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State of Maine

MANUAL FOR LEGISLATIVE DRAFTING



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Drafting Manual

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PART I

CHAPTER 1

INTRODUCTION

In order to maintain the quality of our laws, all the processes involved in converting a meritorious idea into an effective law must follow mandated guidelines. A law which is carelessly or inaccurately drafted may be incomprehensible, unenforcible or even invalid. To help prevent these problems, the Legislative Research Office (today called the Office of Revisor of Statutes) was established in 1947 "(t)o 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." Drafters within the office have accumulated and developed the following standards and procedures which will aid in drafting legislation for presentation to the Maine Legislature.

CHAPTER 2

THE OFFICE OF REVISOR OF STATUTES

The Office of Revisor of Statutes 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 assistance to interim committees and standing committees on request. The office serves all Legislators and committees, without regard to party affiliation or seniority. A sponsor desiring drafting assistance may submit a request for legislative drafting and then consult with a drafter on the proposed legislation. The proposal will then be drafted in proper form for introduction in the Legislature. The office also checks and corrects the form of proposals drafted by persons outside the office. The office may not, however, accept any instrument for processing unless it is sponsored by a Legislator, Legislator-elect or legislative committee. Nonlegislators wishing to propose legislation should obtain a legislative sponsor and have the sponsor present the proposal to the office for processing. All proposals are drafted, typed, proofread, copied, jacketed, 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 initialled, indicating that it has been properly processed and approved by the Revisor of Statutes.

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 with anyone outside the immediate staff. If conferences with other persons or agencies are desirable the drafter will, if possible, obtain the sponsor's premission 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 revisor. If a requestor furnishes any documents or materials to be used in drafting and the documents or materials are to be returned to the requestor, copies will be made to remain as part of the permanent drafting file, unless the requestor 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 arrangements with the revisor to avoid interruption of the normal workflow in the office.

Under the legislative rules, members of the Legislature may prefile requests with the Revisor of Statutes 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.

Drafters are cautioned to avoid promising drafts within a certain time period as prior requests and the typing and proofreading workload may not permit completion within the

alloted 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 Office of Revisor of Statutes 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.

PART II

CHAPTER 1

INTRODUCTION

The drafting process is guided by the parameters set by the Maine Constitution, the laws of Maine, the rules of the Maine Legislature, 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 to the area of the law being drafted. These parameters define what actions are properly considered in a legislative instrument and identify substantive issues that must be addressed when drafting in certain areas of the law. They further delineate the proper form for various legislative instruments.

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 conflicting provisions of law. A drafter should consider interpretations of the Constitution made in relevant federal and state court cases, which can be found in the Maine Key Number Digest, as well as relevant Attorney General's opinions.

First, 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. Second, a piece of legislation need not relate to only one subject. Third, there is no constitutional restriction on the introduction of private and special laws. The Office of Revisor of Statutes can counsel drafters who need assistance in determining the subject matter of legislation. (For restrictions on special types of legislation, see Part V.)

A drafter should be aware of the following provisions of the Constitution:

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 provisions concerning in which House certain bills may originate
- 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 mea-

asures 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, Sections 14 through 14-D

- 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

CHAPTER 3STATUTORY LIMITATIONS ON DRAFTING

Ultimately, there are no statutory limitations on drafting substantive provisions. In enacting a new law, the Legislature is not bound by any previous state law. The Legislature is, however, bound by provisions of the Constitution of Maine, as well as by provisions of the Federal Constitution and of federal statutes where they preempt state law. In order to avoid the limitations set by an existing law, a drafter should precede the substance of the law with the phrase "notwithstanding this section (or chapter or part, etc.)".

Two areas in the present Maine Revised Statutes which expressly bind other portions of the Maine Revised Statutes: 1 MRSA §71, "Rules of Construction" and 1 MRSA §72, "Words and Phrases". These sections set out rules for construction of statutes as well as words and phrases used in the statutes. The rules of construction hold throughout the Maine Revised Statutes "unless such construction is inconsistent with the plain meaning of the enactment."

Perhaps the most important portions of 1 MRSA §71 are those portions defining the following commonly-used terms: "and," "or," "dates," "gender," "severability," "singular,"

"plural," "statute titles," and "statutory references."

Understanding these references will help avoid unnecessary duplication of definitions when drafting. 1 MRSA §72 sets forth rules governing the ordinary construction of specific words, including: "highway," "month," "municipality," "state," "town," and "year."

Private and special laws, which the Constitution of Maine permits, may override more general statutes concerning the same subject area.(1) This is, of course, subject to express or implied legislative purpose to the contrary. If a general statute is intended to preempt all private and special laws in conflict with it, the court has indicated it will so interpret the general law. (2) 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.

(1) State v. Cleland, 68 Me. 258 (1878). (2) Lewiston Fire Association v. City of Lewiston, 354 A. 2nd 154, 1976.

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. Each new Legislature adopts its own rules, although these are ordinarily the rules of the previous Legislature with certain changes. A drafter should therefore keep in mind that the rules set forth in the Registers are only as current as the Registers themselves and that they may change during the legislative session. The Secretary of the Senate or the Clerk of the House can supply information concerning any recent rule changes and the Office of Revisor of Statutes maintains a complete and up-to-date set of the Joint Rules, the Senate Rules and the House Rules.

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

A. JOINT RULES

Joint Rule 19 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 de-

partmental 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 Revisor of Statutes 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 Revisor of Statutes 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 Revisor of Statutes 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

Rule 11 deals with the germaneness of amendments.

Rule 21 sets forth procedures for correction of bills before their second reading.

Rule 31 provides that persons introducing bills, resolves or petitions must sign them and provide brief descriptive titles of their contents.

C. HOUSE RULES

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 5COURT OPINIONS AND RULESA. COURT OPINIONS

Enacted law is often subject to judicial interpretation and application. Consequently, a drafter must be aware of court opinions relevant to any proposed change in the law, such as opinions interpreting a law which the drafter proposes to amend 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.(1) Any proposed amendment 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 part of or a whole 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.(2) (2)Maine State Housing Authority v. Depositors Trust Company, 278 A 2nd 699 (Me. 1971).

(1)Realco Services v. Halperin, 353 A 2nd 743 (Me. 1976).

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 indications 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.

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." Occasionally, 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 any proposed change.

Cases of the Supreme Judicial Court of Maine, including advisory opinions, 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 neighboring 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 paperbound desk copy by West Publishing Company. 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 actually 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 6ATTORNEY GENERAL'S OPINIONS

Attorney General's opinions should be used with care as they are not binding on courts; however, a drafter should realize that Attorney General's formal opinions have been researched very carefully and reviewed by the Attorney General prior to issuance.

One of the most important Attorney General's opinions pertaining to legislative drafting was issued to the Revisor of Statutes on December 19, 1975. 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 one another. This opinion is the basis for the policy of the Revisor's office on any questions of conflicting legislation.

Two other noteworthy decisions issued concern the subjects of municipal home rule and severability clauses. These opinions were issued October 16, 1970 and May 3, 1978.

CHAPTER 7

CONSIDERATIONS IN THE DRAFTING PROCESS

Legislative drafting involves more than converting an idea into proper language. The drafter must analyze the issue to be drafted within the existing legal and factual framework, in order to insure that the finished draft is not inconsistent with either law or fact.

The following checklist should serve as a reminder of legislative documents which set forth drafting parameters.

1. Maine and United States Constitution. Both this State's and the United States Constitution may set forth limitations on ways of drafting certain issues.
2. 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.
3. 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 prin-

ciples of law as interpreted by Maine's Supreme Judicial Court and by the federal courts when construing Maine law. By using the descriptive work index, the drafter should be able to locate relevant case law touching on the subject matter of the proposed legislation.

4. 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. History and Disposition. The Legislative Information Office maintains, 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 references to Legislative Documents (L.D.'s) which deal with the same subject matter as the legislation he is working on. This can be particularly helpful if an L.D. was not enacted. The L.D. from the previous session can then be used as a model when the drafter reaches the writing stage.

