. Chapter 498 contains a specific provision that the act will become effective July 1, 1977.

The foregoing analysis substantiates your position that potential conflict involving provisions of chapters 383 and 498 will not occur until those chapters become effective by their specific terms in 1976 and 1977. However, chapters 408 and 254 are presently both effective and any conflicts between the chapters exist now. According to the chart which you furnished with your memorandum, these conflicts exist between §21 of chapter 408 and §1 of chapter 254; §23 of chapter 408 and §3 of chapter 254, and §25 of chapter 408 and §4 of chapter 254.

The conflict between §21 of chapter 408 and §1 of chapter 254 is minimal. Both sections would repeal and replace 4 M.R.S.A. §551. Though the wording of the respective replacements is different, they can be read together and given effect in a harmonious manner. Therefore, there would be no implied repeal of either section by the other, regardless of the chronological order of enactment and effective date. State v. London, 162 A.2d 150, 153 (Me., 1960). Since the primary goal is to give effect to the legislative intent, and that goal can be accomplished in this case because the provisions of the amendatory acts are not irreconcilably in conflict, the two sections should be read together.

The conflicts between the other sections are more difficult because they are irreconcilable conflicts. Sections 23 and 25 of Chapter 408 would amend parts of 4 M.R.S.A. §§554 and 562, respectively, while sections 3 and 4 of chapter 254 would repeal those statutory sections as amended prior to the last session. The situation is complicated by the chronology of eanctment, approval, and effective date for the two acts. Chapter 254 was passed to be enacted by the House on May 6, 1975, passed to be enacted by the Senate on May 7, and approved by the Governor on May 12. The chapter became effective on October 1, 1975. On the other hand, Chapter 408 was passed to be enacted and approved later (June 2 and 3, 1975), but became effective immediately because it was emergency legislation. Since upholding legislative intent is the ultimate goal of statutory construction, any clear expression of such intent would serve to solve the conflict. But where, as here, such statement of intent is lacking, it is necessary to apply rules of construction.

The specific fact situation described above has been judicially considered, but not in Maine courts. The Supreme Court of Idaho has made the following comments which are on point:

> "The general rule at common law seems to have been that, of two inconsistent statutes enacted at the same session of the Legislature, the one which went into effect at the later date would prevail. (citations omitted) At common law this was a sensible rule, because the general rule was that a statute went into effect from the date of its passage, that is, from the date of the last act necessary to complete the process of legislation and give the bill the force of law. Sutherland on Statutory Construction (2d. Ed.) p. 308, § 172. Under our Constitution no act takes effect until 60 days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the law. Thus, except in the case of emergency acts, all acts of the Legislature go into effect at the same time. Therefore, in the great majority of cases, the common-law rule would not be an effective guide." Peavy v. McCombs, 150 P. 965 (Idaho, 1914).

The court went on to suggest that a better guide would be which act was last signed by the Governor. However, it should be noted that this approach also has weakness as a guide in cases where one of the acts is passed over the Governor's veto or the Governor approves the conflicting statutes in a different order than they were passed by the Legislature.

The facts before the Idaho court in the Peavy case were nearly identical to the ones giving rise to this opinion - an act passed on an emergency basis inconsistent with an earlier enactment of the same legislature - and the Court held that the emergency act should prevail. One basis for the decision was that the subject matter of an emergency enactment would have been more clearly before the legislature. This rationale has also been used by courts of the State of Washington (Heilig v. City Council of Puyallus, 34 P. 164 (Wash. 1893)), with the added reason that the intent of the Legislature is best reflected by its last expression - the last measure enacted - rather than depending upon the date of the Governor's approval or the effective date. (State

ex rel Gebhardt v. Superior Court for King County, 131 P. 2d 943 (Wash., 1942); State ex rel Shomaker v. Superior Court of King County, 76 P. 2d 306 (Wash., 1938)). The same general rationale has been applied in similar cases in Illinois (People v. Mattes, 71 N.E. 2d 690 (Ill., 1947) and Pennsylvania (United States Steel Co. v. County Allegheny, 86 A.2d 838 (Pa., 1952)).

In light of the foregoing, we conclude that the Maine courts would probably follow what appears to be the majority rule for conflicts between acts passed at the same legislative session, where there is no clearly stated legislative intent, especially when one of the acts was emergency legislation. The majority rule could be stated thus: When there is irreconcilable conflict between enactments of the same session of the Legislature, the last act passed by the Legislature shall prevail over previously passed acts, to the extent of the conflict. There is no indication in the legislative history which would suggest that the Legislature had any specific intent concerning the effect of chapter 254 at the time they enacted chapter 408. However, applying the majority rule state above, the provisions of chapter 408 should be construed to prevail over those of chapter 254 to the extent that there is irreconcilable conflict between them. This means that 4 M.R.S.A. §§544 and 562, as amended by P.L. 1975, c. 408, are presently in effect despite the repeal of these sections found in P.L. 1975, c. 254.

To summarize this opinion, there are listed below the steps which should be taken in analyzing two or more statutes passed in the same legislative session on the same topic:

1. Enactments should be read together and harmonized as far as possible to give effect to all provisions.

2. If there is an irreconcilable conflict between provisions of the enactments, the acts should be read carefully for any intrinsic guides indicating legislative intent that one of the acts should prevail over the other.

3. In the absence of any indication of legislative intent, the act which was last passed by the Legislature will prevail over previously passed acts, to the extent of any irreconcilable conflicts.

ATTORNEY GENERAL'S OPINION
REGARDING
MUNICIPAL HOME RULE

On November 4, 1969, the people of Maine voted to amend the State Constitution by adoption of Article VIII-A, entitled "Municipal Home Rule." That amendment, which had been presented to the Governor by legislative resolve on June 11, 1969, states:

> "The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character."

The Resolve proposing this amendment, as initially submitted in Legislative Document No. 451, reads:

> "Municipal corporations shall have the exclusive power to alter and amend their charters on all matters which are local and municipal in character."

House Amendment "A" to that Resolve was then adopted by the Legislature, deleting the word "exclusive" which preceded the word "power," and adding the words "not prohibited by Constitution or general law," following the word "matters." During the debate on this Resolve, one of its supporters stated that through this Amendment, "Home Rule would be given by the State of Maine to the cities and municipalities to draft and to adopt and to amend their charters." Legislative Record, page 3260.

On January 30, 1970, the Legislature enacted Chapter 563 of the Public Laws of 1969, amending Title 30 of the Revised Statutes by adding a new chapter 201-A. Its stated purpose is "to implement the home rule powers granted to municipalities by Article VIII-A of the Constitution of the State of Maine." Section 1912 of that Chapter reads, in pertinent part:

> "§1912. Charter revisions, adoptions, procedure
>
> "1. Municipal officers. The municipal officers may determine that the revision of the municipal charter is necessary or that adoption of a new municipal charter is necessary and, by order, provide for the establishment of a charter commission to carry out such purpose as provided in this chapter.

"2. Alternative method, initiative...."

Section 1914 of that Chapter reads, in pertinent part:

"§1914. Charter amendments, procedure

"1. Municipal officers. The municipal officers may determine that amendments to the municipal charter are necessary and, by order, provide that such proposed amendments be placed on a ballot at the next regular municipal election held not less than 60 days after such order is passed.

"2. Alternative method, initiative...."

The following provision was inserted by Committee Amendment A which, however, was deleted prior to enactment of P. L. 1969, Ch. 563:

"§1921. Legislative right

"This Act shall not be exclusive and the Legislature shall have the right to grant, amend or revise the charter of any municipality."

When this Bill, Legislative Document 1630, was being debated, one of its opponents declared that - "it is just a drafted bill of unlimited home rule." Legislative Record, page 407.

The Director of Legislative Research has submitted the two following questions to this Department:

"1. Should this office accept for drafting from legislators, material for new municipal charters?"

The first question is construed as referring to a charter for a municipal corporation that does not yet exist, i.e., the creation of new municipal corporation. As thus construed, this first question is answered in the affirmative.

"2. Should this office accept for drafting from legislators, material for revising, altering or amending existing municipal charters?"

The second question is answered in the negative.

The State Legislature may enact any law of any character or on any subject unless it is prohibited either in express terms or by necessary implication by the Federal or State Constitutions.

Baxter v. Waterville Sewerage Dist., 146 Me. 211.

Prior to the Article VIII-A amendment to the Constitution of the State of Maine, the Legislature had power to create, abolish, amend, alter and revise municipal corporations. Article IV, Part 3, Section 14, Constitution of the State of Maine; North Yarmouth v. Skillings, 45 Me. 133; Bayville Village v. Boothbay Harbor, 110 Me. 46; and Googins v. Kilpatrick, 131 Me. 23. By the Article VIII-A amendment, "the power to alter and amend their charters" was conferred upon the "inhabitants of any municipality." The term "municipality"refers to "cities and towns." 30 M.R.S.A. §1901, subsection 6. Cf 30 M.R.S.A. §§1902, 2051, 5602, 5603 and 5701. The grant of power is limited to action upon previously existing charters. The word "amendment" means to add something to or withdraw something from that which has previously existed. Vol. 1 Words and Phrases, First Series, page 369. "The power to 'amend' must not be confounded with the power to create." Gagnon v. U.S. 24 S. Ct. 510, 193 U.S. 451. It seems clear, therefore, that the Article VIII-A amendment does not grant to anyone the power to create new municipal corporations. Accordingly, that power remains in the Legislature.

The Article VIII-A grant is further limited to matters "not prohibited by Constitution or general law, which are local and municipal in character." Accordingly, it is also clear that the power to amend and alter municipal charters as to non-local and non-municipal matters remains in the Legislature. However -

> "There is no objective test by which a court can determine whether a matter relates to the local or municipal affairs of a municipality. The term 'local or municipal affairs' is not a fixed quantity, but fluctuates with every change in the conditions upon which it is to operate...."
>
> "....in Missouri, it has been held that control over a municipal police department is a matter of state-wide concern, while in California, Minnesota and Ohio this is a municipal affair. Generally speaking, however, there is a wide area of agreement by the courts of the various jurisdictions on specific subjects. For example, municipal affairs generally include the opening and maintenance of streets, the advertisement of a city's advantages, the administration of local health affairs, and the assessment and collection of street paving costs. On the other hand, 'state affairs' have been held to include the administration of justice, the creation of general legal rights, municipal tort liability,

the administration of police and pension funds, the care of neglected and delinquent children, the regulation of banks, the mediation of labor disputes, the destruction of public records, and the control of a free public school system."

(Pages 55, 64 and 65, Rhyne, Municipal Law.)

Our next point of inquiry is whether a proposed amendment to an existing municipal charter which clearly relates to a "local" and "municipal" matter is the proper subject for State legislative action? The test is whether or not the grant of the power in Article VIII-A is, by necessary implication, a limitation on the Legislature. The historical development of this power grant seems to indicate that such a limitation was intended. Inhabitants of municipalities had the power to petition the legislature for such charter amendments prior to the Article VIII-A amendment. Article I, Section 15, Constitution of Maine. A grant of power to inhabitants of municipalities to amend and alter their own charters, subject to disapproval by the State Legislature, could have been accomplished by a mere Act of the Legislature. The only apparent purpose for the use of a Constitutional Amendment to confer this power was to provide a limitation on the power of the Legislature. Furthermore, a fair reading of the amendment seems to convey that as its clear intent. In the fact statement above, it was noted that the Resolve initially included the word "exclusive," but that such word was deleted before its passage. While no explanation for that deletion was provided by the legislators, it seems fair to conclude that it was deemed redundant. This construction is reinforced by the seemingly contemporaneous interpretation of that amendment made by the same Legislature in a Special Session six months later, in rejecting that portion of a Committee Amendment to P. L. 1969, Ch. 563, which contained a proposed Section 1921, declaring a reservation of the right of the State Legislature to amend such charters. Accordingly, the State Legislature does not have the power to amend or alter an existing municipal charter as to a local or municipal matter.

The final point of inquiry concerns the precise scope of the power granted to the inhabitants of municipalities by the Article VIII-A amendment. That amendment states that they are empowered to "alter and amend their charters" on all local matters. Black's Law Dictionary, Fourth Edition, defines the word "alter" as follows:

"Alter. To make a change in; to modify; to vary in some degree; to change some of the elements or

ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. Davis v. Campbell, 93 Iowa, 524, 61 N.W. 1053. To change partially. Cross v. Nee, D.C. Mo., 18 F. Supp. 589, 594. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish. Kraus v. Kraus, 301 Ill. App. 606, 22 N.E. 2d 862. See Alteration; Change.

"To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. To 'amend' implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. See Ex parte Woo Jan, D.C. Ky, 228 F. 927, 940.

"But 'alter' is sometimes used synonymously with 'change,' Board of Sup'rs of Yavapai County v. Stephens, 20, Ariz. 115, 177 P. 261, 264, and with 'enlarge' City of Jamestown v. Pennsylvania Gas Co., C.C.A.N.Y., 1 F. 2d 871, 883.

"The other; the opposite party. See Alt."

That Dictionary defines the words "amend" and "amendment" as follows:

"Amend. To improve. to change for the better by removing defects or faults. Cross v. Nee, D.C. Mo., 18 F. Supp. 589, 594. To change, correct, revise. Texas Co. v. Fort, 168 Tenn. 679, 80 S. W. 2d 658, 660.

"....

"Amendment. A change, ordinarily for the better. Musher v. Perera, 162 Md. 44, 158 A. 14, 15.

An amelioration of the thing without involving the idea of any change in substance or essence. Van Deusen v. Ruth, 343 Mo. 1096, 125 S. W. 2d 1, 3.

"Any writing made or proposed as an improvement of some principal writing. Ex parte Woo Jan, D. C. Ky., 228 F. 927, 941; Couch v. Southern Methodist University, Tax. Civ. App., 290 S. W. 256, 260.

"In legislation, it is a modification or alteration proposed to be made in a bill on its passage, or an

enacted law; also such modification or change when made. Brake v. Callison, C.C. Fla., 122 Fed. 722; State v. MacQueen, 82 W. Va. 44, 95 S. E. 666, 668.

"It is to be distinguished from a 'substitute for a bill.' In re Ross, 86 N.J. Law, 387, 94 A. 304, 306. It is an alteration in the law already existing, leaving some part of the original still standing. State ex inf. Crain ex rel. Peebles v. Moore, 339 Mo. 492, 99 S.W. 2d 17, 19. To effect an improvement or better carry out the purpose for which statutes was framed. State ex rel. Foster v. Evatt, 144 Ohio St. 65, 56 N.E. 2d 265, 282. And it includes additions to, as well as corrections of, matters already treated. Christian Feigenspan, Inc., v. Bodine, D. C. N.J. 264 F. 186, 190. See also, State v. Fulton, 99 Ohio St. 168, 124 N.E. 172, 175."

For an extensive discussion of the words "alter" and "amend" see State v. City Commission of San Angelo, 101 S. W. 2d 360.

It is noted that the implementing statute, 30 M.R.S.A., Chapter 201-A, uses the words "revision of the municipal charter" and "adoption of a new municipal charter."

Black's Law Dictionary, Fourth Edition, defines the word "revise" as follows:

"Revise. To review, re-examine for correction, to go over a thing for the purpose of amending, correcting, rearranging, or otherwise improving it; as, to revise statutes, or a judgment. American Indemnity Co. v. City of Austin, 112 Tex. 239, 246 S. W. 1019, 1023; State ex rel. Taylor v. Scofield, 184 Wash. 250, 50 P. 2d 896, 897."

In Kelly v. Laing, 242 N.W. 891, 259 Mich. 212, the Court stated:

"'Revision' and 'amendment' have the common characteristics of working changes in the charter, and are sometimes used inexactly, but there is an essential difference between them. Revision implies a reexamination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with

corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail."

Also see Staples v. Gilmer, 33 S.E. 2d 49, 183 Va. 613; State v. Taylor, 133 N.W. 1046, 22 N.D. 362; McFadden v. Jordan, 196 P. 2d 787, 32 Cal. 2d 330; City and County of Denver v. New York Trust Co., 33 S. Ct. 657, 229 U.S. 123.

In Wheeler v. Board of Trustees, 37 S. E. 2d 322, 200 Ga. 323, the Court held that the repeal of a constitution and creation of a new one is not an amendment of the former constitution but "on the contrary it is a completely revised or new constitution." People ex rel Moore v. Perkins, et al, 137 Pac. 55, 56 Colo. 17, held that "when the word 'amendment' is used without limitation, any matter which is germane to the principal subject, to wit, that of municipal government, is proper to be submitted as an amendment."

In Moore v. Oklahoma City, 254, P. 47, 122 Okl. 234, was held that a change in the plan of governing and administering the municipal affairs of a city from commission to manager form did not constitute a repeal of its charter nor the adoption of a new charter, nor the surrendering of its charter rights, but that it is a valid amendment, "so long as its charter rights and powers of independent self-government are retained and brought forward in the proposed change."

In Boatman v. Waddle, 264 P. 2d 730, (Okla. 1953) a municipality, acting under a power to amend its own charter, submitted a question to its voters whether the existing charter should be repealed and a proposed new charter adopted. The Court stated:

"Under this broad constitutional authority, a municipal government presently existing under a charter form of government with Commissioners may amend its form of government to a council-manager form of government, or vice versa, or it may amend one or more designated articles or sections of its present charter, or all of them, or it may elect to continue in effect certain ordinances and abolish others, or may retain certain departments of municipal government or abolish others or consolidate them.

"....

"We do not agree with protestants that the

Initiative Petition which submits a proposition of changing the form of city government from a commission form to a council-manager form is an attempt to revise or adopt a new charter, but is in effect an amendment of the present charter."

It seems clear from the foregoing and from the debates on the Resolve and the implementing Act that the words "amend" and "alter" as used in the Article VIII-A amendment confer a broad power upon municipalities with regard to local and municipal matters. It seems clear that the Article VIII-A grants encompasses the concept of "revision" as used in the implementing Act. However, the term "adopting a new municipal charter" as used in the Implementing Act raises a more difficult question. It seems that the recent constitutional grant to a municipality of the power to alter and to amend its charter does not confer upon it the power to abolish itself, nor to abandon its right of independent, municipal, self-government. Subject to these limitations, the power to alter and to amend seems to be broad enough to permit a change of each and every part of its charter and to substitute a new charter. Boatman v. Waddle, supra.

In summary, it appears that the Legislature retains the exclusive broad power to create new municipal corporations. On the other hand, it appears that existing municipalities have the exclusive broad power to alter and amend their charters as to local and municipal matters, including substitution of charters. Finally, while the Legislature can, in effect, alter and amend an existing municipal charter as to matters of State-wide interest, the appropriate method for doing that is general legislation.

CHARLES R. LAROUCHE
Assistant Attorney General

ATTORNEY GENERAL'S OPINION
REGARDING
SEVERABILITY CLAUSES

I am responding to your memorandum of April 28, 1978, concerning severability clauses. In that memorandum you asked two questions which will be set forth individually with their answers below.

Question 1: "Under the rules of construction, 1 M.R.S.A. § 71, do the provisions of subsection 8, relating to severability, apply to all state statutes and session laws?"

The statutory provision in question reads as follows:

> "The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

This statutorily recognized rule of construction on its face applies to all state statutes and session laws. Furthermore, there is no legislative history to indicate any exceptions to the application of this provision. Subsection 8 was enacted by P.L. 1959, Chapter 363, § 4, as part of an errors and inconsistency bill and there is no stated legislative intent of record. Therefore, in light of the unambiguous wording of the provision and the lack of any recorded legislative intent to the contrary, it is our opinion that the answer to your first question is affirmative.

Question 2: "If question 1 is answered in the affirmative, can similar severability provisions, other than 1 M.R.S.A. § 71, subsection 8, be repealed with no legal consequences?"

In order to answer this second question, it is necessary to examine briefly the more general topic of severability and severability clauses. As you know, the term "severability" connotes a theory of statutory construction which may be applied when a part of a statute is found to be unconstitutional. The idea is to give effect to remaining provisions of the law insofar as they are able to be separated from the invalid provision. This doctrine or rule is designed to give effect to as much of a statute as possible, it being presumed that it was the legislative intent to do so. (See generally: 2 Sutherland, Statutory Construction, 4th Ed. §§ 44.01, et seq.). This principle has long been judicially recognized in Maine, and perhaps was best set forth in State v. Webber, 125 Me. 319, 133 A. 738 (1926), in a quotation from Commonwealth v. Petranich, 183 Mass. 217, adopted therein.[1] This quotation reads:

> "It is an established principle that where a statutory provision is unconstitutional, if it is in its nature separable from the other parts of the statute, so that they may well stand independently of it, and if there is no such connection between the valid and the invalid parts that the Legislature would not be expected to enact the valid part without the other, the statute will be held good, except in that part which is in conflict with the Constitution. But if the objectionable part is so connected with the rest that they are dependent on each other and cannot well be separated, or that the valid part, if left alone, would so change the character of the original statute that the Legislature would not be presumed to have enacted it without the other, the whole must be set aside."

There have been no Maine cases in which the relationship between the judicially recognized doctrine of severability and the parallel legislatively enacted rule of construction found in § 71, sub-§ 8 has been discussed. However, one noted authority on statutory construction indicates that general severability statutes like § 71 have been interpreted as codifications of the general rules rather than a fixed rule of law. (Sutherland, supra, § 44.11). While no Maine court has specifically stated this interpretation, it might be inferred from the fact that the two cases in which the doctrine was applied subsequent to enactment of § 71, sub-§ 8 were decided without even footnote reference to the statute.[2/]

There are, therefore, three ways in which the rule or principle of severability has been stated in Maine - case law, general statute (§ 71) and express severability clauses found in individual enactments. In light of this multiplicity of recognition, a strong argument can be made that the specific severability clauses found in some legislation are mere surplusage and that severability would be recognized under either of the other two sources for the doctrine. It is very likely that these express severability clauses might be omitted from future legislation and be appropriately repealed from existing legislation without necessarily endangering the entire legislation if a part thereof is

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1/ A selection of other Maine cases and opinions in which severability of statutes is considered includes: In Re Spring Valley Development, 300 A.3d 736, 751 (Me., 1973); Ross v. Hanson, 227 A.2d 606 (Me., 1967); Opinion of the Justices, 132 Me. 502, 167 A. 174 (1933); McKenney v. Farnsworth, 121 Me. 450, 118 A. 237 (1922); and Hamilton v. Portland State Pier Site Dist., 120 Me. 15, 112 A. 836 (1921).

2/ The two cases were In Re Spring Valley Development, supra, and Ross v. Hanson, supra.

found unconstitutional in the future. However, since severability is always a question of construction for judicial decision, it is impossible for us to say that repeal of the existing specific severability clauses would have no legal consequences. In other words, although the court could base severability either upon existing precedent or upon 1 M.R.S.A. § 71, sub-§ 8, the existence of a separate severability clause with regard to the legislation in question may strengthen the case for severability. (See Sutherland, supra, § 44.11).

ATTORNEY GENERAL'S OPINION
REGARDING
SPECIAL RESOLVES WAIVING SOVEREIGN IMMUNITY

December 5, 1978

(Letter to Judiciary Committee)

Attached is an opinion of the Maine Supreme Judicial Court. This opinion would appear to indicate that, despite decades of practice to the contrary, the Court now views special resolves authorizing suit against the State as violative of constitutional prohibitions on special legislation. You will note that while the Court found the instant case not to be violative of the prohibition, it suggests that a number of other cases involving special resolves, particularly in standard negligence areas such as automobile accidents or slip and fall cases, would violate the special legislation prohibition.

Needless to say, we are evaluating the appropriate steps to take in regard to pending suits authorized under some recently enacted resolves. Further, this decision may require reexamination of the legislative practice in this regard. As you know, even with enactment of the Tort Claims Act, there are still a number of areas where sovereign immunity applies and where a resolve would remain necessary to permit suit against the State. The Court, by the opinion, may now be suggesting that with the Tort Claims Act in place, the Legislature should not be waiving immunity on a case-by-case basis in areas where immunity remains in effect.

I thought I should call this matter to your attention as your committee begins to develop legislative proposals, including special resolves, for the next legislative session.

Date Opinion Filed:
December 1, 1978

Reporter of Decisions
Decision No. 1934
Law Docket No. Yor-74-19

LOUIS NADEAU
V.
STATE OF MAINE

DELANTY, J.

Pursuant to a Private Resolve, 1969 Me, Acts, ch. 32,[1/] Louis Nadeau (Nadeau), the plaintiff, instituted suit against the State of Maine before a three-justice panel of the Superior Court. Finding that Nadeau's complaint did not state a cause of action, the panel converted the State's motion to dismiss pursuant to M.R.Civ.P. 12(b) (6) into an order granting summary judgment to the State. We conclude that the panel erred in granting summary judgment but that such error was essentially harmless because it should have granted the State's motion to dismiss.

1/ Chapter 32 of 1969 Me. Acts states:

RESOLVE, Authorizing Louis Nadeau to Bring Civil Action Against the State of Maine.

Louis Nadeau; authorized to sue the State of Maine. Resolved: That Louis Nadeau formerly of Biddeford in the County of York, who suffered damage for violation of his constitutional rights is authorized to bring an action in the Superior Court for the County of York, within one year from the effective date of this resolve, at any term thereof against the State of Maine for damages, if any, and the complaint issuing out of said Superior Court under the authority of this resolve shall be served on the Secretary of State by attested copy 30 days before a term of said court by the sheriff or either of his deputies in any county of the State of Maine; and the conduct of said action shall be according to the practice of actions and proceedings between parties in said Superior Court, and the liabilities of the parties and elements of damage, if any, shall be the same as the liabilities and elements of damage between individuals; and the Attorney General is authorized and designated to appear, answer and defend said action. Any judgment that may be recovered in said civil action shall be payable from the State Treasury on final process issued by said Superior Court or, if appealed, the Supreme Judicial Court, and costs may be taxed for the said Louis Nadeau if he recovers in said action. Hearing thereon shall be before 3 justices, without a jury; said justices to be assigned by the Chief Justice of the Supreme Judicial Court.

As a backdrop for considering whether the plaintiff has stated a cause of action, some elaboration on the underlying facts is in order. Although Nadeau's complaint offers little direct assistance, we have made reference to a legislative "Statement of Facts" accompanying the Resolve but not enacted by the Legislature which the plaintiff apparently attempted to incorporate into his complaint. Further guidance is provided by our prior decision in Nadeau v. State, Me., 247 A.2d 113 (1968); Nadeau v. State, Me., 232 A.2d 82 (1967); Nadeau v. State, 159 Me. 260, 191 A.2d 261 (1963).

Accused of murder, Nadau signed a confession at the Biddeford Police Department admitting to the crime. At the subsequent probable cause hearing in the Municipal Court, Biddeford, Maine, held in October of 1949, Nadeau entered a plea of guilty without the benefit of counsel. Because of an alleged inability to speak or write English fluently, Nadeau avers that he knew neither that he was signing a murder confession nor that he was entering a guilty plea to the charged crime. Following indictment, Nadeau pled not guilty. At trial in the Superior Court, the judge who presided at the probable cause hearing testified that Nadeau had previously entered a guilty plea. Convicted of murder, Nadeau was sentenced to life imprisonment.

In 1963, the United States Supreme Court decided in White v. Maryland, 373 U.S. 59 (1963), that the right to counsel attached at a probable cause hearing because it was a critical stage in the proceedings against the accused. In 1968, White v. Maryland was given retroactive application, Arsenault v. Massachusetts, 393 U.S. 5 (1968). Our Court, upon the State's motion for rehearing, concluded that Nadeau's conviction could not stand in light of the controlling principles of White and Arsenault. Nadeau v. State, Me., 247 A.2d 113 (1968). Stipulating that it would not retry him, the State released Nadeau.

In 1969, a Private Resolve was introduced in the Legislature which sought to appropriate to Nadeau $83,000 "as a full and final settlement against the State for violation of his constitutional rights." Referred to the Judiciary Committee, the present bill emerged and was enacted by the Legislature. The Resolve authorized Nadeau to sue the State while deleting all references to a direct appropriation.

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2. Promptly following the 1968 decision in Arsenault v. Massachusetts, supra, the State moved for a rehearing and reconsideration of Nadeau v. State, Me., 232 A.2d 82 (1967), in which we decided that White v. Maryland, supra, was to be applied prospectively.

I.

In arguing that his complaint alleges a cause of action, Nadeau proceeds upon the theory that the Resolve creates a new action based on unjust conviction and imprisonment. The State responds that the plaintiff's interpretation of the Resolve renders the bill unconstitutional under art. I, § 6-A (equal protection clause) and art. IV, pt. 3, § 13 (special legislation clause) of the Maine Constitution.

We need not here decide whether consistent with the above-mentioned constitutional principles the State could create a cause of action for Nadeau alone because the Legislature clearly intended no such result. The Resolve's sole purpose was to waive sovereign immunity and to permit the plaintiff to proceed on any cause of action cognizable in this jurisdiction. The Resolve unambiguously states:

> Nadeau . . . is authorized to bring an action . . . against the State of Maine for damages, if any, . . . and the liabilities of the parties and elements of damage, if any, shall be the same as the liabilities and elements of damage between individuals. . ..

Although the Resolve is not unconstitutional for creating a new cause of action, we deem it necessary to consider the jurisdictional question of whether the Resolve's waiver of sovereign immunity violates either the special legislation or equal protection clauses of our Constitution. If the instant Resolve transgresses either of the constitutional provisions, the plaintiff's suit would be null and void depriving the trial court and this Court of jurisdiction. Look v. State, Me., 267 A.2d 907 (1970). As such, the question may be appropriately raised on our own initiative. Id.

At the outset, we recognize that private bills which either directly appropriate money or authorize suits against the State serve a significant ameliorative function since sovereign immunity was an absolute bar to a suit against the State prior to our decision in Davies v. City of Bath, Me., 364 A. 2d 1269 (1976). Moreover, all legislative acts are clothed with an armor of constitutionality particularly resilient where such acts follow a long-settled and well-established practice of the Legislature. State v. Longley, 119 Me. 535, 112 A. 260 (1921). It is equally true that although we have had the opportunity, we have not heretofore inquired into the constitutionality of such legislation. Drake v. Smith, Me., 390 A.2d 541 (1978); Turner v. Collins, Me., 368 A.2d 1160 (1977); Hilton v. State, Me., 348 A.2d 242 (1975); Kerr v. State, 127 Me. 142, 142 A. 197 (1928); Austin W. Jones Co. v. State, 122 Me. 214, 119 A. 577 (1923); Marshall v. State, 105 Me. 103, 72 A. 873 (1909).