6. Private and Special Laws. The Office of Revisor of Statutes also maintains a cumulative subject index covering all private and special laws enacted by the Legislature. This index should be checked if the drafter suspects that it may have been the subject of previous special legislation.

In addition, the Attorney General's Office has compiled and issued a 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.

7. Laws of Other States. Problems affecting different states are often similar in nature, similar legislation may have been enacted in another state. The State Law Library maintains sets of laws 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 a drafter is drafting a bill relating to commercial fishing it is unlikely that the Utah statutes will prove helpful.

8. Federal Law. An important issue to consider while doing 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.

9. 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.

10. 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.

11. SIRS Search. The staff of the Revisor's office has the ability to perform a SIRS (Search and Information Retrieval System) search. A SIRS search can locate a given word or phrase in the Maine Revised Statutes. This search can en-

compass the entire data base or be limited to a given Title or even a section. The query - the word or phrase being searched for - can be broad or specific.

Once the desired phrases are found, the result can appear in either citation form or in a printout of the entire section. Requests for searches, with specific instructions, can be initiated by directing a memo to the Revisor's office.

12. Computerized Cross Reference and Indexes. The Office of the Revisor of Statutes maintains a computerized cross-reference system. The system indicates sections of the Maine Revised Statutes which are referred to by number in other sections of the statutes. The cross-reference system serves 2 purposes. The first is to ensure that when a drafter wants to change a section 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 that after a legislative session, 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.

13. 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, 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 leg-

islation 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 19 of the Maine Revised Statutes.

----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 19 of the Maine Revised Statutes and in the supplementary pamphlets and pocket parts to the volume. This table lists the public laws for all sessions of the Legislature since 1954 and tells where the subjects covered in these laws are located in the Maine Revised Statutes.

----Popular Names of Acts

Table 3, found in Volume 19 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.

----Uniform Acts and Interstate Compacts

Table 4 in Volume 19 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.

----Omitted Statutes not Repealed

Table 5 of Volume 19 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.

----Title and Section Program -- Current

This program is maintained by the Office of Revisor of Statutes 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.

----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.

----Checklist for Potential Conflicts

A Conflicts List is maintained in the Office of Revisor of Statutes during each legislative session. ~~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 Conflicts List gives the L.D. number of the potentially conflicting bills, the committee to which the other bills were referred, the sponsor of each of the L.D.'s, and the L.D.'s respective in each of the House of the Legislature.

This listing is a valuable tool which permits the legislative committees and their clerks and staff to identify potentially conflicting pieces of legislation early in the process so that 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.

14. 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 Policy and Legal Analysis, the Office of Fiscal and Program Review 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. 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.

DRAFTING

Having completed the necessary preliminary research, the drafter should now be able to visualize the elements of the legislation to be drafted. Often, creating an outline will prove a valuable and indispensable tool for the drafter; it will help the drafter integrate the structural aspects of the legal problems faced.

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 the appropriate legislative instrument. Part III explains in detail the various types of instruments used during the legislative session.

When drafting legislation which repeals existing law, it is important to make sure that nothing in the existing law 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. 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. 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.

Part IV, dealing with style and grammar, should be followed. Statutes should be written in clear standard English, which any citizen of Maine can understand. A clear and understandable writing style can result in legislation free from ambiguities and conflicts.

PART III
LEGISLATIVE INSTRUMENTS

CHAPTER 1

INTRODUCTION

Once a drafter has determined what must be accomplished in a particular piece of legislation, he must decide what type of legislative instrument will best achieve this goal. Part III deals with the 5 basic types of legislative instruments used by the Maine Legislature, sets forth standards for drafting each type of instrument, and gives examples of each.

The 5 basic types of legislative instruments are:

1. Bills, which consist of:
 - A. Public law bills; and
 - B. Private and special law bills;
2. Resolves;
3. Constitutional resolutions;
4. Resolutions, which consist of:
 - A. Joint resolutions (including memorials);
 - B. Senate resolutions; and
 - C. House resolutions; and
5. Orders, consisting of:
 - A. Joint orders (including congratulatory 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 draft which is prepared in final form by the Office of Revisor of Statutes, 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 allocated, 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 the entire 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.

If possible, a drafter should avoid combining the two types in the same bill as this creates problems in applying and clarifying the proposed legislation.

Generally, bills can be divided into the following segments:

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.

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

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 overly broad or vague, so that the average citizen reading the notice for public hearing on a bill can determine if the bill deals with a specific subject area. 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 objective in stating the subject matter of the bill. 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. 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 Revisor of Statutes 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 must 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.

B. The emergency preamble. The emergency preamble follows the title of the bill and is used only if the bill is to be enacted as an emergency measure to take effect sooner than 90 days after adjournment of the legislative session. Article IV, Part Third, Section 16 of the Constitution of Maine requires that 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 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 rea-

son, the emergency preamble should be rational and comprehensible and should clearly spell out the circumstances which justify passage of that bill as emergency legislation.

The following is an example of a standard emergency preamble. (P.L. 1985 ch. 570 - L.D. 1756)

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

Whereas, some municipalities will be holding referendum votes on school construction in conjunction with the June primary election; and

Whereas, nonemergency bills will not take effect until July if the Legislature adjourns in April; 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 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, mandates: "... 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 (1) (although 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

Arrangement of sections. The main body of a bill con-

tains the general provisions of the bill. A bill may contain any number of provisions and sections, allocated as well as unallocated, 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. In order to avoid confusion, however a drafter should deal with only one major subject in any single bill.

The main body of a bill is organized into bill sections which are numbered consecutively. 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.

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.

1. **Amending existing law.** 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 as-

cending numerical order by title and section affected.

2. Enacting new law. 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. 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 and placed at the end of the bill. Again, the sections of a public law bill enacting new statutory units are arranged in ascending numerical order. The following rules should be remembered when enacting new statutory provisions:

a. 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.

b. 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 section numbers should be left between the chapters).

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

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

(For further information on the breakdown of the Maine Revised Statutes, the drafter should see Part IV, chapter

2).

The Revisor of Statutes may revise allocations in bill drafts submitted to his office for processing.

3. Amending and enacting in same 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.

4. Private and special laws. Bills affecting existing private and special laws should be arranged so that the first section of the bill is the section affecting 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.

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 arranging 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, chapter 2, subchapter E).

B. Arranging a bill by subject matter. With the exception of the rules of arranging a bill set out in the preceding 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 order in which such provisions usually appear in the bill is as follows:

1. **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:

§2301. Short title

This chapter shall be known and may be cited as the "Maine Weights and Measures Law."

Statement of Purpose 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 is discouraged as much as possible since it may act as an unnecessary restriction on the application or interpretation of the law. Furthermore, heavy reliance on a statement of purpose 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 not contain any substantive provisions, and 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. 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 or as a statement of fact at the end of the bill. It should be stressed that the use of an allocated statement of purpose is strongly discouraged by the Revisor of Statutes Office.

3. Definitions. Occasionally, it is desirable to define terms that will be used frequently in certain laws, and for this purpose a "definitions" section often appears in a bill. Definitions should only be used, however, when neces-

sary. If a word has a common meaning and can clearly be understood without a special explanation, a definition should not be used. A definition may be useful in maintaining clarity and consistency when using terms that may otherwise be 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, etc.), unless the context otherwise indicates, the following terms have the following meaning: "

Words to be defined within a definition section should be arranged alphabetically. When writing definition sections, a drafter should use the term "means" rather than the term "shall mean" following each term to be defined. If a definition is only intended to be partial rather than exhaustive (i.e., rather than setting out all items covered by the word, the definition only sets out examples of the type of item to be covered by the word), the term "includes" should be used. An example of a partial definition would be:

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

Following is an example of a definition section:

§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.

A more complete discussion of the proper use of definition sections can be found in chapter VIII of Legislative Drafting by Reed Dickerson.

4. 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.

5. 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.

6. 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 civil and criminal penalty provisions and a drafter involved in writing such provisions 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.

7. **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.

8. **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:

a. **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 procedures 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.

4. Transition clause. When a state department or agency is reorganized or abolished, it is often 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.