Nevertheless, where some individuals are appropriated money or permitted to sue the State while others are not, the equal protection clause of the Maine Constitution is necessarily implicated. Art. I, § 6-A states:

> No person shall be deprived of life, liberty or property without due process of law, nor be denied equal protection of the laws . . .. (emphasis supplied).

Moreover, the vehicle by which the Legislature authorizes payment or suit is a private bill, thereby activating the special legislation clause, art. IV, pt. 3, § 13, which provides:

> The Legislature shall from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Both constitutional provisions have been used to invalidate private resolves attempting to grant a privilege to an individual or individuals not enjoyed by other similarly situated persons. Concerning the equal protection clause, the Court, speaking through Mr. Chief Justice Mellen[3] in the early leading case of Lewis v. Webb, 3 Me. 326, 336 (1825), stated:

> On principle then it can never be within the bounds of legitimate legislation, to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just or reasonable in its consequences. It is our boast that we live under a government of laws and not of men. But this can hardly be deemed a blessing unless those laws have for their immoveable basis the great principle of constitutional equality. (emphasis supplied).

In Lewis v. Webb, supra, the Court voided a private resolve which attempted to dispense in a particular instance with the general procedures governing appeals from decrees of probate court judges. On similar grounds, the Court one year later in Durham v. Lewiston, 4 Me. 140 (1826), invalidated a private resolve which granted to a particular party an appellate review not enjoyed by others. Relying on Lewis and Durham, Milton v. Bangor Railway & Electric Co., 103 Me. 218, 68 A. 826 (1907), struck down a private act which limited an injured party's right to sue a specific railroad by granting to that corporation an exemption from the general requirements of the common law.

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3. For an informative biography of our first Chief Justice, see Ballou, Prentiss Mellen, Maine's First Chief Justice: A Legal Biography, 28 Me. L. Rev. 315 (1977).

Turning to the special legislation clause, although it may appear at first blush to be directory, merely advising the Legislature on how it ought to draft legislation, we have consistently viewed it as mandatory. As such, if a general law is practicable, viz., where general legislation has been enacted or could have been made applicable, passage of special legislation violates art. IV, Pt. 3, § 13. Thus, in Opinion of the Justices, 157 Me. 106, 170 A.2d 647 (1961), the Court effectively relied upon the special legislation clause in indicating that a proposed private bill which sought to compensate a corporation for loss of business during construction of a bridge would be unconstitutional if it merely sought to provide additional damages to that already available under the general law. Resting its decision on the special legislation clause and the State and Federal equal protection guarantees, Maine Pharmaceutical Association v. Board of Commissioners, Me., 245 A.2d 271 (1968), the Court voided a private bill giving a named individual special permission to sit for a pharmacy examination when he was not qualified to do so under the controlling statutory provisions. Similarly, in Look v. State, supra, we voided a private resolve on equal protection and special legislation grounds where the Legislature attempted to exempt certain property owners from the statutory six-month period for bringing suit to recover damages resulting from changing the grade of State highways.

These cases reveal a judicial vigilance, dating back to the first days of statehood and continuing to the present, against ad hoc legislative attempts to single out certain named individuals for benefits not available to the general citizenry. This favoritism and arbitrariness, to which we have always been acutely sensitive, is equally in a system where the Legislature determines who is to be compensated or permitted to sue the State. See Tort Liability of the State: A Proposal for Maine, 16 Me. L. Rev. 209, 210-12 (1964). We can perceive no dispositive distinction between these two situations. Although there may be a semantic difference between a legislative enactment which directly bestows a privilege upon an individual and one which merely removes a bar to any action which would have otherwise existed, the underlying reality is the same. In both instances, there has been a legislative dispensation from the general requirements of the law with the distinct possibility of different legislative treatment for two individuals who are in all material respects identical. Such is not permitted by the constitutional guarantee of equal protection of the laws or by the special legislation clause.

Of course, a law uniform in operation is not rendered invalid merely because of the limited number of persons who will be affected by it. Where there has been a reasonable classification of the objects of the law, generally there are no equal protection problems, even if the law does not operate equally on all individuals and places alike. Universality is immaterial as long as those affected are reasonably

different from those excluded and there is a rational basis for treating them in a different manner. Portland Pipeline Corp. v. Environmental Improvement Commission, Me., 307 A.2d 1, appeal dismissed, 414 U.S. 1035 (1973); von Tiling v. City of Portland, Me., 268 A.2d 888 (1970); State v. King, 135 Me. 5, 188 A. 775 (1936). Verreault v. City of Lewiston, 150 Me. 67, 104 A.2d 538 (1954), for instance, presented the not dissimilar question of the permissible limitations on a waiver of municipal tort immunity. In Verreault, the Court found no equal protection violation in a statute which permitted suit against a municipality only where injuries resulted from defects in a sidewalk. In denying the possibility of recovery where the sidewalk injury was caused by ice and snow, the Court stated:

> (A)t common law there was no right of action against a town or city for injuries caused by defects in highways. The State in granting a right of recovery for defects in highways can make the right granted as broad or as narrow as it sees fit. It can restrict its grant of such right of recovery with respect to the nature of the defects, the portion of the highway in which the defects may be found for which liability is granted, or the class of travellers to which the right of recovery is given. The only limitation thereon is that the limitation must not be arbitrary and that there must be equality of right to all persons similarly situated. Id. at 74, 104 A.2d at 542.

Similarly, special legislation is not per se unconstitutional. Where the objects of a law cannot readily be attained by general legislation, special legislation may be enacted. In Austin W. Jones Co. v. State, supra, the State waived sovereign immunity where a unique factual pattern was presented. In Jones, a corporation was permitted to sue the State as a result of arson to its property perpetrated by a mental patient from a State hospital released by a physician in the State's employ who knew that the patient was still insane. In other cases presenting unusual circumstances, special acts permitting suit against the State have been upheld. See Tolisano v. State, 19 Conn.Supp. 266, 111 A.2d 562 (1954) (illegally incarcerated prisoner permitted to sue State).

Where, however, the facts are not unusual, as where an individual traveling on a highway is injured due to a state's carelessness, courts have consistently struck down special acts waiving sovereign immunity since there is no rational basis for distinguishing between that individual and all others similarly situated. Tough v. Ives, 162 Conn. 274, 294 A.2d 67 (1972); Cox v. State, 134 Neb. 751, 279 N.W. 482

(1938); Lucero v. New Mexico State Highway Department, 55 N.M. 157, 228 P.2d 945 (1951); Jack v. State, 183 Okla. 375, 82 P.2d 1033 (1937); Collins v. Commonwealth, 262 Pa. 572, 106 A 229 (1919); Sirrine v. State, 132 S.C. 241, 128 S.E. 172 (1925). In such circumstances, a general law could have been made applicable. As was stated in Cox v. State, supra at ___, 279 N.W. at 486-87,

> (i)n the instant case, the legislature created a liability in favor of this plaintiff for the tort of the state's agents and servants, resulting in an injury to her while she was traveling a highway under the control of the state. Legislative Bill No. 20, in substance and form, grants to this plaintiff a right as against all other persons using the highways of the state who are similarly situated. We believe that such act does not operate equally and uniformly on all members of the class brought within its operation. While a special privilege is granted to this plaintiff, the right is denied to others similarly situated to recover for the torts of the agents and servants of the state. To uphold this legislation would require individuals, similarly situated, to knock at the door of the legislature and ask that an exception be made in their particular cases, while others, less fortunate, may not be able to obtain the relief sought. If any basis for the classification can be said to exist, it must be found in the peculiar facts and circumstances of the injuries sustained by this plaintiff. Legislative Bill No. 20 discloses nothing unique or peculiar in the circumstances of the alleged injury which would serve to distinguish it, either in a legal or moral sense, from any other wrongful act or commission of the agents or servants of the state. The act provides a special exemption in favor of this plaintiff--the right to recover for damages--which it denies to all other persons similarly situated.

Where, as here, materially unique facts and circumstances prompt a legislative waiver of sovereign immunity, it is highly improbable that there are other similarly situated individuals being denied the privilege granted to Nadeau. Moreover, short of a statutory provision waiving sovereign immunity for all allegedly tortious conduct attributable to the State's agents, it is doubtful whether general legislation could have been enacted to cover the unique facts presented by this case. As such, the potential for "privilege, favoritism, and monopoly" inherent in special legislation, Opinion of the Justices, 146 Me. 316, 322, 80 A.2d 866, 868 (1951), while not being eliminated, is reduced to a constitutionally tolerable level.

We find no violation of either the equal protection or special legislation clauses.

II.

As with a private bill directly appropriating money to an individual, special legislation permitting suit against the State must be based on a legislative assessment that the State owes a moral obligation to the particular person. Opinion of the Justices, 157 Me. 106, 170 A.2d 647 (1961). The State is not free to authorize payment, or a suit which could result in a judgment,without some sort of public benefit. Such a legislative conclusion may be challenged in the courts. Id. Here, however, since it is not alleged that the Legislature could not have properly concluded that a moral obligation was owed to the plaintifff, we will assume that the circumstances set forth in the Resolve and the accompanying "Statement of Facts" could serve as a necessary predicate for such an assessment.

III.

We next turn to a discussion of the procedural aspects of the instant case. The Court quashed service of process on Nadeau's first complaint. Thereupon, he re-served a duplicate original complaint on April 27, 1972. The State's answer of May 8, 1972 included a motion to dismiss for failure to state a claim, M.R.Civ.P. 12(b)(6). On June 19, 1974, a pre-trial conference was held and a pre-trial order entered. At the pre-trial conference, the State submitted a memorandum in support of its 12(b)(6) motion. The following day, the record indicates that Nadeau filed "Factual Data on Plaintiff's Background as per Stipulation No. 2 of Pre-Trial Conference." This "factual data" has not been made a part of the record. Finally, on June 25, 1974, the Court treated the State's 12(b)(6) motion as a motion pursuant to M.R. Civ. P. 56 and granted summary judgment to the State.

Although the quashed original complaint was included in the record, Nadeau omitted from the record the April 27, 1972 complaint. Neither was defendant's May 8, 1972 answer included in the record. Both parties have, however, appended the answer to their briefs. Technically then, we do not have before us the pleadings which led to summary judgment because they were not properly a part of the record.

We have recently remarked that "(w)hen an inadequate record is presented to the Law Court to support an appeal, such appeal must fail." Berry v. Berry, Me., 388 A.2d 108, 109 (1978). In Berry, we denied an appeal where the appellant was contesting the granting of a motion to dismiss and did not include the motion in the record. The rationale behind the rule is that review of a trial court decision is impossible

where the pertinent documents leading to that ruling are not before us. Construction Products Co. v. W.D. Matthews Machinery Co., Me., 388 A.2d 916 (1978); State v. Bellanceau, Me., 367 A.2d 1034 (1977).

Both parties concede that the complaint and answer before the Law Court are in effect the same pleadings that were before the panel when it granted summary judgment. Although we expressly disapprove of plaintiff's negligence in the preparation of the record, we will consider the appeal because the appropriate documentation is before us, albeit improperly.

> M.R.Civ.P. 12(b) provides as pertinent to this appeal:
>
> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

As a threshold question we must determine whether the three-justice panel had before it "matters outside the pleading" sufficient to convert a 12(b)(6) motion into one for summary judgment.

In addition to the pleadings, the State submitted a legal memorandum in support of its motion to dismiss. Under Westman v. Armitage, Me., 215 A.2d 919 (1966), such documentation cannot be "matters outside the pleading." Plaintiff's factual data submitted pursuant to the pre-trial order is not before us. Given plaintiff's failure to include this material in the record, we have no alternative but to assume that it would have been sufficient to trigger consideration under M.R.Civ.P. 56.[4]

4. If the factual data submitted pursuant to stipulation amounted to an "agreed statement of facts," then under Mendall v. Pleasant Mt. Ski Dev., Inc., 159 Me. 285, 191 A.2d 633 (1963); see Chandler v. Dubey, Me., 325 A.2d 6 1974), it may well have been sufficient to convert a 12(b)(6) motion into one for summary judgment.

Having brought into play the requirements of M.R.Civ.P. 56, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion. . .." The "reasonable opportunity" language was designed to prevent unfair surprise to the litigants. Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389 (6th Cir. 1975). Unless the parties knew that the 12(b)(6) motion was being considered as one for summary judgment, "reasonable opportunity" should include ten days' notice to the parties. (M.R.Civ.P. 56(c)) so that they will have the opportunity to furnish the court with additional materials. Gutierrez v. El Paso Cummunity Action Program, 462 F.2d 121 (5th Cir. 1972). The record provides no basis for concluding that Nadeau either knew or ever received notice that the court was contemplating summary judgment. Its grant of summary judgment five days after submission of the factual data was error. Spickler v. Carzis, Me., 349 A.2d 173 (1975); Dunn v. Town of Scarborough, Me., 329 A.2d 162 (1974).

Even though summary judgment was procedurally inappropriate, such error must be assessed in light of whether the State's underlying motion to dismiss under 12(b)(6) should have been granted. Medina v. Rudman, 545 F.2d 244 (1st Cir. 1976); see Westman v. Armitage, supra.

Before reviewing a motion to dismiss for failure to state a claim, we repeat certain rubrics of construction. Adopting the rule of Conley v. Gibson, 355 U.S. 41, 45-46 (1957), we have stated that such a motion should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Doane v. Pine State Volkswagen, Inc., Me., 377 A.2d 481, 484 (1977). Otherwise stated, if a complaint alleges either "the necessary elements of a cause of action or facts which would entitle a plaintiff to relief upon some theory," Dom J. Moreau & Son v. Federal Pacific Electric Co., Me., 378 A.2d 151, 153(1977), the complaint should not be dismissed. In reviewing the full spectrum of claims which might entitle the plaintiff to relief, we are obligated to construe the pleadings in the light most favorable to him, Bramson v. Chester L. Jordan Co., Me., 379 A2d 730 (1977), and resolve every doubt in his behalf.

IV.

The plaintiff seeks to ground his cause of action upon a number of alternative legal theories. We have already rejected Nadeau's principal argument that the Legislature attempted to create a special cause for Nadeau alone based upon unjust conviction and imprisonment. Because an action based upon such a theory has not hitherto existed at common law, see Note, Compensation of Persons Erroneously Confined by the State, 118 U. Pa. L. Rev. 1091 (1970), in the absence

of any statutory authorization, plaintiff cannot proceed on this basis.[5]

The facts of this case reveal no basis for Nadeau claiming false imprisonment. False imprisonment involves the unlawful detention or restraint of an individual against his will, Palmer v. Maine Central R.R. Co., 92 Me. 399, 42 A. 800 (1899). To be actionable, the authority upon which plaintiff is confined must be unlawful, as where a warrant is defective on its face, Faloon v. O'Connell, 113 Me. 30, 92 A. 932 (1915), or where an officer uses excessive force to arrest, Bale v. Ryder, Me., 290 A.2d 359 (1972), or unreasonably delays in bringing the arrested person before a magistrate, Hefler v. Hunt, 120 Me. 10, 122 A. 675 (1921). In the instant case, plaintiff's arrest and imprisonment were upon lawful process. In fact, it was the State which ensured that there was no unreasonable delay in releasing Nadeau by petitioning the Court immediately following the decision in Arsenault v. Massachusetts, supra, which delay might otherwise form the basis for such a tort. Weigel v. McCloskey, 113 Ark. 1, 166 S.W. 944 (1914). Under these facts, no action for false imprisonment will lie.