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, Occupational and Professional 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 Business, Occupational and Professional 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, Occupational and Professional 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, Occupational and Professional Regulation by the State Controller, upon recommendation of the department head, the State Budget Officer and upon approval of the Governor.

c. **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 to 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 Office of Revisor of Statutes should always be consulted before a revision clause is used. The following is an example of a standard revision clause.

Sec. 102. Revision clause. Whenever in the Revised Statutes the words "University of Maine" and "university" used as an abbreviation for University of Maine appear,

they shall mean "University of Maine System."

d. **Nonseverability clause.** Severability clauses are not generally used in Maine bills since 1 MRSAs §71 contains a severability clause which applies to all the Maine Revised Statutes. Inclusion of such a clause may therefore 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.

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 Maine Revised Statutes, Title 1, section 71, 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.

e. **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.

i) **Appropriation clauses.**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 of the appropriation, and of the fiscal year involved.

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 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 ; that abbreviations or popularized names to refer to agencies or programs to which funds are appropriated are not used ; 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.

The drafter of an appropriation clause should be familiar with 5 MRSA Part 4, c. 141-159, "Finance"; 5 MRSA c. 141, "General Provisions;" 5 MRSA c. 143, "Accounts and Control;" 5 MRSA c. 145, "Appropriations;" 5 MRSA c. 145-A, "Minibonds;" 5 MRSA c. 145-B, "Issuance of Registered Bonds; Miscellaneous Provisions;" and 5 MRSA c. 149, "Budget." He should also be familiar with the general budgetary provision 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.

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.

	<u>1985-86</u>	<u>1986-87</u>
<u>EXECUTIVE DEPARTMENT</u>		
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.

	<u>1985-86</u>
<u>FINANCE AND ADMINISTRATION,</u>	
<u>DEPARTMENT OF</u>	
Bureau of Taxation	
Positions	(2)
Personal Services	\$15,600
All Other	1,500
Capital Expenditures	1,000
	<u>\$18,000</u>

3rd example:

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

	<u>1984-85</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>	
Elderly Low Cost Drug Program	
All Other	\$665,000

ii) Allocation clauses. 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, 1985, 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.

f. **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. Penalties and criminal laws may not be made retroactive because of the constitutional prohibition against ex post facto laws. In the area of civil laws, however, it may be possible to have a 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, 1980.

Sec. 10. Expiration. This Act shall expire on January 1, 1985 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. ???, dealing with sunset provisions for sections allocated to the Maine Revised Statutes.)

g. **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.

i) **Effective date clauses.** 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 adjournment 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 takes effect on the general effective date.

If the drafter and the sponsor of a bill decide, that it is desirable to delay the operation of a law for a period of time longer than 90 days after recess of the Legislature to allow those affected by the law to make necessary preparations to comply with its provisions, then an effective date clause is necessary. (An example of this is the Maine Criminal Code which was enacted in 1975 but 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.

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."

i1) **Emergency clauses.** 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) or may set a specific date on which the bill will take effect. A bill may provide that various parts of the bill take effect at different times. The following are examples of emergency clauses:

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

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

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, 1986.

*Sec. 10. Effective date. Sections 2 and 3 of this Act shall take effect on January 1, 1987. (Note here that the sections of the Act not given 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, pg. ???????).

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.

III. PARTS AFTER THE MAIN BODY

Following the main body of the bill are the fiscal note and statement of fact. These 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 and are used to furnish information to the Legislators and members of the public. Prior to final enactment, they

are removed and do not appear in the enacted version of the law.

A. Fiscal note. Joint Rule 21 of the 113th Legislature states:

21. 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 Fiscal and Program Review shall have sole responsibility for preparing those fiscal notes.

Thus, any bill which will have a positive or negative effect 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 and are usually in the following form:

FISCAL NOTE

This bill will result in a decrease of \$14,000 in annual dedicated revenues to the Ground Water Oil Clean-up Fund which supports activities in the Department of Environmental Protection.

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 Office of Fiscal and Program Review.

B. Statement of Fact. Joint Rule 31 of the 113th Legislature requires that all bills and resolved be accompanied by a written statement of fact indicating intent. The statement of fact reflects the intent of the sponsor, who is responsible for its accuracy. Some uniform laws and code enactments, such as the Maine Criminal Code, contain explanatory comments listed after each section which take the place of the statement of fact and which are not part of the law. The best statement of fact describes 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

Currently, a person charged with a criminal offense who requests pretrial discovery material from the prosecutor's office must generally pay the prosecutor's office a certain amount to reproduce the item. This law would require the prosecutor to furnish discovery material to the defendant at no cost to the defendant.

CHAPTER 3

RESOLVES

A resolve is a legislative enactment of very limited application or duration (somewhat similar to a private and special law).

A resolve has the same basic parts as a bill; however, since a resolve is generally very restricted in its application, the drafter should note differences between a resolve and a bill. Occasionally, a legislator will attempt to amend or alter the public or general law in a resolve. A drafter should avoid this practice; the resolve is not traditionally viewed as effecting general law and such an attempt would create problems of interpretation and application. (See Attorney General's opinion concerning resolves contained in Appendix IV).

I. 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 Washington County for the Year 1983.

RESOLVE, to name the Brook and Pond Located on the West Poland Road in Oxford County and on the West Shore of Thompson Lake in Honor of the Perkins Family.

2. The 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, 1983 marks the 100th anniversary of the founding of the Town of Old Orchard Beach; and

Whereas, an event of great significance has been planned to commemorate this historic development; and

Whereas, this legislation is vitally necessary to the town people of Old Orchard Beach and their planned centennial; 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....

II. 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:

Town of Old Orchard Beach; "Centennial Way" designated. Resolved: That the Saco Spur from Route 1 to its intersection with Ocean Park road be designated as "Centennial Way" during the year 1983 to commemorate the 100th anniversary of the founding of the Town of Old Orchard Beach; and be it further

Resolved: That the Commissioner of Transportation be authorized to erect appropriate signs furnished by the town at such locations and appurtenances to the way as the Department of Transportation and the town may select.

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 such provisions 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.

III. 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, Authorizing the Department of
Educational and Cultural Services to
Conduct a Study of Self-insurance
of Public School Properties.**

Preamble **Preamble.** Whereas, the state and local school units spent \$10,000,000 on fire and related insurance coverage over the past 5 years and received only slightly over \$2,000,000 in claims; and

 Whereas, this amounts to a cost of approximately \$800,000 per year for the

State and \$700,000 per year for local units; and

Whereas, the present method of providing state aid for school construction itself protects school units from the financial burden of catastrophic loss; and

Whereas, school units can receive substantial rebates from insurance providers if they engage cooperative group purchases of insurance; and

Whereas, the Maine Insurance Advisory Board provides joint purchase of insurance coverage for State of Maine buildings and University of Maine buildings; and

Whereas, these facts suggest that various alternative methods of insuring public school buildings could produce substantial savings to both state and local school units; now, therefore, be it

Body of resolve

Study of public school building insurance authorized. Resolved: That the Governor direct the Department of Educational and Cultural Services to conduct a study of public school building insurance, which includes input from the Maine Insurance Advisory Board to see if the current method of funding school construction, a self-insurance fund, the Maine Insurance Advisory Board's policy, or cooperative purchase of private insurance would result in a reduction in the cost of insuring public school buildings in Maine; and be it further

Resolved: That the department report back to the Joint Standing Committee on Education its findings and any accompanying legislation at the beginning of the Second Regular Session of the 111th Legislature.

CHAPTER 4

CONSTITUTIONAL RESOLUTIONS

A constitutional resolution is a legislative instrument proposing a change in the existing language of or an addition to the Constitution of Maine. Unlike a bill or resolve, a constitutional resolution, upon passage by the Legislature, is submitted to the voters of the State for acceptance at a referendum. For this reason a bill proposing 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. A constitutional resolution is quite different in form from a bill or a resolve, although the three parts into which the constitutional resolution can be divided are similar.

I. PARTS BEFORE MAIN BODY

The parts of a constitutional resolution before the main body are the title and the introductory clause.