Malicious prosecution has long been recognized as an actionable tort in this jurisdiction. Nyer v. Carter, Me., 367 A.2d 1375, 1378 (1977). Under the instant circumstances, plaintiff would have to prove not only that criminal proceedings were instituted against him without probable cause and with malice, but also show that he received a favorable termination of the proceedings. Saliem v. Glovsky, 132 Me. 402, 172 A. 4 (1934); Sabin v. Beaumont, 118 Me. 490, 107 A. 295 (1919). The plaintiff has alleged none of these elements. Moreover, a conviction in a court having proper jurisdiction, where such conviction is not obtained by fraud, is conclusive on the issue of probable cause, even if the conviction is reversed on appeal. Dunlap v. Glidden, 31 Me. 435 (1850). As such, plaintiff's conviction at trial stands as an absolute bar to the institution of such an action.

5/ At least five jurisdictions, in the federal government, California Illinois, New York, and Wisconsin, have statutory provisions compensating persons erroneously imprisoned. All the statutes appear to require proof of innocence. An individual released from incarceration on constitutional grounds does not appear to qualify as a victim of erroneous confinement, unless he also did not in fact commit the crime. See 118 U. Pa. L. Rev., supra at 1092. See generally, Annot., 161 A.L.R. 346 (1946). It should be noted that Nadeau nowhere asserts that he could prove his innocence; to the contrary, he urges us to dispense with such a requirement.

Closely related to false imprisonment and malicious prosecution is abuse of process, which is the employment of a process in a manner not contemplated by the law. It differs from malicious prosecution in that "it lies for the improper use of process after it has been issued, not for maliciously causing process to issue." Lambert v. Breton, 127 Me. 510, 514, 144 A. 864, 866 (1929). Elements necessary to sustain such an action include 1) a use of the process in a manner not proper in the regular conduct of the proceedings and 2) the existence of an ulterior motive. Bourisk v. Derry Lumber Co., 130 Me. 376, 156 A. 382 (1931). As with the other causes of action that we have reviewed, there is no indication of any conduct remotely actionable under the instant tort.

Nadeau's remaining argument appears to be that he has a cause of action based upon a violation of his sixth amendment right to counsel. Contrary to plaintiff's assertion, there is no possible action against the State either directly or under any theory of respondeat superior which would make it liable for such injury as did occur in the instant case.

At the time of Nadeau's arrest in 1949, we did not and had never viewed a probable cause hearing as a critical stage in the proceedings against an accused under ordinary circumstances. Holbrook v. State, 161 Me. 102, 208 A.2d 313(1965). Fourteen years later, the United States Supreme Court reached the opposite conclusion in White v. Maryland, supra. Notwithstanding that White was given retroactive application because the "denial of the right (to counsel) must almost invariably deny a fair trial," Arsenault v. Massachusetts, supra at 6, neither the State nor its agents can be "charged with predicting the future course of constitutional law." Pierson v. Ray, 386 U.S. 547, 557 (1967). Accord, O'Connor v. Donaldson, 422 U.S. 563, 577 (1975); Wood v. Strickland, 420 U.S. 308, 322 (1975). Accordingly, Nadeau received no injury compensible under our jurisprudential system.[6]

6. Nadeau finds a cause of action in art. 1, §19, which states: "Every person, for an injury done him in his person. . . shall have remedy by due course of law." We have never viewed this constitutional provision as granting an action where one did not otherwise exist either under existing statutory or cognizable common law, see Section 19 of the Maine Constitution: The Forgotten Mandate, 21 Me. L.Rev. 83 (1969). See Milton v. Bangor Ry. & Elec. Co., supra, where the Court left open the question of whether exempting a particular corporation from the general requirements of tort law might not violate an injured individual's rights under art. I, §19. In any event, the constitutional provision is inapplicable because of Nadeau's complaint reveals that he has suffered no injury as a matter of law.

Because Nadeau's complaint reveals no cognizable action, it would have been proper for the three-justice panel to dismiss plaintiff's suit for failure to state a claim.

The question now arises as to whether we should order plaintiff's suit dismissed with or without prejudice. The general rule is that if we find that the trial court was justified in granting a 12(b)(6) motion, the judgment below is on the merits and raises matter in bar. 2A J. Moore's Federal Practice §12.09 at 2313 (2d ed. 1974). The rule is far from unbending and when justice so requires we have affirmed the dismissal of a suit yet permitted the plaintiff to file a new complaint, Begin v. Bernard, 160 Me. 233, 202 A.2d 547 (1964), or amend the original complaint, Cohen v. Maine School Administrative District, Me., 369 A.2d 624 (1977).

Had the tribunal granted the State's 12(b)(6) motion, Nadeau would typically have been given leave to amend his complaint. Where, however, summary judgment has been entered, a court is ordinarily reluctant to permit the plaintiff to amend his complaint to assert a different cause of action. 2 R. Field, V. McKusick, & L. Wroth Maine Civil Practice §56.1 at 35 (2d ed. 1970). Thus, in the instant case, the error in granting summary judgment prejudiced the plaintiff by effectively eliminating the possibility of an amended complaint.

Nadeau nowhere concedes that he could not amend his complaint to assert a valid cause of action. We are mindful of our comment in Nelson v. Times, Me., 373 A.2d 1221, 122-23 (1977):

> We would have serious doubts concerning the accuracy of the (12)(b)(6)) ruling, considering the theoretical amendability of the infant plaintiff's complaint, were it not for the fact that at oral argument it was agreed by plaintiff's counsel that the complaint could not be amended in any substantial manner to allege facts other than those recited therein.

Under the instant circumstances, the plaintiff should have the opportunity to amend his complaint, if amendable, subject to such time limitations as may be imposed by the panel.

The entry is:

> Appeal sustained. Case remanded to the panel with instructions that the justices thereof 1) direct entry of an order vacating the order for summary judgment for the defendant, 2) enter judgment dismissing the complaint for failure to state a cause of action (M.R.Civ.P. 12(b)(6), and 3) grant leave to amend under appropriate limitations.

ATTORNEY GENERAL'S OPINION
REGARDING
LEGAL SIGNIFICANCE OF THE TITLE AND STATEMENT OF FACT

March 15, 1979

(Letter to Sen. Ault and Rep. Kany)

I am writing in response to your inquiry to Attorney General Cohen concerning the legal significance of the title and statement of fact of a bill.

Simply stated, neither the title nor the statement of fact of a bill is deemed to be part of the enacted legislation. Thus, they do not have the force of law. The title and statement of fact may become relevant, however, when a court construes the particular act. To explain their relevance, I must briefly discuss the process by which a court interprets a statute.

The overriding objective of statutory construction "is to give effect to the intention of the Legislature," Reggep v. Lunder Shoe Products Company, 241 A.2d 802,804 (Me. 1968). In order to ascertain the legislative intent, a court will look first to the language of the statute. In fact, it is generally held that when the wording of a law is clear, the court will not look behind that wording in construing the law.

> "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning." State v. Granville, 336 A.2d 861, 863 (Me. 1975).

In other words, if the language of a statute clearly reveals the Legislature's intent, the inquiry need proceed no further.

When a court decides that a statute is ambiguous, it will utilize extrinsic aids in order to discover the legislative purpose. As part of this endeavor, the court will customarily examine the legislative history of the enactment. See, e.g., Finks v. Maine State Highway Commission, 328 A.2d 791, 797 (Me. 1974). It is in this context that the title and statement of fact may become relevant, insofar as they constitute a part of that history. Thus, if the court concludes that the language of the title

and/or the statement of fact helps to shed light on the meaning of an ambiguous statute, the court may look to that language in construing the statute.*

You have also inquired as to what measures the Legislature should take to correct an erroneous or incomplete title or statement of fact. Before I address that issue, I would emphasize that the focus of the Legislature's attention should be on the language of the bill. As the above discussion indicates, if that language is clear and unambiguous, then the title and statement of fact are of no legal significance in the sense that they would not be utilized by a court in interpreting and applying a statute.

Assuming the Legislature perceives a need to rectify an error in the statement of fact or title, it is impossible to say that one procedure is preferable to another. The courts have not created a clear hierachy by which they rank different facets of the legislative history in order of importance. While it may be argued that an amendment to the title or statement of fact would have a greater effect, insofar as it must be approved by the Legislature,a clear statement in the course of the debate, especially if made by a sponsor or proponent of the bill, should suffice. Once a court determines that it must examine the legislative history of a statute, it will examine that history in its entirety. Thus, it is virtually certain that a court which reads the statement of fact or the title of a bill will also read all of the debate on the measure.

To summarize, the best safeguard against judicial misreading of the legislative intent behind a statute is to draft the statute in a clear and unambiguous manner. When it is deemed necessary, however, to correct a title or statement of fact, the form of the correction is less important than the clarity with which it expresses the Legislature's intent.

If we can be of further service to you, please let us know.

Sincerely,

STEPHEN L. DIAMOND
Deputy Attorney General

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* As a practical matter, the statement of fact is far more likely to be utilized than the title of the bill. A quick review of the cases failed to reveal any decisions in which the Maine Supreme Court relied on a title to construe a statute. The leading commentator on the subject indicates, however, that the title would probably be relevant for this purpose. Sutherland, Statutory Construction, § 47.03.

ATTORNEY GENERAL'S OPINION
REGARDING
EFFECTIVE DATE OF LEGISLATION

September 21,1979

(Letter to James Henderson, Deputy Secretary of State)

This is a follow-up of our opinion dated July 10, 1979, which dealt with the issue of whether the Governor had the power to sign bills into law more than 10 days (except Sundays) after they were presented to him, when the Legislature had adjourned prior to the elapsing of the 10 days. We answered that question in the negative, and, as a consequence, a further issue was raised regarding the effective date of these bills should the Governor fail to return them to the next meeting of the Legislature as provided in the Maine Constitution, art. IV, pt. 3, § 2.

I.

As a preliminary matter, it must be determined what constitutes the "next meeting" of the Legislature for purposes of the return of legislation under art. IV, pt. 3, § 2 of the Maine Constitution. This issue has become signficant since it is now likely that there will be a special session in the very near future. The question, then, is whether the language "next meeting of same the Legislature" in § 2 means the next chronological session, whether special or regular, or the next regular session, The problem arises because similar language in at least one other state constitution has been interpreted to mean the next regular session of the Legislature. Arnold v. McKellar 9 S.C. 335 (1878).1/ The rationale for this decision was that the word "meeting" implied a regularly recurring event and further, that special sessions ought to be limited to the matters which made them necessary. 9 S.C. at 342.

1/ The relevant language from the South Carolina Constitution reads as follows:

> 'If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not have such force and effect unless returned within two days after their next meeting.'

9 S.C. at 341, citing
S. Caro. Const.,art.III,§22

Based on the clear language of art. IV, pt. 3, § 2 and its legislative history, we do not believe that the Maine Constitution can be interpreted to produce the same result which the South Carolina court reached under its constitutional provision. In 1973, the Maine Legislature passed, and the people accepted, a constitution resolution amending the language of § 2. Previously, the provision had read, in relevant part:

> If the bill or resolution shall not be returned by the Governor within five (now ten) days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.
>
> Me. Const., art. IV, pt. 3,§2 (pre-1973 version)

The language of the last phrase was amended by Amendment CXXII to the Constitution to read:

> . . . unless the Legislature by their adjournment prevent its return, in which case, it shall have such force and effect, the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.
>
> Me. Const., art, IV, pt. 3, §2 (emphasis added)

The plain language of § 2,in its present form, indicates that the Governor must return a vetoed bill to the next chronological session of the same Legislature which enacted it, whether such a session is labelled "special" or "regular." It is a well settled principle of constitutional and statutory construction that, where there is no ambiguity and no evidence of other intent, the language of a statute is to be given its ordinary meaning. E.g., Flemming,

377 A.2d 448 (Me. 1977); Union Mutual Life Ins. Co. v. Emerson, 345 A.2d 504 (Me. 1975). When § 2 is given its ordinary meaning, there is no basis for excluding special sessions.

The above interpretation is consistent with the Legislature's intent, as reflected by the history of the constitutional resolve proposing the amendment which resulted in the present language of art. IV, pt. 3, § 2. As noted during the legislative debate:

> At the present time, the Governor has five days to sign a bill and if he doesn't do it within that time, it becomes law unless the legislature adjourns before the five days are up. Then he has three days after we meet again. This bill says that he has this same extra time if the same Legislature which enacted the bill meets again in special session, the bill does not become law. Now, at the meeting of the next Legislature he still has the three days. This would do away with this provision. That is why I call it a mini-pocket veto.
>
> 2 Me. Legis. Record (1973) at 3080 (remarks of Representative Ross)

It is clear from the above remarks that the legislative intent underlying the amendment was, at least in part, to allow the Governor to return bills approved by both Houses at a previous session to an immediately following special session.2/ The intent to include special sessions within the definition of "next meeting" is evident from these comments, especially in light of the fact that at the time they were made, the special session was the only type of meeting permissible other than the single regular session. (See Me. Const., art. IV, pt. 3, § 1, prior to 1975 amendment.) Finally, the generality of Representative Ross' reference to

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2/ Another purpose of the amendment was to give the Governor a "pocket veto" power which he had not previously had. See Remarks of Rep. Ross, supra. That power exists when the Legislature approving the bill does not reconvene before the expiration of its term.

special sessions is strong, if not conclusive, evidence that the "next meeting of the Legislature" was meant to include any following sessions of the same Legislature. It must thus be concluded that "next meeting of the same Legislature," as used in Me. Const., art. IV, pt. 3, §2, means the next chronological session of the same-numbered Legislature which approved the relevant bill, whether that session is specially called by the authority of the Governor or the Legislature or is regularly scheduled under Me. Const., art. IV, pt. 3, § 1.3/

Having determined that "next meeting" includes special sessions, the question arises whether the Governor, by excluding from his "call" for the special session consideration of the pending bills, can prevent the operation of that part of art. IV, pt. 3, § 2 which gives effect to those bills which are not returned by the Governor within three days of the beginning of the next session. For a number of reasons, we answer this question in the negative. 4/

First, by its plain language and intent, section 2 appears to be a self-executing constitutional provision of equal dignity with the constitutional power of the Governor to call a special session for specific purposes. The two provisions are not in conflict and can easily be read together to allow reconsideration by the Legislature at the special session of bills returned by the Governor. Moreover, in the case where such pending bills are not acted upon by the Governor and are allowed to become law by the elapsing of the three-day period, no action by the Legislature is required; the bills become law by the mere expiration of time in the same way as if the Governor had signed them. (See discussion of effective date, infra.) Finally, it would appear to be beyond the scope of our constitutional

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3/ This interpretation also furthers the evident purpose of this section to expedite the return of legislation to the Legislature so that it will be finally acted upon as soon as possible. Expedition of legislation and the need for certainty are interests which have been recognized and held deserving of protection in the general area of procedure whereby legislation becomes effective. See Wright v. United States, 302 U.S. 583 (1938).

4/ For purposes of this opinion, we assume arguendo that the Governor has authority to limit the Legislature's consideration in special sessions to those matters creating the "extraordinary occasion" upon which the session is based. Me. Const., art. IV, pt. 1, §13; see also Arnold v. McKellar, supra. Since that precise question is not now before us, we deem it unnecessary to address it, and nothing included herein should be considered as expressing an opinion on that issue.

system to read into the Constitution, where it does not appear explicitly, a power in the Governor to undercut the independent functioning of a self-executing provision of the Constitution. We cannot justify,by the words of our Constitution or any reasonable implications therefrom, an interpretation which would allow the Governor to alter the operation of art. IV, pt. 3, § 2. We conclude, therefore, that it is beyond the power of the Governor to arrest the operation of the provisions of § 2 by which bills approved by the Legislature at a previous session become law at the next meeting of the same Legislature.

II.

Once the meaning of "next meeting" in § 2 of art. IV, pt. 3 has been determined, there remains the question of the effective date of laws not returned by the Governor within three days of the beginning of that meeting. The relevant portion of section 2 reads as follows:

> If the bill or resoltuion shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjourment prevent its return, in which case it shall have such force and effect, unless returned within three days after the next meeting of the same Legislature which enacted the bill or resoltuion . . . .
>
> Me. Const., art. IV, pt. 3, §2 (emphasis added)

The use in the section of the term "same force and effect as if he had signed it" in the event of a ten-day delay and the reference to that same language in the event the Legislature adjourns prior to the ten-day period evidence the intent that both situations be treated alike. In each situation, the effect of a failure by the Governor to return a vetoed bill to the Legislature during a session is the same "as if he had signed it." Id. The expiration of the time during which the Governor could veto the bill gives the bill the same effect as it if had been signed on that last day.

Section 2 by itself, however, does not purport to establish the effective date of bills which become law when they are not returned to the next session of the Legislature within three days of its commencement. A determination of the effective date of such bills requires that the effect

of § 16 of art. IV, part 3, be integrated with the effect of § 2. Section 16 reads, in relevant part:

> No Act or joint resolution of the Legislature, except such orders or resoltuions as pertain solely to facilitating the performance of the business of the Legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the session of the Legislature in which it was passed, unless in case of emergency. . . .
>
> Me. Const., art. IV, pt 3, §16

Reading §§ 2 and 16 together leads to the conclusion that the bills in question, if not returned within three days of the beginning of the next meeting of the Legislature, become effective either immediately, if they are emergency measures, or 90 days after the recess of the session of the Legislature in which they were passed.

The remaining problem is to determine which "session of the Legislature" passed these bills, since the recess of that session determines the effective date of non-emergency measures under § 16.[5/] There are only two choices for the "enacting session." It must be either the session during which both Houses of the Legislature approve the bill or the following session of the same Legislature to which they may be returned by the Governor. For a number of reasons, we conclude that it is the latter.

A single, readily apparent and most important policy underlies the 90-day delay built into § 16 and the related provisions connecting the effective date of statutes to the recess of the legislative session which enacted them. This policy is the protection of the people's right to referendum. That the right of referendum is a significant one which cannot be abridged by any action of the Legislature or Governor is well settled in this State. Farris ex rel. Dorsky v. Goss, 143 Me. 227 (1948). It is equally clear that the 90-day delay created by § 16 has the paramount, if not sole, purpose of effectuating that right.

5/ The effective date of emergency measures which are not subject to referendum (Morris v. Goss, 147 Me. 89 (1951)), is also governed by §16: their "immediate" effective date is on the fourth day of the "next meeting."

Section 16 of art. IV, pt. 3 of the Maine Constitution was a part of the same constitutional resolve which enacted the rights of referendum and initiative. 1907 Laws of Maine c. 121, 6/ The parallell between the 90-day delay contained in § 16 and the 90-day filing requirement in art. IV, pt. 3, §17 7/ strongly indicates that the primary purpose of the effective date provision was to allow the electorate an adequate opportunity to exercise the right of referendum, and the transfer of the effective date provision from statute to constitution is additional evidence of the intent to safeguard the referendum by withdrawing the power to change effective dates from the Legislature. The legislative debate on this resolve makes it clear that the purpose of the 90-day period was to allow referendum petitions to be filed before the referred law went into effect. 1907 Me. Leg. Rec. 640-645. This connection has also been noted by several other authorities. See L. Pelletier, "Initiative and Referendum in Maine," 1951 Bowdoin Coll. Bull. 7, 12, 16; Galbreath, "Provisions for State Wide Initiative and Referendum," 43 Annals of the American Academy of Political and Social Science 81, 101-02 (1912).

To interpret § 16 as providing that the pending bills would become effective 90 days after the adjournment of the session at which they were approved by the Houses of the Legislature would, in our view, undercut the very policy which prompted the adopting of that section. Such an interpretation would severely curtail, and in some cases possibly even eliminate, the right of the people to override legislative action through the referendum process. Thus, the only interpretation which is faithful to the underlying purpose of § 16 is that the phrase, "the session of the Legislature in which it was passed," means that session at which the Governor could have returned the pending bills under

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6/ Effective dates of legislation prior to the enactment of §16 were governed by statute, see, e.g., 1903 Me. Rev. Stat. ch. 1, §5, and the specific statute in effect at that time provided for an effective date only 30 days after the recess of the enacting Legislature, unless another date was stated in the particular bill. The drafters of §16 evidently wanted to take the power to establish effective dates out of the hands of the Legislature in order to safeguard the referendum process. The result is that §16 severely limits the authority of the Legislature to make legislation effective prior to 90 days after adjournment.

7/ Section 17 mandates that referendum petitions be filed "by the hour of five o'clock, p.m., on the ninetieth day after the recess of the Legislature (which passed the bill) . . . . "

art. IV, pt. 3, § 2 of the Constitution.[8]/

A further point supports this view. It is well settled that no bill can become effective until the final legislative act has occurred, and that act is the Governor's approval or failure to act. In Stuart v. Chapman, 104 Me. 17 (1908), the Law Court stated that

> The last legislative act is the approval of the governor. . . . The approval of the governor was the last legislative act which breathed the breath of life into these statutes and made them part of the laws of the state.

Id. at 23

This long-standing principle was recent reaffirmed in an Opinion of the Justices of the Maine Supreme Court upholding the power of the Governor to veto a bill with a referendum clause. Opinion of the Justices, 231 A.2d 617 (Me. 1967), in which the Justices stated:

8/ Based on the language in art. IV, pt. 3, §17, which refers to measures "passed by the Legislature," it might be argued that the right to a referendum could still be preserved even under the interpretation rejected in this opinion. That argument presupposes the applicability of §17 to measures which have been approved by both Houses of the Legislature but which have not been acted upon by the Governor. We reject that argument for two reasons. First, by its express terms, §17 is limited to measures which would be effective but for the fact that the constitutional time period required for a law to take effect has not yet elapsed. Implicit in this limitation is the requirement that the measure must have been approved by both the Legislature and by the necessary gubernatorial action or inaction. Second, the argument would necessitate that in order to preserve their rights, the opponents of a bill would be compelled to collect signatures and file petitions even though the bill might still be vetoed by the Governor. We believe it highly unlikely that the drafters of §17 intended to require the people to undertake a time-consuming and possibly expensive petition drive which might ultimately be rendered unnecessary.

> The legislative process here involved is composed of concurring action by both Houses of the Legislature together with consideration by the Chief Executive resulting in (a) approval, (b) disapproval, . . . or (c) failure of the Chief Executive to either approve or disapprove within the applicable period of time prescribed in the last sentence of Article IV, Part Third, Section 2. (citations omitted)
>
> Id. at 611

See generally Klosterman v. Marsh, 180 Neb. 806, 143 N. W. 2d 144 (1966).

For the reasons stated above, then, it must be concluded that the legislative session which "passed" a pending bill, for purposes of § 16, is the "next meeting" during which the Governor could have disapproved and returned the bill. 9/

III

A number of questions related to computing time may arise under the interpretation of the Maine Constitution offered herein. First, there is the question of whether the Governor must present back vetoed bills within three calendar or three legislative days. The general rule is that calendar days are counted. Anno. 54 A.L.R. 339 (1928). Hence, the Governor must present bills back to the Legis-

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9/ We should note that the above conclusion is in apparent conflict with a previous opinion of this office issued to the State Controller over the signature of an Assistant Attorney General on November 1, 1967. It is clear that the prior opinion was reached without the benefit of reference to various historical materials dealing with the purpose of the 90-day effective date delay enacted along with the referendum and initiative measures in 1907. For this reason, the prior opinion fails to give sufficient weight to the paramount purpose of that delay, which was to provide an adequate period for the invocation of the referendum. We therefore feel that the views expressed herein provide a more accurate interpretation of Me. Const., art. IV, pt. 3, §2 than our prior opinion, and accordingly, we must reject the conclusion reached in that opinion

lature within three calendar days of the beginning of the session, or they will have the same effect as if he had signed them on the third day. Days in which the Legislature is in temporary recess (as opposed to adjournment sine die) are generally considered legislative days for purposes of the Governor's presentation to the Legislature of vetoed bills, so that, if the Legislature meets for one or two days and then adjourns temporarily, the returned bills must still be presented by the end of the third calendar day of the session. 10/ Wright v. United States, supra; Kennedy v. Sampson, 511 F.2d 430 (C.A.D.C. 1974; Redmond v. Ray, 268 N.W. 2d 849 (Ia. 1978); cf.Building Comm'n. v. Jordan, 48 So.2d 565 (Ala. 1950); see also Opinion of the Atty. Gen.,July 13, 1977.

Related problems may arise if the Legislature returns in special session and sits for fewer than three days. One question which may be anticipated is whether the length of such a short session is to be counted against the three days allotted the Governor to return vetoed bills to the next meeting of the Legislature under art. IV, pt. 3, § 2. In other words, if there is a two-day session, does the Governor then have only a single day at the next session in which to return the vetoed bills? We conclude that this would not be the case, since such an interpretation would undercut the apparent purpose of the three-day period: to provide the Governor with adequate time at the beginning of the session to prepare and submit veto messages.

Another possible view would be that if the session lasts fewer than three days, the Governor must nonetheless return the bills during the course of the session or lose his veto power. We reject that view on the ground that the Constitution should not be interpreted in such a way as to allow the Legislature to infringe the Governor's right to veto by its power to adjourn. See Opinion of the Atty. Gen., May 7, 1976.

It is, therefore, our opinion that, should the Legislature remain in special session for fewer than three days, and should the Governor choose not to return a bill during that time, the bill would be carried over to the next session, regular or special, of the same Legislature, and the Governor would then have three days to exercise his veto power.

10/ The proposed special session is scheduled to begin on Thursday, October 4, 1979. In light of the fact that three legislative days will elapse prior to the following Sunday, we have not addressed the issue of whether Sundays are to be included within the three days allowed the Governor.

Conclusion

In conclusion, we may summarize the opinions expressed herein as follows:

1. The "next meeting" of the same Legislature, for purposes of the Governor's return of vetoed bills left from the previous session, pursuant to Me. Const., art. IV, pt. 3, § 2, is the next session of the same Legislature, whether specially called by the Governor or Legislature or regular, as defined in Me. Const., art. IV, pt. 3, § 1.

2. The effective date of legislation not returned by the Governor to that next meeting is governed by art. IV, pt. 3, § 16, with the "next meeting,"as defined above, considered as the session in which the legisalation passed. In other words, the legislation becomes effective 90 days after the adjournment of the session during which it became law by virtue of its not being returned to the Legislature by the Governor. The same conclusion would apply if the bill was vetoed during the session and the Legislature overrode the veto.

3. A temporary recess of the "next meeting" will have no effect on the calculation of the three days allotted to the Governor to return vetoed bills, and bills may be returned by him to an agent of the originating House during such a recess.

4. Should the "next meeting" adjourn after a session of fewer than three days, any bill not returned by the Governor during that session will be carried over to the next session of the same Legislature, and the Governor will have the same power during that session to return the bill within three days, or to allow it to become law, as he would have had in the previous session. If there is no other session of the same Legislature, the bill will not become a law.

We hope this information addresses the concerns which you voiced in requesting both this and the previous related opinion.

ATTORNEY GENERAL'S OPINION
CONCERNING
RESOLVES

March 3, 1980

This will respond to your opinion request in which you ask whether the Legislature can require the Aroostook County Commissioners to hire a county administrator.

30 M.R.S.A. §202 (1978) authorizes the commissioners of each county to hire a county administrator. Section 202 sets forth in considerable detail the eligibility requirements for appointment as county administrator, the duties to be performed by that officer and the grounds for his removal from office. The administrator, if one is appointed, acts as "the chief administrative official of the county and shall be responsible for the administration of all departments and officers over which the county commissioners have control." 30 M.R.S.A. §202. In the event that the commissioners appoint a full-time administrator, "they shall forego the annual salary otherwise due them and shall only receive $25 each for each meeting attended and reimbursement for travel at the same rate established for state employees." 30 M.R.S.A. §202.

It is clear that under present law, the decision as to whether to hire a county administrator rests solely within the discretion of the county commissioners. You have inquired whether there is any action the Legislature can take to require the commissioners of Aroostook County to hire an administrator for the county.

One option which is always available to the Legislature is to amend 30 M.R.S.A. §202 to provide that the commissioners of Aroostook County shall hire a county administrator. A question which may arise is whether such an amendment would constitute special legislation is violation of Article IV, pt. 3, §13 of the Maine Constitution, which provides:

> "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation."

The "special legislation" clause of the Maine Constitution has been interpreted as prohibiting the enactment of laws which "grant a privilege to an individual or individuals not enjoyed by other similarly situated persons." Nadeau v. State, Me.,

395 A.2d 107, 112 (1978). See also Opinion of the Justices, Me., 402 A.2d 601 (1979). We are aware of no decision by the Maine Supreme Judicial Court which has construed Article IV, pt.3, §13 as prohibiting the Legislature from enacting laws in the area of county government which apply only to a particular county.[1] Indeed, Title 30 is replete with instances in which the Legislature has done just that. See, e.g., 30 M.R.S.A. §2 (salaries of county officers); 30 M.R.S.A. §58 (county offices of Androscoggin County); 30 M.R.S.A. §§404-406 (authority of counties to obtain loans); 30 M.R.S.A. §412 (Androscoggin County mental health services); 30 M.R.S.A. §412-A (Piscataquis County family services); 30 M.R.S.A. §424 (Cumberland County jail and recreation center); 30 M.R.S.A. §425 (Kennebec County fire protection services); 30 M.R.S.A. §426 (Piscataquis County ambulance service); 30 M.R.S.A. §553-B (salaries of District Attorneys); 30 M.R.S.A. §605 (Androscoggin County treasurer). Moreover, it is a well-established principle of law in this state that the commissioners of each county derive their authority from the Legislature. See, e.g., State v. Vallee, 136 Me. 432, 446, 12 A.2d 421 (1940); Prince v. Skillin, 71 Me. 361, 373 (1888); Inhabitants of Belfast, Appellants, 52 Me. 529, 530 (1864). The authority of the Legislature to regulate the powers and duties of the county commissioners includes the authority to deal with counties on an individual basis. In the absence of a more specific constitutional prohibition, we are not inclined to interpret Article IV, pt. 3, §13 as restricting the power of the Legislature to deal with the problems of county government by enacting laws which apply only to the commissioners of a particular county. Accordingly, it is our conclusion that the Legislature could amend 30 M.R.S.A. §202 to require the commissioners of Aroostook County to hire a county administrator.

You have also inquired whether this could be accomplished by including appropriate language in the legislative resolve approving the county budget. In order to properly respond to your question, it is necessary to analyze the status of a legislative resolve.