1. **The title.** 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. The following is an

example of a title to a typical constitutional resolution:

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

2. The introductory clause. 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:

II. 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. The 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.

Proposed additions to the Constitution of Maine should be allocated to the Constitution in a logical manner. Drafters should consult other general rules which apply to the drafting of new statutory provisions as well as to the arrangement of the substance of these provisions.

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

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

Section 4. Qualifications. No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been 5 years a citizen of the United States, have arrived at the age of 21 years, have been a resident in this State one year; and for the 3 months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the district which he represents.

No person may be a candidate for election as a member of the House of Representatives unless, at the time of the nomination for placement on a primary, general or special election ballot, that person is a resident in the district which he seeks to represent.

II. 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 referendum provision. 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. Any variation from the standard form should be carefully considered to insure that it complies with all constitutional and statutory provisions. Examples of the standard referendum forms are as follows: (Note that the session during which a referendum is proposed makes a difference in the form; a resolution proposed at the first regular session of the Legislature is to be voted on at a special statewide election and a resolution proposed at the second regular session of the Legislature is to be voted on at the general election):

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 plantation 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) (or 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:

"Shall the Constitution of Maine be amended to require a candidate for State Representative or State Senator to be a resident in the district which the candidate seeks to represent at the time he is nominated to be placed on any election ballot

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

Legislature concurring, that the following amendment to the Constitution of Maine be proposed:

Amending Clause

Constitution, Article I, §25 is enacted to read:

Main body of the resolution

Section 25. Equality of rights. Equality of rights under the law shall not be denied or abridged in this State because of the sex of the individual.

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 plantation to meet, in the manner prescribed by law for holding a statewide election, at a statewide election, on the Tuesday following the first Monday of November in 1984 following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

(Question)

Shall the Constitution of Maine be amended by a resolution of the Legislature to provide for an equal rights amendment?

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 purposes of this referendum.

CHAPTER 5
RESOLUTIONS

A resolution is basically a formal expression of legislative will, sentiment, or opinion. It can be directed to no one specifically, or to another branch of state or local government, another state government, the Federal Government, or an official of those governments. 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. Joint resolutions are sometimes used to express high sentiment or opinion without petitioning any person or entity, while 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.

1. **The Title.** The title of a resolution is similar to the title of other types of legislative instruments. The title should be a short, concise description of the contents of the resolution, beginning with the words, "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 RELATING
TO CONSERVATION OF MAINE FARMLAND

JOINT RESOLUTION MEMORIALIZING THE
97TH CONGRESS OF THE UNITED STATES
TO TAKE ACTION TO ADDRESS THE
PROBLEMS POSED BY ACID PRECIPITATION.

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

2. **The preamble.** 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. Each paragraph in the preamble (except the last paragraph) should end with "; and" which will provide a lead-in to the next paragraph. 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. Following is an example of an introductory paragraph in a memorial:

We, your Memorialists, the House of Representatives and Senate of the State of Maine, in the First Regular Session of the One Hundred and Thirteenth Legislature, now assembled, most respectfully present and petition the members of the 99th Congress of the United States of America, as follows:

The following is an example of a resolution preamble.

Whereas, agricultural land is essential for agricultural production; and

Whereas, Maine agriculture is a major contributor to the economy of this State and the region, both directly and through its advantages to other industry; and

Whereas, agricultural activities preserve natural resources, as well as the Maine landscape, foster the values of independence, integrity and self-reliance which spring from agricultural communities and promote economic self-sufficiency; and

Whereas, such lands constitute a limited and finite portion of Maine's land base, and continue to be threatened with conversion to nonagricultural uses; now, therefore, be it

3. **The body.** 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 is an example of the body of a resolution.

Resolved: That We, the Members of the 111th Legislature, now assembled in the First Regular Session, consider the state's farmland to be a unique and irreplaceable resource, whose conservation is essential to present and future sustained agricultural activities, and yields significant benefit to the people of the State; and be it further

Resolved: That the Members hereby consider it the policy of this State to encourage the efforts of both public agencies and private organizations to protect and maintain open agricultural land within Maine for present and future use. Toward this end, the members endorse the voluntary transfer of rights and interest in agricultural lands through agreements between farmland owners and private land conservation agencies; and further declare their support for activities which will strengthen Maine's agricultural economy and thereby also aid in the conservation of farmland; and be it further

Resolved: That the members take this opportunity to encourage federal, state and local cooperation in this effort to conserve Maine's farmland; and be it further

Resolved: That suitable copies of this resolution be sent forthwith to the Department of Agriculture, Food and Rural Resources.

One special type of joint resolution should be mentioned. This is a standardized joint resolution (called an "in memoriam") 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:
TOWN/COUNTY

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

Title (Joint Resolution)

JOINT RESOLUTION MEMORIALIZING THE PRESIDENT, THE SECRETARY OF COMMERCE AND THE MAINE CONGRESSIONAL DELEGATION CONCERNING THE CURRENT HARDSHIPS ON CERTAIN MAINE INDUSTRIES DUE TO THE LACK OF FAIR AND EQUITABLE TRADE POLICIES

Preamble

We, your Memorialists, the Senate and House of Representatives of the State of Maine in the First Regular Session of the 111th Legislature, now assembled, most respectfully present and

petition the President of the United States, the Secretary of Commerce and the Maine Congressional Delegation, as follows:

Whereas, certain industries of the State are severely suffering from the lack of fair and reasonable trade policies on foreign goods; and

Whereas, this crisis is compounded by a difference in currency values and government subsidies which have resulted in a flood of Canadian imports and and

Whereas, the encroachment on producer markets of eastern United States is devastating the farming, lumber and fishing industries of this State; and

Whereas, the Maine economy is suffering the depletion of these vital industries and the loss of countless jobs related thereto; and

Whereas, the citizens of Maine whose livelihood depends on a prompt and equitable solution to this problem must look to the Federal Government for appropriate relief; now, therefore, be it

Body of the Resolution

Resolved: That We, your Memorialists, respectfully urge that these difficulties and hardships should not be allowed to continue; and be it further

Resolved: That We respectfully request the President of the United States and the Secretary of Commerce for the United States and the Maine Congressional Delegation to make every effort to establish fair and equitable foreign trade policies for the farming, fishing and lumber industries of this State; to renegotiate those international trade agreements which are so undeniably injurious to Maine industries; to provide appropriate relief where undue damage has resulted and to adjust the imbalance

caused by the differences in currency values; and be it further

Resolved: That suitable copies of this resolution be transmitted immediately to the Honorable Ronald W. Reagan, President of the United States, to the Secretary of Commerce for the United States and to each member of the Maine Congressional Delegation.

CHAPTER 6

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. An order may be a joint order, a Senate order or a House order.

I. 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.

1. **The preamble.** 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

2. **The introductory phrase.** The form of the introductory phrase depends on whether or not the order is a joint order, Senate order, or House order. A joint order originating in the Senate would read "Ordered, the House concurring, that...", and one originating in the House would read "Ordered, the Senate concurring, that...". A Senate or House

order begins with the phrase, "Ordered, that...".

3. The body. 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 Revisor's Office.

a. The congratulatory order. 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 both because the drafting of congratulatory orders takes the time of office personnel which could be spent drafting and preparing other types of legislation, and because an excessive number of congratulatory sentiments diminish the importance of this honor. The Revisor's Office has developed the following standardized form for sentiments.

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 35 words or 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:

TOWN/COUNTY

b. The study order. This order is used to direct a joint standing committee of the Legislature or a special committee to study a particular topic to determine whether legislation is necessary and to report its findings to the Legislature together with any suggested legislation. 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 as provided, that the Joint Standing Committee on _____ shall study _____; and be it further

Ordered, that the committee report its findings and rec-

ommendations, 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

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

(Note: When funding for the study is provided, replace "Joint Standing Committee" in the first paragraph with the phrase "Joint Select Committee", and also eliminate the 3rd paragraph beginning "Ordered".)

c. Orders to recall bills. Occasionally, the Legislature wishes to reconsider its actions on a bill which is either on the Governor's desk awaiting his signature or which has been killed and placed in the legislative files. Orders used to recall bills are in essentially the following forms:

Form for recalling bill from legislative files:

Ordered, the Senate (or House) concurring, that the Bill, "AN ACT (set out the title of the bill), "Senate (House) Paper _____, Legislative Document _____, be recalled from the legislative files to the Senate (House).

Form for recalling bill from Governor's desk:

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

d. 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 (or House) concurring, that the Joint Standing Committee on _____ report out a bill (set out the subject matter and content of the bill).

e. 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 (or 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 House (or Senate) has transacted all the business which has come before it and is ready to Adjourn Without Day.

f. Orders to amend 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 (House) concurring, that Joint

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 branch rules.

Ordered, that Senate (House) Rule _____ be (adopted, repealed or amended) (set out proposed new rule or amendment).

g. 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 Revisor of Statutes Office, the Secretary of the Senate, or the 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 committee 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 the request of both branches to try to reconcile disagreement on the instrument). Amendments are drafted in the Office of Revisor of Statutes, 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 reproduced for distribution, they appear on colored paper, the color corresponding to the amendment's origin. Committee amendments are pink, Senate amendments are yellow, and House amendments are blue.

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.

Heading. The heading of an amendment is centered at the top of the first page of the amendment, and is in the following format (the second line gives the House of origin of the amendment, i.e., "SENATE" or "HOUSE OF REPRESENTATIVES").

STATE OF MAINE
 HOUSE OF REPRESENTATIVES
 112TH 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.

Introductory paragraph. 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:

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."

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.

Body. Following the introductory paragraph is the body of the amendment. The amendment may merely make one or more changes to the original legislative 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 the Speaker or President will not entertain it on the floor of the House or Senate.

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 are 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 the printed L.D. with the corresponding number of lines, etc. of the L.D. put in parentheses.

In amendments, unlike in bills, words to be deleted are "double quoted" and words to be added are 'single quoted'.

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'

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 original bill 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 Revisor's Office when drafting any amendment.

Statement of fact. Like most legislative instruments, an amendment should have a statement of fact to assist Legislators and members of the public in understanding the purpose of the amendment. The statement of fact to an amendment is drafted the same way as a statement of fact for a bill (see chapter ???).

When amendments are signed and introduced, they are given a letter designation by the Clerk of the House or Secretary of the Senate. The first amendment from that particular body is designated "A" and each subsequent amendment to

the same legislative instrument is assigned the next letter in sequence.

The following is an example of a complete amendment.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH 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.

	<u>1985-86</u>
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.

PART IV
STYLE AND GRAMMAR
IN
DRAFTING

CHAPTER 1 - Introduction

Expressing a legislative 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 general rules for the drafter at the writing stage.

As a general matter, the drafter should attempt to eliminate language which obstructs clear understanding. Early drafts should be concerned with putting the substance of the bill in writing, with 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

I. 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), . . .)

Any grouping which is long and complex should be broken

down into logical subgroupings. For example, when a particular title is long and complex it is broken down into parts, and then into chapters, which can be logically grouped together.

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, §381, §5221, 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

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:

(17 §2901) Sec. 2901. Making or circulating books and pictures

(17 §2902) Sec. 2902. Notices for cure of venereal diseases, etc.

(17 §2903) Sec. 2903. Circulation among minors of criminal news and obscene pictures

(17 § 2904) Sec. 2904. Use of phonographs for profane or obscene language

(17 §2905) Sec. 2905. Obscene or impure shows

(17 §2906) Sec. 2906. Magazines containing obscene material

on their covers not to be displayed to minors

The new law had one section designation as follows:

(17 §2911) Sec. 2911. Dissemination of obscene matter to minors

If the new chapter on obscenity had dealt with exactly 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.

II 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 according to subject matter and not placed at the end. The hierarchy of the Constitution is:

PREAMBLE

ARTICLE

PART (Used only in ARTICLE IV)

SECTION

SUBSECTION

III. 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 law is printed the new language remains underscored.

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"). Technicians in the Revisor's Office will provide the proper historical reference. 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

PSL 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

PSL 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:

IV. ARRANGEMENT OF NEW MRSA MATERIAL

Drafters of bills which merely repeal or amend provi-

sions 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 Revisor of Statutes reserves the right to review and 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.

V. HEADNOTES

Each portion of the Maine Revised Statutes, including Private and Special Laws, must have a "title" or "headnote" down to and including subsections; no portion of a statute below a subsection should have a headnote. Headnotes are important tools, since they aid the reader in finding a given section by encapsulating the substance of the section. A headnote does not have the force of law (1), (1)(see 1 MRSA §71 sub§10) and consequently, no formal amendment is needed. A drafter should, however, revise a headnote when

an amendment makes the existing one obsolete or misleading.

A uniform law may appear without headnotes in order to make it conform to the law enacted in other states.(2) (2)(See Part V, chapter 6, Drafting to Uniform Laws). Any unallocated section of a public law or a resolve should have a headnote.(3)(3) (For rules concerning headnotes in Resolves, see Part III, chapter 3, subchapter B).

Headnotes should be short and concise. If a section headnote cannot be made both concise and complete, it may indicate that the section covers too much territory and should be divided into several sections.

VI. BREAKDOWN OF SECTION

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

SECTION

SUBSECTION

PARAGRAPH

SUBPARAGRAPH

DIVISION

SUBDIVISION

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.

A.4. Tabular arrangement. 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. Use of the tabular style of arrangement can help to make the material in a section clear and easy 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.

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...

B. Paragraphs. The text of a blocked but unnumbered or unlettered paragraph relates to the numbered or lettered paragraph with the same margin preceding it. The text of an unnumbered or unlettered paragraph with the first line indented relates to the section as a whole.

An example of inattention to this rule can be found in 34 MRSA §2334 (now repealed), 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 Courtyt. 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, the paragraph should be made into subsection 8-A. A section should not be drafted to contain several indented paragraphs, a series of subsections and finally an indented paragraph.

While a single sentence should usually be blocked, a drafter may want a single sentence which appears at the end of a section which has several subsections, to apply to the entire section. The drafter will achieve this result if the single sentence is indented.

VII. "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.

VIII. INTERNAL REFERENCES

A. 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 the statutory authority is given, the preferred method 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.

B. Within the same grouping. Whenever, within the Maine Revised Statutes, 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 §7039 states:

The Civil Service Law shall consist of chapters 56, 60, 65, 67, 69, 71 and this chapter.

The reference does not indicate in what title these chapters can be found. Because, however, the section in which the reference appears is contained in Title 5 and Title 5 contains chapters numbered 56 to 71, it is not necessary to repeat "Title 5" again. (1) (1) See 1 MRSA §71

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.

Cross-reference When reference is made to several consecutive sections, e.g. "section 230 to 235" it is unnecessary to use the word "inclusive." The word "to" indicates that the first and last sections are included in the reference. Cross references are phrased as follows:

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

Avoid the phrase: "pursuant to".

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

The forms of textual citations differ from 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:

A. Citations contained in the Revised Statutes

1. Citations to the Constitution of Maine:

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

2. 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)

3. 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)

4. Citations to a public law:

Public Law 1975, chapter 55

5. Citations to a private and special law:

Private and Special Law, 1975, chapter 33

6. Citations to a resolve:

Resolve, 1975, chapter 44

7. 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 39 (b)
 Maine District Court Civil Rules, Rule 37
 Maine Rules for Probate Court, Rule 7
 Maine Rules of Evidence, Rule 501

B. Citations Contained in the Text of a Public Law

An unallocated section of law must have more complete citation to the Maine Revised Statutes; the citation form is the same, 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"

C. 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.

D. 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.

F. Points for the Drafter to Note

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 that while resolves are normally arranged by "resolve 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 resolve 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

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:

PL 1985, c. 686, was enacted in 1986;

P&SL (Private and Special Law) 1985, c. 77, enacted in 1986;

Resolve 1985, c. 88, passed in 1986; and

Cons. Res. (Constitutional Resolution) 1985, c. 6, passes in 1985.