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1. It is true, of course, that constitutional provisions in other states specifically prohibit special legislation in the area of county government. See generally C. Sands, 2 Sutherland Statutory Construction, §40.10 at 183 (4th Ed., 1973) and cases cited therein. However, Maine's special legislation clause is much less specific than similar provisions found in other jurisdictions.

In City of Bangor v. Inhabitants of Etna, 140 Me., 85, 34 A.2d 205 (1943) the Legislature passed and the Governor approved a resolve authorizing the appropriation of money to reimburse the Town of Etna for the support of a state pauper. The City of Bangor brought suit against Etna claiming that it had provided the support to the pauper and was entitled to state reimbursement. The case was heard before a referee who ruled in favor of the City of Bangor on the ground that, as a matter of fact, the individual receiving aid was not a pauper. On appeal, the Town of Etna argued that the individual's status as a state pauper was fixed by the legislative resolve. In rejecting this argument, the Law Court discussed the status of a resolve.

> "The Resolve was merely an appropriation to reimburse municipalities and individuals for expenditures upon claims presented and approved by the committee on claims. It was not a legislative enactment. It was purely an order directing the disbursement of certain State funds for particular purposes.
>
> It is within the power of the legislature to make such orders and resolutions, without any purpose or intention to abrogate, annul or repeal any existing general law."

140 Me., at 89. See also Moulton v. Scully, 111 Me., 428, 449, 89 A.944 (1914).

The Court emphasized that the Legislature does not always act as a law-making body and not every legislative act is a law in the sense of legislation of general applicability. A law is typically thought of as intending "to permanently direct and control matters applying to persons or things in general, "while a resolution or resolve is an expression of legislative opinion which is designed to "have a temporary effect" on a particular matter. City of Bangor v. Town of Etna, 140 Me., at 90-91, quoting Conley v. United Daughters of the Confederacy, 164 S.W. 24,26 (Tex. Civ. App. 1913). In support of its conclusion that a resolve is not usually viewed or intended as amending the general law on a subject, the Court noted that by virtue of Article IV, pt. 1, §1 of the Maine Constitution, all public laws and private and special laws carry an enacting clause which reads, "Be it enacted by the people of the State of Maine". The Court took notice of the fact that "[u]niformly throughout the history of Legislative procedure in Maine, resolves have carried no enacting clause." City of Bangor v. Town of Etna, 140 Me., at 90.

The fact that a resolve does not usually have the effect of altering the general law does not mean that it is not enforceable as a valid act of the Legislature. As stated by the Law Court in City of Bangor v. Town of Etna, 140 Me., at 90:

> "We are not to be understood as saying that a resolution passed by both branches of

> the legislature and approved by the Governor does not have the force of law to accomplish the intended purpose...."[2]

Thus, a resolve does have the force and effect of law to the extent of accomplishing the temporary or limited purpose for which it was enacted. However, in the absence of a manifestation of legislative intent to the contrary, a resolve will not be interpreted as making permanent, substantive changes in the general law. Id at 91. For example, the Law Court stated:

> "An appropriation bill, for instance, is not a law in its ordinary sense. Such a bill pertains only to the administrative functions of government. A joint resolution or resolve, is often merely a rule or order for the guidance of the agents and servants of the government....There is no language in the legislative resolve relied upon and there is nothing inherent in or disclosed by it which impliedly annuls the effect of the general law...."

Id.

As mentioned previously, and as implied in the Law Court's opinion in City of Bangor v. Town of Etna, supra, the Legislature could express its intent that a resolve have the effect of changing the general law. For example, the Legislature could place an enacting clause on the resolve. See Moulton v. Scully, 111 Me., at 447-48. In such a case, the resolve would continue to be a resolve, at least nominally, but would have the effect of a Private and Special Law, i.e.,[3] it could amend the general law on a particular subject, if that were the intent of the Legislature. See, e.g., Beckett v. Roderick, Me., 251 A.2d 427, 431 (1969); Poland Telephone Co. v. Pine Tree Tel. & Tel. Co., Me., 218 A.2d 487 (1966); Larson v. New England Tel. & Tel. Co., 141 Me., 326, 332, 44 A.2d 1 (1945). See generally C. Sands, 4 Sutherland Statutory Construction §22.15 at 143 (4th ed., 1972) ("a general law may be amended by a special act.").

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2. See also Maine Legislative Drafting Manual 311 (Appendix 3, 1978) which defines a resolve as "[a]n enactment of a temporary or limited nature which has the force and effect of law. A resolve does not begin with an enacting clause but rather with the phrase 'Resolved, that...'"

3. See, e.g., Maine Legislative Drafting Manual 310 (Appendix 3, 1978) which defines a Private and Special Law as "[a] law that relates to particular persons on things, or to particular persons or things of a class, or which operates on or over a portion of a class instead of all the class or which is temporary in its operation." (emphasis added).

Based upon the Law Court's decisions in City of Bangor v. Town of Etna, 140 Me., 85, 34 A.2d 205 (1943) and Moulton v. Scully, 111 Me., 428, 89 A. 944 (1914), it would appear that the following fairly summarizes the status of a legislative resolve in Maine. A legislative resolve is an enactment, passed by both Houses of the Legislature and approved by the Governor, which deals with a matter of a temporary or limited nature. Unless the Legislature expresses its intent to the contrary, a resolve does not have the effect and will not be interpreted as changing the general law on a particular subject-matter. Nevertheless, a resolve does have the force of law to accomplish the limited purpose for which it was enacted. Finally, the Legislature can manifest its intention that a resolve amend the general law on a particular subject-matter by including an enacting clause in the resolve.

Having described the status of a resolve, it is now possible to consider your original question, which is whether the Legislature, by inserting appropriate language in the resolve approving the Aroostook County budget, can require the county commissioners to hire a county administrator. In particular, you have inquired whether the Legislature can decrease the salaries of the Aroostook County commissioners in the budget resolve and appropriate funds for the specific purpose of hiring a county administrator such that the commissioners will be required to appoint and pay an administrator.

30 M.R.S.A.§2(1) (B) (1) (1978) provides that the Chairman of the Aroostook County commissioners shall receive an annual salary of $7,778 while the other commissioners receive an annual salary of $4,000 each. Section 2(4) (A) of Title 30 mandates that "[t]he salaries mentioned in this section shall be in full compensation for the performance of all official

duties by those officers...." See also 30 M.R.S.A. §106 (1979-80 Supp.).[4] 30 M.R.S.A. §202 (1978) vests discretion in the county commissioners to appoint and set the salary of a county administrator.[5] In the event that the commissioners choose to appoint a full-time county administrator, they must forego the annual salaries otherwise due them pursuant to 30 M.R.S.A. §2 and they are entitled to receive $25 each for each meeting attended and reimbursement for travel expenses.

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4. 30 M.R.S.A. §106 (1979-80 Supp.) provides:

> "The county commissioners in the several counties shall receive annual salaries as set forth in section 2 from the treasurer of the counties in biweekly, monthly, semiannual or annual payments, as determined by the county commissioners. If such payments are made monthly, they shall be made on the last day of each month; if semiannually, they shall be made on the last day of June and the last day of December; if annually, they shall be made on the last day of December.
>
> These salaries shall be in full for all services of the commissioners, including the management of the jails. These salaries shall also be the full compensation for any expenses or travel to and from the county seat for any commissioner, except as provided in this paragraph and section 55. The county commissioners may, by majority vote, allow the payment of all necessary expenses and travel allowances to and from the county seat by commissioners who live more than 5 miles from the county seat. When outside of the county seat on official business, including public hearings, inspection and supervising construction, snow removal and maintenance of roads in unincorporated townships in their respective counties, all county commissioners shall be allowed in addition to their salaries, all necessary traveling and hotel expenses connected therewith. All bills for such expenses shall be approved by the district attorney within whose district their county lies and paid by the treasurer of said county and with the further exception of such expenses as are provided for in section 55.

5. We have enclosed a copy of 30 M.R.S.A. §202 for your consideration.

We are confident that the Legislature can decrease the salaries of the county commissioners by amending 30 M.R.S.A. §2. In fact, we have recently issued an opinion to that effect. See Op. Atty.Gen., January 31, 1980, a copy of which is enclosed. Moreover, as mentioned previously, we see no reason why the Legislature cannot amend 30 M.R.S.A. §202 to require the Aroostook County Commissioners to hire a county administrator. However, these conclusions do not answer the question of whether the Legislature can amend these general laws in the Aroostook County budget resolve.

Earlier in this opinion we stated that the Law Court has indicated that a resolve, such as one appropriating money, is normally not viewed as legislation designed to amend the general laws on a particular subject-matter. On the other hand, the Law Court has also suggested that a resolve may be construed as legislation amending the general laws on a particular subject-matter, where the Legislature has expressed such an intent by including an enacting clause in the resolve. Assuming that the Legislature expressed such an intent, it would appear that such legislation would prevail over general laws dealing with the same subject-matter. As stated by the Law Court in Beckett v. Roderick, Me., 251 A.2d 427, 431 (1969):

> "We must not however lose sight of the fact that legislative intent must control and that special legislation may take precedence over general statutory provisions."

See also State v. Anderson and Sabatino, Me., ___ A.2d ___, slip op. at 32-33 (Opinion filed December 31, 1979). Opinion of the Justices, Me., 311 A.2d 103, 108 (1973).

In view of the foregoing, we are inclined to conclude that the Legislature has the authority to amend 30 M.R.S.A. §202 to require the Aroostook County commissioners to hire a county administrator and may accomplish such an amendment of the general law by inserting appropriate language in the Aroostook County budget resolve. However, we must also point out that we do not recommend such a practice. Initially, by attempting to amend 30 M.R.S.A. §202 in the county budget resolve, the Legislature would be creating a conflict between the resolve and the general law, thereby complicating the task of statutory interpretation. Moreover, since county budgets are approved on an annual basis, an argument can be made that any attempt to use the budget resolve to effectuate an amendment of 30 M.R.S.A. §202 would only be effective for a one year period. Finally, use of the budget resolve as a mechanism to amend provisions of the general law is totally inconsistent with the Legislature's past use of resolves.

Consequently, it would appear to us that the most appropriate method by which the Legislature could require the Aroostook County commissioners to appoint a county administrator is to enact general legislation amending 30 M.R.S.A. §202.

Finally, you have also inquired as to what functions or duties the county commissioners are required to perform in the shire town of the county.[6] 30 M.R.S.A. §151 (1979-80 Supp.) requires the county commissioners to "hold sessions in the shire town of each county at least 3 times annually in 3 different months and at other times or other places which they may designate." Additionally, 30 M.R.S.A. §301 requires the commissioners to provide and keep in repair, in the shire town, the county courthouse and jail. Finally, 30 M.R.S.A. §302 places restrictions on the authority of the county commissioners to remove or erect county buildings beyond the limits of the shire town.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

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6. Aroostook County was created, with Houlton as its shire town, by Chapter 395, §1 of the Public Laws of 1839.

APPENDIX V

TEXT OF CONSTITUTIONAL PROVISIONS OF THE CONSTITUTION OF MAINE RELATING TO LEGISLATIVE DRAFTING

The following is the text of certain provisions of the Constitution of Maine relating to legislative drafting.

Article I, Section 15 --

> Section 15. Right of petition. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Article IV, Part First, Section 1 --

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

Article IV, Part Third, Section 1 --

> Section 1. To meet annually; power of the Legislature to convene itself at other times. The Legislature shall convene on the first Wednesday of December following the general election in what shall be designated the first regular session of the Legislature; and shall further convene on the first Wednesday after the first Tuesday of January in the subsequent even-numbered year in what shall be designated the second regular session of the Legislature; provided, however, that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Third, Section 18. The Legislature shall enact appropriate statutory limits on the length of the first regular session and of the second regular session. The Legislature may convene at such other

times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled. The Legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.

Article IV, Part Third, Section 2 --

Section 2. Bills to be signed by the Governor; proceedings, in case he disapproves; bills shall be returned by him within ten days. Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass it, it shall be sent together with the objections, to the other House, by which it shall be reconsidered, and, if approved by two-thirds of that House, it shall have the same effect, as if it had been signed by the Governor; but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both Houses respectively. If the bill or resolution shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.

Article IV, Part Third, Section 7 --

Section 7. Compensation; traveling expenses. The Senators and Representatives shall receive such compensation as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it. The expenses of the Members of the House of Representatives in traveling to the Legislature, and returning therefrom, once in each week of each session and no more, shall be paid by the State out of the public treasury to every member, who shall seasonably attend, in the judgment of the House, and does not depart therefrom without leave.

Article IV, Part Third, Section 9 --

Section 9. Either House may originate bills; Revenue bills; Proviso. Bills, orders or resolutions, may originate in either House, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases; provided, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

Article IV, Part Third, Section 13 --

Section 13. Special legislation. The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Article IV, Part Third, Section 14 --

Section 14. Corporations; formed under general laws. Corporations shall be formed under general laws, and shall not be created by special Acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State.

Article IV, Part Third, Section 15 --

Section 15. Constitutional conventions. The Legislature shall, by a two-thirds concurrent vote of both branches, have the power to call constitutional conventions, for the purpose of amending this Constitution.

Article IV, Part Third, Section 16 --

Section 16. Acts become effective in ninety days after recess; exception; emergency bill defined. No Act or joint resolution of the Legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the Legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the session of the Legislature in which it was passed unless in case of an emergency, (which with the facts constituting the emergency shall be expressed in the preamble of the Act), the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.

Article IV, Part Third, Section 17 --

Section 17. Proceedings for referendum; proclamation by Governor. Upon written petition of electors, the number of which shall not be less than ten percent of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the Governor and filed in the office of the Secretary of State by the hour of five o'clock, p.m., on the ninetieth day after the recess of the Legislature, or if such ninetieth day is a Saturday, a Sunday, or a legal holiday, by the hour of five o'clock, p.m., on the preceding day which is not a Saturday, a Sunday, or a legal holiday, requesting that one or more Acts, bills, resolves or resolutions, or part or parts thereof, passed by the Legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such Acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. The effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition. If it is later finally determined, in accordance with any procedure enacted by the Legislature pursuant to the Constitution, that such petition was invalid, such Act, bill, resolve or resolution or part or parts thereof shall then take effect upon the day following such final determination. As soon as it appears that the effect of any Act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the Governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the Governor may, and if so requested in said written petition therefor, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof. If the Governor is requested in the written petition to order such measure to be submitted to the people at a special election and if he fails to do so in the public proclamation giving notice that the effect of an Act, bill, resolve or resolution or part or parts thereof has been suspended by petition, the Secretary of State shall, by proclmation order such measure to be submitted to the people at a special election as requested, and such order shall be sufficient to enable the people to vote.

Article IV, Part Third, Section 18 --

Section 18. Direct initiative of legislation; number signatures necessary on direct initiative petitions. The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution, by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State by the hour of five o'clock, p.m., on the fiftieth day after the date of convening of the Legislature in regular session. If the fiftieth day is a legal holiday, the period runs until the hour of five o'clock, p.m., of the next day. Any measure thus proposed by electors, the number of which shall not be less than ten percent of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The Legislature may order a special election on any measure that is subject to a vote of the people. The Governor may, and if so requested in the written petitions addressed to the Legislature, shall, by proclamation, order any measure proposed to the Legislature as herein provided, and not enacted by the Legislature without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the Legislature, to which such measure was proposed. If the Governor is requested in the written petition to order a measure proposed to the Legislature and not enacted without change to be submitted to the people at such a special election and if he fails to do so by proclamation within ten days after the recess of the Legislature to which the measure was proposed, the Secretary of State shall, by proclamation, order such measure to be submitted to the people at a special election as requested, and such order shall be sufficient to enable the people to vote.