(Each item in this example was enacted or adopted by the 112th Legislature, which sat during the biennium which began with 1985.)

Also, all public laws enacted by a Legislature during a biennium are numbered consecutively, beginning with the first public law passed by that Legislature and ending with the last public law passed by that Legislature 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 containing the reference. The same rule holds true for private and special laws, resolves, and constitutional resolutions.

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

A. 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

B. 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. (1)(1)As of May, 1987, Titles 1,3,4,5,9,10,11,13,14,17,18,23,28,31,32,35,37,38,39,44,46 (subtitle II) and 49(subtitle I,II,IV).

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 codification, 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

Furthermore, 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 which will be changed in the future. The Attorney General ruled that such an incorporation would be unlawful delegation of legislative authority to another body, namely whichever body made the later changes in the incorporated material.

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

A short and concise sentence is the best type of sentence to use when drafting. Long sentences tend to lose the attention of the reader and consequently are construed as ambiguous and unreadable. Frequently, a long legislative sentence can be broken down into several shorter sentences without a loss of meaning or continuity.

I. LEGAL RULE

In expressing legislative policy, simplicity is of primary importance. Each sentence should express a single thought, making it easier for the reader to comprehend the rule stated. 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 subject and an action. These two parts constitute the rule. In more complicated forms the sentence may contain exceptions, conditions and cases.

II. LEGAL SUBJECT

The legal subject identifies the person who is required or permitted to do something or prohibited from doing something. Since description of the legal subject determines the person whom the law will cover, the description should be precise.

Because legal duties, liabilities, rights, privileges, and powers can reside only in a 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. Furthermore, in order for the law to be meaningful, it must direct someone to perform an act. Consider the following sentence:

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

The sentence does not state who is to issue the order. The drafter should have specified the person who is to carry out the act. Compare this sentence:

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

The sentence is clear and concise, specifying the actor and the duty.

III. LEGAL ACTION

A. Choice of verb. The verb directs the legal subject

to act in a particular manner and often modifies the manner in which the particular act should be performed. 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, namely between the verb "may" and "shall".

If the rule (subject, plus action) is permissive (confers a right, privilege or power that is to be exercised at the will of the subject), use the word "may" in the legal action. If the rule is imperative (imposes a duty or liability on the 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 legal action.

B. Active or passive voice. In general, the passive verb is weaker in its effect than an active verb. Consequently, when drafting legislation, it is better to use the active voice whenever possible since it forces the drafter to identify who shall perform the desired action. For example: "A record is to be kept by the secretary" (in the passive voice) is not as clear as "The secretary shall keep the record." (active voice).

IV. LIMITATIONS ON APPLICATION

Frequently, legislation imposes a rule not of general or

uniform application. Limitation on the rule's application 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.

A. The Case Ordinarily introduced by "when," a case sets out the 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 exercised.

As a general matter, the case should be stated at the beginning of a sentence. In this way, the reader is immediately notified of the rule's limited application. However, when a single rule applies to different cases, it is often more convenient to use the tabular form and list the cases after the rule:

SUBJECT The director
ACTION May restrict licensees' operations:

1. When an emergency exists;

- CASES 2. When a licensee has been indicted; or
 3. When a licensee has been adjudicated as
 bankrupt.

The word "when" should always precede the definition of the case. Avoid introducing a case with the words "in case," "in the event" or "where".

Always use the present or past tense of the verb in stating the case, depending on whether the facts stated in the case must occur before or simultaneously with the legal action. Never use the future tense.

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

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

B. The Condition A condition suspends the operation of the rule until fulfilled. The drafter should place the condition before the rule and after the case. The drafter should also introduce a condition with "if" or "until" when the legal action is stated affirmatively.

For example:

CASE	When an emergency exists,
CONDITION	if the director determines that the situation threatens the life or safety of any individual,

RULE (action) he may restrict the licensees' operations.

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 (action)	he may not restrict licensees' operations.

C. 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 law. 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 gener-

al rule is to create a section or subsection, with the headnote "EXCEPTION," and set out the exception separate from the rule.

V. PUTTING THE SENTENCE TOGETHER

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

EXCEPTION		
CASE		
CONDITION		
	RULE:	Legal Subject
		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:

		The Legislature
	RULE	may not extend a tax increase
		unless:
		(1) The Governor prepares a report on the economic and inflationary effects of an increase; and
CONDITIONS		(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

I. 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.

A. Brevity While conciseness is desirable, it is better to state the obvious than to achieve brevity at the expense of clarity. If the meaning of a complex sentence can be as precisely stated in two or more simple sentences, use the simple sentences, even at the risk of sounding choppy. Sentences should be straightforward and in simple words. Constructing short sentences can help the drafter avoid the common faults of verbosity, redundancy and circumlocution. Long sentences have to be studied; short sentences can be read.

B. 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 the law, unless a contrary intent is clear. Three rules can be derived from this presumption:

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.

II. WORDS AND PHRASES

A. Forbidden Words The drafter should avoid altogether the words found in the following lists.

- | | |
|-----------------------|-----------------------|
| above (adj) | made and entered into |
| aforesaid | |
| afore-mentioned | means and includes |
| and/or | none whatsoever |
| any and all | null and void |
| authorize and direct | order and direct |
| before-mentioned | over and above |
| below (adj) | preceding (adj) |
| by and with | provided, however |
| by and under | provided that |
| | said |
| desire and require | same |
| each and all | |
| each and every | (+) |
| final and conclusive | sole and exclusive |
| following (adj) | to wit |
| from and after | type and kind |
| full and complete | unless and until |
| full force and effect | whatsoever |
| | whensoever |
| herein | wheresoever |
| hereinafter | whosoever |
| hereinbefore | |

B. Preferred Expressions

In an effort to simplify and clarify statutory language, the following frequently used words and phrases should be avoided:

WORDS TO AVOID

absolutely null and void
 accorded
 admit of
 afforded
 all of the ___
 an adequate number of
 an excessive number of
 a sufficient number of
 attains the age of
 at the time
 by means of
 cause it to be done
 contiguous to
 does not operate to
 donate
 during such time as
 during the course of
 effectuate
 employ (meaning "use")
 endeavor (v.)
 evidence, documentary or
 otherwise
 evince
 examine witnesses and
 take testimony
 expend
 expiration
 fail, refuse or neglect
 feasible
 final and conclusive
 for the duration of
 for the purpose of ___
 for the reason that ___
 forthwith
 hereafter
 heretofore
 in case
 in cases in which
 in lieu of
 in order to
 in the event that
 in the interests of
 is applicable
 is authorized to
 is binding upon
 is defined and shall be
 construed to mean
 law passed
 member of a partnership

PREFERRED WORDS

void
 given
 allow
 given
 all the ___
 enough
 too many
 enough
 becomes ___ years of age
 when
 by
 have it done
 next to
 does not
 give
 while
 during
 carry out
 use
 try
 evidence

 show
 take testimony

 spend
 end
 fail
 possible
 final
 during
 to ___
 because
 immediately
 after takes effect
 before takes effect
 if
 when
 instead of
 to
 if
 for
 applies
 may
 binds
 means

 law enacted
 partner

necessitate	require
not later than	before
occasion (v.)	cause
on and after July 1	after June 30
on the part of	by
ordered, adjudged and decreed	adjudged
or, in the alternative	or
per annum	each year
per centum	percent
per day	a day
per foot	a foot
period of time	period
prior	earlier
prior to	before
prosecute its business	carry on its business
provision of law	law
pursuant to	under
render (meaning "give")	give
render (meaning "cause to be")	make
retain	keep
rules and regulations	rules
sole and exclusive	exclusive
specified (meaning "listed")	named
subsequent to -	after
summon	send for, call
terminate	end
the place of his abode	his abode
to the effect that	that
under the provisions	under
until such time as	until
utilize (meaning "use")	use
whenever	when
with reference to	for

C. Use of "shall", "may", "must", and "will"

Shall and may. The general rule is that "shall" indicates mandatory action; "may" indicates discretionary power. This obvious difference in usage can be easily illustrated:

The commissioner shall adopt rules.
The commissioner may adopt rules.

The drafter should not use a series of words, such as "The director is required to..." or "The director is authorized to..." when either "shall" or "may" would suffice.

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, or impose a duty or liability?

Traditionally, drafting manuals have suggested the following rules:

1. If a right, privilege or power is conferred, use "may". (The commissioner may call a special meeting...)
2. If a right, privilege or power is abridged use "may not". (Licensees may not engage in any activities which...)
3. If an intended right might be construed as merely an unenforceable privilege, use "is entitled". (Each member is entitled to compensation...)
4. If an obligation to act is imposed, use "shall". (The department shall issue rules...)
5. If an obligation not to act is imposed use "shall not". (The department shall not issue rules which restrict...)

These rules may appear fairly clear cut. Unfortunately they are not. The problem arises when the drafter fails to analyze the nature of the provision he is drafting. The following examples illustrate a few of the problems which must be considered before choosing one of the above rules.

Assume that a drafter is contemplating 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. The drafter has, however, failed to comply with a well-recognized rule: 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. If the drafter wants to retain the negative subject ("No person..."), the sentence should read:

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

However, the preferred method is to negate the verb, so that the sentence would read:

A person shall not conduct a picket line without a permit issued under this section.

In another situation, assume the drafter wants to indicate that a person has the ability or the right, but not the duty, to perform a certain act. Consider the following sentence:

Any party shall appeal from a District Court judgment within 30 days after entry of judgment.

Literally interpreted, this sentence 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:

Any party may appeal from a District Court judgment within 30 days after entry of the judgment.

2. Must. Use "must" to talk about a thing rather than a person:

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

A record must be kept whenever a certificate is issued.

"Must" should also be used to express requirements, i.e., statements about what people must be rather than what they must do:

Public members of the board must represent the public interests and must not be members of the health professions licensed by this state.

Applicants must be 18 years of age and residents of this State.

3. Will. 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.

D. Any, Each, Every, Etc. Generally, these adjectives should be avoided. Simple words such as "a", "an" or "the" nearly always can be used instead. There 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.

If a right, privilege or power is conferred, use "any":
Any employee may.....

If an obligation is imposed, use "each" or "every":
Each employee shall.....

E. "Said" and "Such" The use of the terms "such" and "said" to replace "that", "the", "those", etc., is considered legalese. Instead, simply use "that," "the" and "those."

F. "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 entities use "individuals". The drafter should keep this in mind when making provisions for membership on a board or agency.

G. "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.

H. "And"; "Or"Never use the term "and/or", as it has no definite meaning. "And" is conjunctive. If the legislative intent 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).

I. Dates, Time Periods and Age

1. 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: 120 days after the time when....

SAY: 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".

2. **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"

3. **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:

SAY 21 years of age or older

DON'T SAY between the ages of 21 and 30 and under 31 --
To Include the Age Listed

SAY is 17 years of age or older

DON'T SAY who is over 17 years of age

--To Exclude the Age

SAY who is 18 years or older

DON'T SAY who is over 17

J. Abbreviations. In general, abbreviations should not appear in the text of the Maine Revised Statutes. There are 2 exceptions to this rule:

I. Common Abbreviations. The following common abbreviations may be used: "\$" "a.m." "p.m."

2. Defined Abbreviations. Some abbreviations specifically defined in a statute may be used: however, when preparing a bill draft it is best to explain all acronyms and abbreviations after their initial use.

A notebook which lists all agencies with their abbreviated names (called the "umbrella book") is available for reference purposes in the Revisors' Office.

K. Use of Non-English Terms. Generally, a drafter should avoid using of non-English terms unless that term is necessary for specific identification (for example, binomial

A. Tense

1. 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..." 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 member who shall be appointed by the commissioner and shall equally represent 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.

B. Number, Gender, Person

Whenever possible use the singular instead of the plural. This will 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."

In an effort to avoid gender-biased language, the Revisor's Office attempts to use the "agent" noun instead of a pronoun. If a pronoun is needed, use "he," meaning both "he" and "she." Since 1 MRSA §71, subsection 7 states: "Words of the masculine gender may include the feminine", most of the Maine Revised Statutes are written using the "generic" he. This is the rule to follow unless the statute being drafted applies exclusively to women.

C. 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 pro-

cess, a statute's meaning should not depend upon punctuation. Certain rules of punctuation are observed.

--Series

The use of a comma before the conjunction connecting the last two members of a series is preferred, but the comma may be omitted unless required for clarity.

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 semitrailers or only to pole trailers? If the limit is not intended to apply to trailers and semitrailers, the provision should read:

Pole trailers of 3,000 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:

e 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; 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 1INTRODUCTION

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 situations which a drafter is more likely to encounter. If a drafter is faced with an unusual or difficult drafting problem for which the standardized drafting formats set out in this manual are inadequate and which is not covered in this part, he should consult the Office of Revisor of Statutes for assistance before drafting the legislation.

CHAPTER 2

INITIATED BILLS

The Constitution of Maine, Article IV, Part Third, Sections 18 through 20, govern the procedure for referendum legislation including bills initiated by the voters. The initiated bill, resolve, or resolution may become law in one of 2 ways. Either the Legislature enacts the bill, resolve, or resolution "without change" or 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, to enact as law.

An initiated bill differs from a referendum. In the latter the Legislature, without any prior action of the voters, enacts a bill, resolve, or resolution and then that measure is sent to the voters. An initiated bill, however, 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 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 (amendment) for approval of the voters.

The Revisor of Statutes Office considers initiated bills as private matters originating outside the Legislature. Consequently, while the office will give limited advice on the form of drafting the bills, it does not actually draft them. Rather the office 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 Revisor's 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. Since 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. This initiated bill is only an example and not a model.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SIX

AN ACT to Prohibit Mandatory Local Measured
Service and to Preserve Affordable
Traditional Flat Rate Local Telephone
Service at as Low a Cost as Possible.

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

35 MRSA §80 is enacted to read:

§80. Mandatory local measured telephone service prohibited

1. Mandatory measured service. Mandatory local measured telephone service is prohibited in the State.

2. Traditional flat rate local service. The Public Utilities Commission shall establish rates for telephone companies which will preserve traditional flat rate local telephone service at as low a cost as possible, allowing for unlimited local exchange calling for a single monthly fee as the standard phone service in the State for both business and residential customers. Flat rate service with unlimited local calling shall be described by the telephone company as the "standard" service in all its communications with the public and the Public Utilities Commission. Any other local calling service shall be described as an "optional" service.

3. Standard. In any proceeding before the Supreme Judicial Court or the Public Utilities Commission to review the reasonableness and lawfulness of a local telephone rate approved by the Public Utilities Commission, it shall be presumed that any rate which results in less than 3/4 of the residential customers maintaining standard flat rate service in those exchanges offering optional measured service is in violation of subsection 2, requiring the Public Utilities Commission to establish a rate structure which will preserve traditional flat rate local telephone service at as low a cost as possible. The presumption established in this subsection may be overcome by clear and convincing evidence

that no reasonable alternative rate could be implemented which will maintain 3/4 of the residential customers as standard flat rate customers.

CHAPTER 3STATEWIDE 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 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 equipment projects provided for in this Act, or from entering in-

to 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. 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. Section 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.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

S.P. 313 - L.D. 915

AN ACT to Establish the Maine Job
Development Program.

Preamble. Two thirds of both Houses of the Legislature deeming it necessary in accordance with the Constitution of Maine, Article IX, Section 14, to authorize the issuance of bonds on behalf of the State of Maine to establish a Maine Business Opportunity and Job Development Fund.

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

Sec. 1. 10 MRSA c. 110, sub-c. II-B is enacted to read:

SUBCHAPTER II-B

LOAN INCENTIVES TO MEET ECONOMIC DEVELOPMENT NEEDS

§1038. Maine Job Development Fund

1. Creation. There is created and established, under the jurisdiction and control of the authority, the Maine Job Development Fund.