Article IV, Part Third, Section 19 --

Section 19. Measures approved by people become effective thirty days after proclamation; veto power limited. Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the Governor has made public proclamation of the result of the vote on said measure, which he shall do within ten days after the vote thereon has been canvassed and determined; provided, however, that any such measure which entails expenditure in an amount in excess of available and unappropriated state funds shall remain inoperative until forty-five days after the next convening of the Legislature in regular session, unless the measure provides for raising new revenues adequate for its operation. The veto power of the Governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the Legislature without change, if vetoed by the Governor and if his veto is sustained by the Legislature shall be referred to the people to be voted on at the next general election. The Legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote.

Article IV, Part Third, Section 20 --

Section 20. Meaning of words "electors" "people" "recess of Legislature" "general election" "measure" and "written petition" As used in any of the three preceding sections or in this section the words "electors" and "people" mean the electors of the State qualified to vote for Governor; "recess of the Legislature" means the adjournment without day of a session of the Legislature; "general election" means the November election for choice of presidential electors, Governor and other state and county officers; "measure" means an Act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of his city, town or plantation as qualified to vote for Governor; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of the circulator that all of the signatures to the petition were made in his presence and that to the best of his knowledge and belief each signature is the signature of the person whose name it purports to be, and accompanied by the certificate of the official authorized by law to maintain the voting list of the city, town or plantation

in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for Governor. The oath of the circulator must be sworn to in the presence of a person authorized by law to administer oaths. Written petitions for a referendum pursuant to Article IV, Part 3, Section 17 must be submitted to the appropriate officials of cities, towns or plantations for determination of whether the petitioners are qualified voters by the hour of five o'clock, p.m., on the fifth day before the petition must be filed in the office of the Secretary of State, or, if such fifth day is a Saturday, a Sunday or a legal holiday, by five o'clock, p.m., on the next day which is not a Saturday, a Sunday or a legal holiday. Written petitions for an initiative pursuant to Article IV, Part 3, Section 17 must be submitted to the appropriate officials of cities, towns or plantations for determination of whether the petitioners are qualified voters by the hour of five o'clock, p.m., on the third day before the petition must be filed in the office of the Secretary of State, or, if such third day is a legal holiday, by five o'clock, p.m., on the next day which is not a legal holiday. Such officials must complete the certification of such petitions and must return them to the circulators or their agents within two days, Saturdays, Sundays or legal holidays excepted, of the date on which such petitions were submitted to them. The petition shall set forth the full text of the measure requested or proposed. Petition forms shall be furnished or approved by the Secretary of State upon written application signed in the office of the Secretary of State by a resident of this State whose name must appear on the voting list of his city, town or plantation as qualified to vote for Governor. The full text of a measure submitted to a vote of the people under the provision of the Constitution need not be printed on the official ballots, but, until otherwise provided by the Legislature, the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

Article VIII, Part Second, Section 1 --

Section 1. Power of municipalities to amend their charters. The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

Article IX, Section 8 --

Section 8. Taxation; intangible property; permits valuation of certain lands upon current use; proviso; school districts. All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.

1. The Legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property.

2. The Legislature shall have power to provide for the assessment of the following types of real estate whenever situated in accordance with a valuation based upon the current use thereof and in accordance with such conditions as the Legislature may enact:

A. Farms and agricultural lands, timberlands and woodlands;

B. Open space lands which are used for recreation or the enjoyment of scenic natural beauty; and

C. Lands used for game management or wildlife sanctuaries.

In implementing paragraphs A, B and C, the Legislature shall provide that any change of use higher than those set forth in paragraphs A, B and C, except when the change is occasioned by a transfer resulting from the exercise or threatened exercise of the power of eminent domain, shall result in the imposition of a minimum penalty equal to the tax which would have been imposed over the 5 years preceding that change of use had that real estate been assessed at its highest and best use, less all taxes paid on that real estate over the preceding 5 years, and interest, upon such reasonable and equitable basis as the Legislature shall determine.

3. The Legislature shall have power to provide that taxes, which it may authorize a School Administrative District or a community school district to levy, may be assessed on real, personal and intangible property in accordance with any cost-sharing formula which it may authorize.

Article IX, Section 14 --

Section 14. State debt limit, exceptions; financial statement in connection with bond ratification election; debt limit on temporary loans. The credit of the State shall not be directly or indirectly loaned in any case, except as provided in sections 14-A, 14-C, 14-D and 14-E. The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repeal invasion or for purposes of war, and except for temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made; and excepting also that whenever two-thirds of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this State by the Government of the United States, or to any fund which the State shall hold in trust for any Indian tribe. Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the State, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the State

outstanding and unpaid, the total amount of bonds of the State authorized and unissued, and the total amount of bonds of the State contemplated to be issued if the enactment submitted to the electors be ratified. Temporary loans to be paid out of moneys raised by taxation during any fiscal year shall not exceed in the aggregate during the fiscal year in question an amount greater than 10% of all the moneys appropriated, authorized and allocated by the Legislature from undedicated revenues to the General Fund and dedicated revenues to the Highway Fund for that fiscal year, exclusive of proceeds or expenditures from the sale of bonds, or greater than 1% of the total valuation of the State of Maine, whichever is the lesser.

Article IX, Section 14-A --

Section 14-A. Authority to insure, appropriate moneys and issue bonds for the payment of industrial, manufacturing, fishing and agricultural mortgage loans. For the purposes of fostering, encouraging and assisting the physical location, settlement and re-settlement of industrial, manufacturing, fishing, agricultural and recreational enterprises within the State, the Legislature by proper enactment may insure the payment of mortgage loans on real estate and personal property within the State of such industrial, manufacturing, fishing, agricultural and recreational enterprises not exceeding in the aggregate $90,000,000 in amount at any one time and may also appropriate moneys 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 as aforesaid. For the purposes of this section, a documented fishing vessel or a vessel registered under state law shall be construed as real estate.

Article IX, Section 14-C --

Section 14-C. Authority to insure, appropriate moneys and issue bonds for the payment of revenue bonds of the Maine School Building Authority. In order to encourage and assist in the provision and construction of public school buildings in the State, the Legislature by proper enactment may insure the payment of revenue bonds of the Maine School Building Authority on school projects within the State not exceeding in the aggregate ten million dollars in amount at any one time and may also appropriate moneys 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 as aforesaid.

Article IX, Section 14-D --

Section 14-D. Authority to insure, appropriate moneys and issue bonds for, the payment of mortgage loans for Indian housing. For the purpose of fostering and encouraging the acquisition, construction, repair and remodeling of houses owned or to be owned by members of the 2 tribes on the several Indian reservations, the Legislature by proper enactment may insure the payment of mortgage loans on such houses not exceeding in the aggregate $1,000,000 in amount at any one time and may also appropriate moneys 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 as aforesaid.

Article IX, Section 14-E --

Section 14-E. Authority to insure Maine veterans' mortgage loans up to 80%, and to appropriate moneys and issue bonds for the payment of same. For the purposes of recognizing the services and sacrifices of Maine's men and women who have served their state and country through honorable service in the Armed Forces of the United States in time of war or national emergency; enlarging the opportunities for employment of Maine's veterans; insuring the preservation and betterment of the economy of the State of Maine; and stimulating the flow of private investment funds to Maine's veterans, the Legislature by proper enactment may insure the payment of up to eighty percent of any mortgage loan to resident Maine veterans of the Armed Forces of the United States, when such loans are made in connection with such legitimate purposes and under such terms and conditions as the Legislature may determine, not exceeding in the aggregate four million dollars in amount at any one time and may also appropriate moneys 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 as aforesaid.

Article IX, Section 15 --

Section 15. Municipal indebtedness. The Legislature shall enact general law regulating the total borrowing capacity of municipal corporations.

Article IX, Section 17 --

Section 17. Continuity of Government in case of enemy attack. Notwithstanding any general or special provision of this Constitution, the Legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the

incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the Legislature shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the Legislature so to do would be impracticable or would admit of undue delay.

Article IX, Section 18 --

Section 18. Limitation on use of funds of Maine State Retirement System. All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes.

Section 19. Limitation on expenditure of motor vehicle and motor vehicle fuel revenues; proviso. All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

Article X, Section 3 --

Section 3. Laws now in force continue until repealed. All laws now in force in this State, and not repugnant to this Constitution, shall remain, and be in force, until altered or repealed by the Legislature, or shall expire by their own limitation.

Article X, Section 7 --

Section 7. Original sections 1, 2, 5, of art. x, not to be printed; section 5 in full force. Sections one, two and five, of Article ten of the Constitution, shall hereafter be omitted

in any printed copies thereof prefixed to the laws of the State; but this shall not impair the validity of acts under those sections; and said section five shall remain in full force, as part of the Constitution, according to the stipulations of said section, with the same effect as if contained in said printed copies.

APPENDIX VI

TEXT OF STATUTORY PROVISIONS RELATING TO LEGISLATIVE DRAFTING

The following is the text of 1 MRSA §§71 to 72 and 21 MRSA §2 which set out general rules of construction and words and phrases which pertain to the Maine Revised Statutes.

1 MRSA §71 --

§71. Laws

The following rules shall be observed in the construction of statutes, unless such construction is inconsistent with the plain meaning of the enactment.

1. Acts by agents. When an act that may be lawfully done by an agent is done by one authorized to do it, his principal may be regarded as having done it.

2. And; or. The words "and" and "or" are convertible as the sense of a statute may require.

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

4. Corporations. Acts of incorporation shall be regarded in legal proceedings as public Acts. All special Acts of incorporation become null and void in 2 years from the day when the same take effect, unless such corporations shall have organized and commenced actual business under their charters.

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

6. Disqualification. When a person is required to be disinterested or indifferent in a matter in which others are interested, a relationship by consanguinity or affinity within the 6th degree according to the civil law, or within the degree of 2nd cousins inclusive, except by written consent of the parties, will disqualify.

7. Gender. Words of the masculine gender may include the feminine.

8. Severability. The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

9. Singular and plural. Words of the singular number may include the plural; and words of the plural number may include the singular.

10. Statute Titles. Abstracts of Titles, chapters and sections,and notes are not legal provisions.

11. Statutory references. Wherever in the Revised Statutes the word "Title" or "chapter" or "subchapter" appears without definite reference, it refers to the Title or chapter or subchapter in which the word "Title" or "chapter" or "subchapter" appears; if the chapter or subchapter is given a number without reference to a numbered Title, it refers to the chapter or subchapter of the Title in which the numbered chapter or subchapter appears. Wherever in the Revised Statutes a numbered section appears without reference to a numbered Title, it refers to the section of the Title in which the numbered section appears.

Wherever in the Revised Statutes or any legislative Act a reference is made to several sections, subsections, paragraphs, subparagraphs, divisions, subdivisions or sentences, the section, subsection, paragraph, subparagraph, division, subdivision or sentence numbers given in the reference are connected by the word "to," the reference includes both the sections, subsections, paragraphs, subparagraphs, divisions or sentences whose numbers are given and all intervening sections, subsections, paragraphs, subparagraphs, divisions, subdivisions and sentences.

12. Statutory time periods. The statutory time period for the performance or occurrence of any act, event or default which is a prerequisite to or is otherwise involved in or related to the commencement, prosecution or defense of any civil or criminal action or other judicial proceeding shall be governed by and computed under Rule 6(a) of the Maine Rules of Civil Procedure as amended from time to time, when the nature of such action or proceeding is civil, and under Rule 45(a) of the Maine Rules of Criminal Procedure, as amended from time to time, when the nature of such action or proceeding is criminal.

§72. Words and phrases

The following rules shall be observed in the construction of statutes relating to words and phrases, unless such construction is inconsistent with the plain meaning of the enactment, the context otherwise requires or definitions otherwise provide.

1. Adult. "Adult" means a person who has attained the age of 18 years.

1-A. Affirmations. When a person required to be sworn is conscientiously scrupulous of taking an oath, he may affirm.

2. Annual meeting. "Annual meeting," applied to towns, means the annual meeting required by law for choice of town officers.

2-A. Child or chilren. "Child or children" means a person who has not attained the age of 18 years.

2-B. Full age. "Full age" means the age of 18 and over.

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

4. Grantee. "Grantee" means the person to whom a freehold estate or interest in land is conveyed.

5. Grantor. "Grantor" means the person who conveys a freehold estate or interest in land.

6. Highway. "Highway" may include a county bridge, county road or county way.

6-A. Infant. "Infant" means a person who has not attained the age of 18 years.

7. Inhabitant. "Inhabitant" means a person having an established residence in a place.

8. (subsection 8 has been repealed)

9. Issue. "Issue," applied to the descent of estates, includes all lawful lineal descendants of the ancestor.

10. Land or lands. "Land" or "lands" include lands and all tenements and hereditaments connected therewith, and all rights thereto and interests therein.

10-A. Lawful age. "Lawful age" means the age of 18 and over.

10-B. Legal age. "Legal age" means the age of 18 and over.

11. Majority. "Majority"when used in reference to age shall mean the age of 18 and over.

11-A. Minor or minors. "Minor or minors" means any person who has not attained the age of 18 years.

11-B. Minority. "Minority" when used in reference to age shall mean under the age of 18.

11-C. Month. "Month" means a calendar month.

12. Municipal officers. "Municipal officers" means the mayor and aldermen or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation.

13. Municipality. "Municipality" shall include cities, towns and plantations, except that "municipality" shall not include plantations in Title 30, chapters 201 to 213, 235 and 239, subchapters I-A, I-B, II, III, III-A and IV and chapters 240 to 245.

14. Oath. "Oath" includes an affirmative, when affirmation is allowed.

15. Person. "Person" may include a body corporate.

16. Pledge; mortgage, etc. The terms "pledge," "mortgage," "conditional sale," "lien," "assignment" and like terms, when used in referring to a security interest in personal property shall include a corresponding security interest under Title 11, the Uniform Commercial Code.

17. Real estate. "Real estate" includes lands and all tenements and hereditaments connected therewith, and all rights thereto and interests therein.

18. Registered mail. The words "registered mail" when used in connection with any requirement for notice by mail shall mean either registered mail or certified mail.

19. Seal, corporate. Whenever a corporate seal is used or required on any instrument, an impression made on the paper of such instrument by the seal of the corporation, without any adhesive substance, shall be deemed a valid seal. A seal of a corporation upon a certificate of stock, corporate bond or other corporate obligation for the payment of money may be facsimile, engraved or printed.

20. Seal, court. When the seal of a court, magistrate or public officer is to be affixed to a paper, the word "seal" may mean an impression made on the paper for that purpose with or without wafer or wax.

21. State. "State," used with reference to any organized portion of the United States, may mean a territory or the District of Columbia.

22. State paper. "State paper" means the newspaper designated by the Legislature, in which advertisements and notices are required to be published.

23. Sworn. "Sworn," "duly sworn" or "sworn according to law," used in a statute, record or certificate of administration of an oath, refer to the oath required by the Constitution or laws in the case specified, and include every necessary subscription to such oath.

24. Timber and grass. "Timber and grass," when used in reference to the public reserved lots, so called, in unorganized territory in the State, mean all growth of every description on said lots.

25. Town. "Town" includes cities and plantations, unless otherwise expressed or implied.

26. Under age. "Under age" means under the age of 18.

26-A. United States. "United States" includes territories and the District of Columbia.

26-B. Unsealed instruments, when given effect of sealed instruments in any written instrument. A recital that such instrument is sealed by or bears the seal of the person signing the same or is given under the hand and seal of the person signing the same, or that such instrument is intended to take effect as a sealed instrument, shall be sufficient to give such instrument the legal effect of a sealed instrument without the addition of any seal of wax, paper or other substance or any semblance of a seal by scroll, impression or otherwise; but the foregoing shall not apply in any case where the seal of a court, public office or public officer is expressly required by the Constitution, by statute or by rule of the court to be affixed to a paper, nor shall it apply in the case of certificates of stock of corporations. The word "person" as used in this subsection shall include a corporation, association, trust or partnership.

27. Vacant and vacancy. "Vacant" and "vacancy" as applied to public office shall comprise and include all cases where the person elected or appointed to such office resigns threfrom or dies while holding the same or, being elected or appointed, is ineligible, dies or becomes incapacitated before qualifying as required by law.

28. Written and in writing. "Written" and "in writing" include printing and other modes of making legible words. When the signature of a person is required, he must write it or make his mark, but the signatures upon all commissions or the signatures on interest coupons annexed to a corporate bond or other corporate obligation may be facsimiles, engraved or printed. The signatures of any officer or officers of a corporation upon a corporate bond or other corporate obligation, other than interest coupons, may be facsimiles, engraved or printed, on condition that such bond or obligation is signed or certified by a trustee, registrar or transfer agent. In case any officer who has signed or whose facsimile signature has been placed upon such corporate bond, other corporate obligation or interest coupon shall have ceased to be such officer before such corporate bond or other corporate obligation is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

29. Will. "Will" includes a codicil.

30. Year. "Year" means a calendar year, unless otherwise expressed. "Year," used for a date, means year of our Lord.

21 MRSA §2

§2. Construction

The following rules of construction apply to this Title.

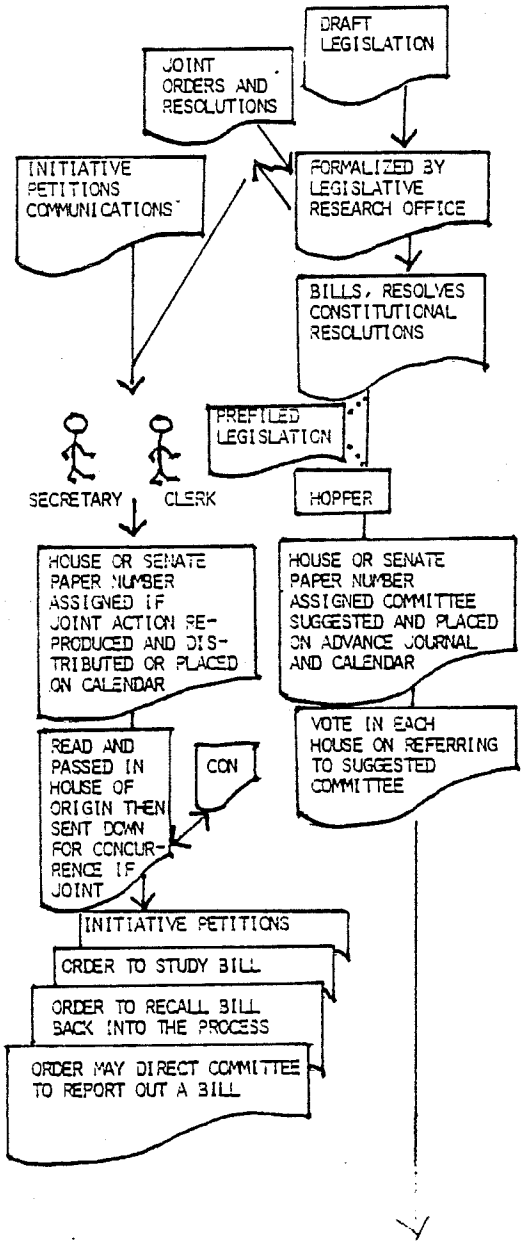
1. Division titles. Arabic numerals refer to sections and subsections. Capital letters refer to paragraphs. Arabic numerals in parentheses refer to subparagraphs.

2. Use of words. "Shall" and "must" are used in a mandatory sense. "May" indicates authority and permission. "May not" indicates a lack of authority or permission. "Shall not" indicates a negative duty.

3. Ministerial act. Where this Title requires the performance of a duty by an official, he may delegate the duty to another under his supervision, if it is ministerial.

APPENDIX VII

AN OVERVIEW OF THE LEGISLATIVE PROCESS



(1) The legislative process begins with a desired objective which is usually reduced to writing in the form of draft legislation, petition, order, resolution, communication or other instrument to bring the matter before the legislative body.

(2) If the objective involves statutory changes, it is formally prepared in a legislative sponsor's name by the Legislative Research Office and held in confidence for introduction by the sponsor.

(3) Bills, Resolves and Constitutional Resolutions may be pre-filed under the legislative rules prior to the session once prepared and sponsored. Docket entries made upon pre-filing.

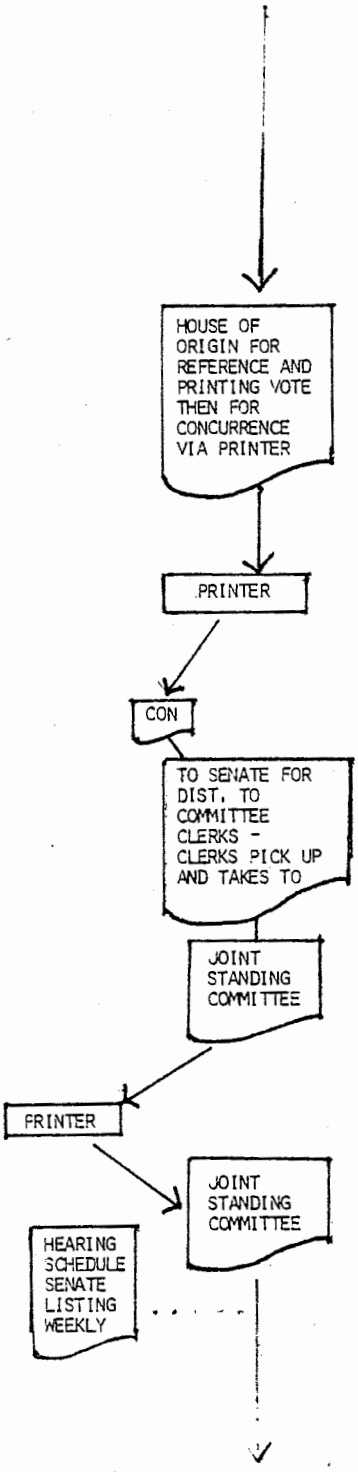
(4) When the session convenes, legislators submit requests for formally prepared and titled instrument. Upon completion by the Legislative Research Office, these are signed and delivered to the Senate and House hoppers.

(5) Orders, Resolutions and Memorials are also drawn or checked for form by the Legislative Research Office, then signed and delivered to the respective Clerk or Secretary.

(6) All Joint Papers received by the Clerk or Secretary, and Bills, Resolves and Constitutional Resolutions removed from the legislative hoppers are given a paper number.

(7) The Clerk of the House and Secretary of the Senate confer on appropriate committee reference for each bill, resolve and petition.

(8) Orders, Resolutions and Communications are placed on the Advance Journal and Calendar or are reproduced and distributed. Then they are read and passed in house of origin and sent down for concurrence. Copies are then printed and distributed as directed.



(9) Orders may direct a Joint Standing Committee to report out a bill - or recall a bill from the legislative files - or order that a study of a bill be made and reported back, to name a few such uses.

(10) Bills, etc., are placed on the Advance Journal and Calendar. Reference and Printing are then voted in house of origin and sent down for concurrence via the printer. (Possible rereference here or later - possible return as non-concurrent matter or other holdup for agreement.)

(11) Commercial printing usually takes 3 days. The printer assigns legislative document number and returns list of assigned numbers to docket. Also posted from LD themselves.

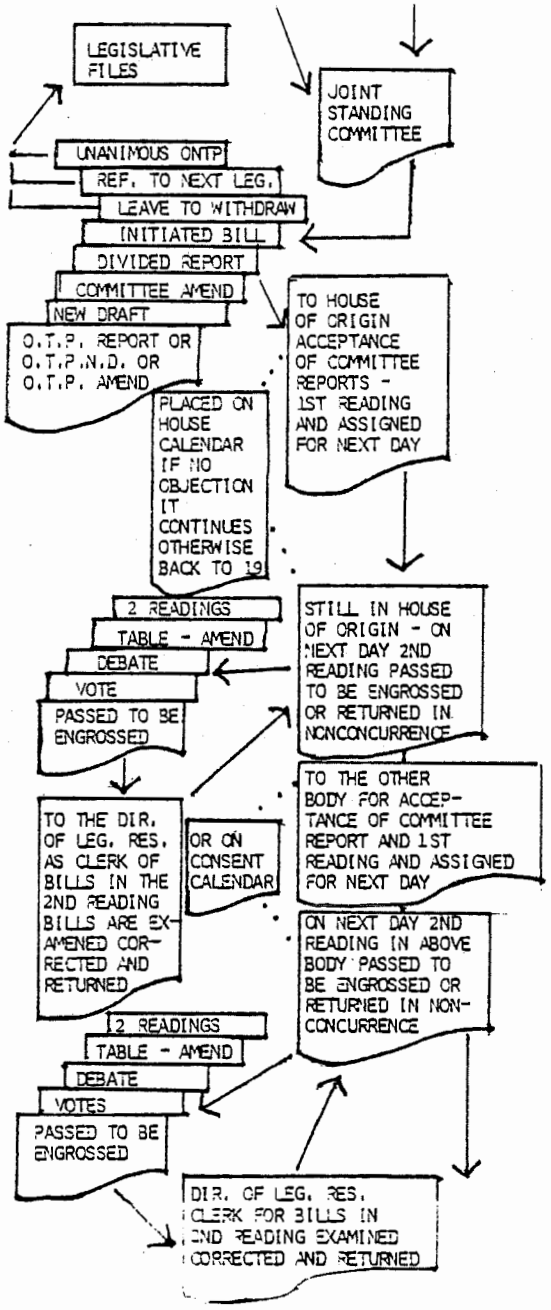
(12) Printer returns printed LD which goes to the opposite body for concurrence on printing referral.

(13) If concurrence is given, LD goes to Senate for distribution to committee clerks and delivery to the referred committee.

(14) Once in committee, a bill is received, hearing date is established and room assigned. The committee then authorizes publication of legal notice of such action.

(15) Committee clerks prepare forms authorizing publication and deliver such to state printer.

(16) The state printer returns proof of notice 10 to 14 days before hearing date and upon approval publishes such notice in the newspaper.



(17) Incidental to the process, the Senate compiles a list of hearings one week in advance. Available in Senate Office for public distribution.

(18) Committees hold public hearings. (Sometimes rescheduled - steps 13 through 16 repeated.)

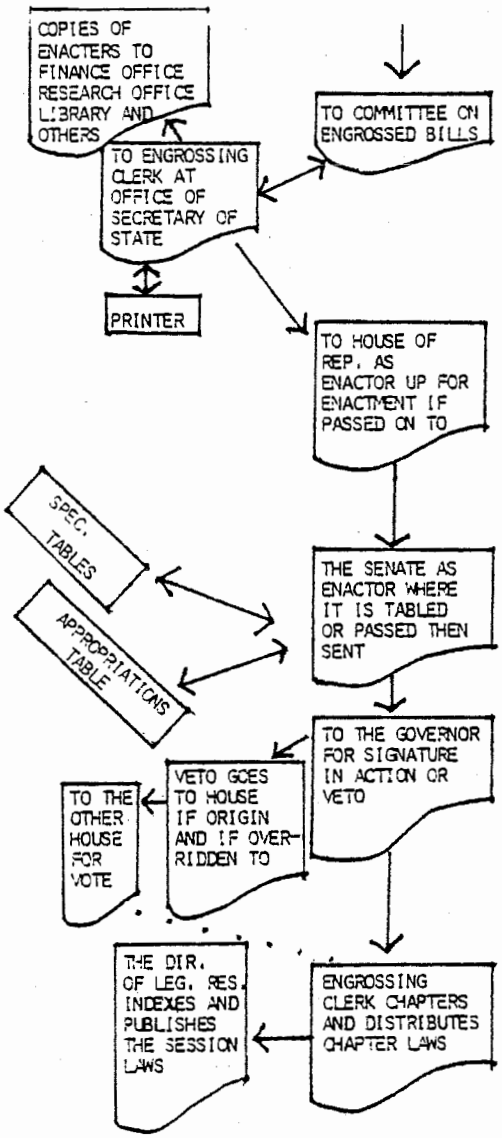
(19) Committee meets executively and decides a course of action for each bill and delivers such report and bill to the respective hoppers.

(20) The committee report is then placed on the Advance Journal and Calendar and preposted from that on the docket for later monitoring.

(21) Bills or Resolves may be changed in committee by amendment, new draft or other recommendation which is sent to house of origin for acceptance of the report and first reading, then assigned for 2nd reading unless rules are suspended. Bills or Resolves killed in committee go to legislative files. All committee reports are preposted from the Advance Journal and Calendar then monitored for correction.

(22) The House maintains a Consent Calendar for noncontroversial measures. If no objection, such matters are placed on the Calendar for the first day, then the second, then passed to be engrossed as a group and sent down for concurrence. If objection or money involved or bill amended, it reverts back as if a report of committee (19). Consent Calendar action is posted daily at the end of the session. (Date entry for the previous night.)

(23) Following each of 2 readings in each house, bills with accompanying amendments, are passed to be engrossed and sent to the Director of Legislative Research as bills in the 2nd reading for examination, correction and return for delivery to the other body to repeat the same steps of this process. All activity is preposted, then monitored for corrections.



(24) If troubles result later on in the process and amendments needed, a bill must be backed up to point where it is passed to be engrossed and amendment added.

(25) Disagreeing action may place a bill in legislative files. However, it can be recalled to its previous status by order.

(26) Upon passage to be engrossed by both branches, all bills and resolves to the Committee on Engrossed Bills for examination, then to the Engrossing Department of the Secretary of State's Office to integrate amendments into the bill and engrossment.

(27) The Engrossing Clerk sends the bill as arranged, to the printer and proofs his work. The printer supplies 40 soft copies and 10 hard copies of the engrossed bill and Engrossing Clerk reports such bills to be truly and strictly engrossed and then sends the engrossed bill to the House of Representatives for first enactment.

(28) This entire process is often stepped up at the end of the session by preengrossing which is anticipation of amendments prior to actual action and printing the same before the fact.

(29) If enacted in the House, sent to the Senate where it is held on one of several tables for funding determinations among others, or immediate enactment.

(30) Enacted bills are taken by the Secretary of the Senate to the Governor for signing, veto or inaction.

(31) Vetoes are sustained or overridden by vote in the house of origin, then in the other body.

(32) Following enactment and signing into law, bills are chaptered by Engrossing Clerk and published as session laws by the Director of Legislative Research.

(33) The Legislative Information Officer publishes history of all bills and resolves.

I N D E X

NOTES