2. Sources of fund. There shall be paid into the fund the following:

- A. All money appropriated for inclusion in the fund;
- B. Subject to any pledge, contract or other obligation, any money which the authority receives in repayment of advances from the fund;
- C. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund; and
- D. Any other money available to the authority and directed by the authority to be paid into the fund.

3. Application of fund. The authority may apply money in the fund for purposes authorized by this subchapter. Money in the fund not needed currently for purposes of this subchapter may be deposited with the authority to the credit of the fund or may be invested in such manner as is provided for by law.

4. Accounts within fund. The authority may divide the funds into such separate accounts as it determines necessary or convenient for carrying out this subchapter.

5. Revolving fund. The fund shall be a nonlapsing revolving fund. All money in the fund shall be continuously applied by the authority to carry out this subchapter.

6. Commitment and administrative fees. The authority may fix commitment fees in an amount not to exceed 1% of the initial principal amount of a loan made or insured under this subchapter. Such fees may, at the discretion of the authority, be deposited into the fund created under this section or into the Mortgage Insurance Fund or Loan Insurance Reserve Fund.

§1039. Maine Job Development Program

1. Operation. Upon appropriation of money for the Maine Job Development Fund created by section 1038, the authority shall operate the Maine Job Development Program. This program shall be operated in conjunction with or as a part of one or more other programs of the authority. This program shall be administered in cooperation with the State

Development Office.

2. Permitted uses of fund. Money in the fund may be applied to carry out the powers of the authority, including:

A. Making loans to businesses eligible for assistance under this subchapter with such collateral as the authority may determine to be adequate; and

B. Providing financial assistance to businesses eligible for assistance under this subchapter. The financial assistance may be used to finance the production of new products and to help finance innovations, inventions and new processes which may lead to the production of new products or enable the applicant to significantly reduce production costs and increase market share for the product without reducing existing employment levels, provided that the authority shall have no liability to any claimant for claims arising directly or indirectly from the use or operation of the product or process.

3. Limitations. Financial assistance under this subchapter shall not exceed \$250,000 to any one business, or \$150,000 in the case of businesses assisted under subsection 2, paragraph B, nor may it exceed 50% of the total project costs as approved by the authority. At a minimum, 10% of the total project costs must be equity provided by the recipient of the loan or financial assistance.

4. Criteria. Program criteria and procedures shall be established by rulemaking pursuant to Title 5, chapter 375, suchapter II, and shall include limits on the amounts of financial assistance provided from the funds to any one business and requirements for sources of financial assistance in addition to the fund. The program shall be directed at small-sized and medium-sized businesses, as defined by the authority. The authority shall consult with the State Development Office in establishing incentives to:

A. Stimulate investment in geographical areas of the State deemed economically distressed by the State Development Office;

B. Stimulate investment in businesses in economically distressed industries in the State as identified by the State Development Office;

C. Provide benefits, in addition to those provided to a

business, to the geographical area in which the business is located or to a business sector;

D. Solve problems widespread in particular business sectors;

E. Develop quality full-time jobs;

F. Minimize adverse environmental impact;

G. Provide for employee safety;

H. Make new or additional jobs available to Maine citizens, including economically disadvantaged persons;

I. Utilize a significant amount of financial assistance in addition to that provided from the fund;

J. Provide for training or retraining of displaced, dislocated or unskilled persons, in cooperation with the appropriate state agencies; and

K. Develop new products, technology, inventions or production processes which can help increase exports of Maine products and services out of the State.

With respect to any loan made under this subchapter, the authority, subject to rules promulgated under this subchapter, shall give preferred rates and terms to businesses meeting the criteria of this section based on the extent to which they meet these criteria.

5. Assistance to municipalities to generate economic growth. One million dollars from the proceeds of the sale of bonds will be provided to the State Development Office to provide municipalities with the resources for a program to generate jobs and business development. Potential uses of this money shall include, but not be limited to, infrastructure development, planning and technical assistance, marketing and other types of capacity building. Money available for the purpose of this subsection shall not be used to provide financial assistance to businesses.

6. Recovery. To the extent permitted by law, and except for financial assistance provided pursuant to subsection 2, paragraph B, the authority, by agreement, shall require repayment of amounts by any business on which behalf money from the fund has been applied or pledged to carry out

this subchapter and, by agreement, shall require interest or other premium on those amounts at such rate as the authority may determine, and shall require such collateral to secure repayment as may be reasonably available, including junior liens as appropriate. The recovery may be deferred until such time as the authority shall determine.

7. Report. The authority shall file and present a report to the joint standing committee of the Legislature having jurisdiction over economic development matters showing the balance of the Job Development Fund, the status of all outstanding direct and insured loans and a report on all other program activities as part of the annual report required by section 974.

Sec. 2. Issue of bonds to establish the Maine Job Development Fund. The Treasurer of State may, under the direction of the Governor, issue from time to time registered bonds in the name and behalf of the State up to an amount not exceeding \$6,000,000 in the aggregate for the purpose of raising funds to fund the Maine Job Development Fund as authorized by section 1. The bonds shall be deemed a pledge of the faith and credit of the State. The bonds shall not run for a longer period than 5 years from the date of the original issue. Any issuance of bonds may contain a call feature at the discretion of the Treasurer of State with approval of the Governor.

Sec. 3. Records of bonds issued to be kept by State Auditor and Treasurer of State. The State Auditor shall keep an account of the bonds, showing the number and amount of each, the date when payable and the date of delivery to the Treasurer of State who shall keep an account of each bond showing the number of the bond, the date of sale and the date when payable.

Sec. 4. Sale, how negotiated; proceeds appropriated. The Treasurer of State may negotiate the sale of the bonds by direction of the Governor, but no bond may be loaned, pledged or hypothecated in behalf of the State. The proceeds of the sale of the 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 purposes set forth in this Act.

Sec. 5. Taxable bond option. The Treasurer of State, at the direction of the Governor, shall covenant and consent that the interest on the bonds shall be includable, under

the United States Internal Revenue Code, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this section shall not be subject to any limitations or restrictions of any law which may limit the power to so covenant and consent.

Sec. 6. 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. 7. Disbursement of bond proceeds. The proceeds of the bonds shall be expended under the direction and supervision of the Finance Authority of Maine.

Sec. 8. Appropriation balances at year end. At the end of each fiscal year, all unencumbered appropriation balances representing state money shall carry forward from year to year. Bond proceeds which have not been expended within 10 years after the date of the sale of the bonds shall lapse to General Fund debt service.

Sec. 9. Bonds authorized but not issued. Any bonds authorized but not issued, or for which bond anticipation notes have not been issued within 5 years of the ratification of this Act, shall be deauthorized and may not be issued, provided that the Legislature may, within 2 years after the expiration of the 5-year period, extend the period for issuing any remaining unissued bonds or bond anticipation notes for an additional amount of time not to exceed 5 years.

Sec. 10. Contingent upon ratification of bond issue. Sections 1 to 9 shall not become effective until the people of the State have ratified the issuance of bonds as set forth in this Act.

Sec. 11. Statutory referendum procedure; submission at statewide election; form of question; effective date. This Act shall be submitted to the legal voters of the State of Maine at a 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:

"Shall the State create the Maine Job Development Program to be funded with a \$6,000,000 bond issue?"

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, if it appears that a majority of the legal voters 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.

In House of Representatives, 1987

Read twice and passed to be enacted.

..... Speaker

In Senate, 1987

Read twice and passed to be enacted.

..... President

Approved 1987

..... Governor

CHAPTER 4

CRIMINAL PENALTIES, CIVIL VIOLATIONS, CIVIL PENALTIES

AND CONFORMITY WITH THE MAINE CRIMINAL CODE

I. 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 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.

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 principles 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.

II. 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, B, C, D or E crimes. The term of imprisonment for each class of crime, found in 17-A MRSA §1252, is as follows:

<u>Class of Crime</u>	<u>Term of Imprisonment</u>
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:

<u>Class of Crime</u>	<u>Natural Persons</u>	<u>Organizations</u>
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 penalty 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.

III. 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 automatically converted into either 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 an imprisonment penalty are converted into classified crimes according to the

following conversion schedule which is found in 17-A MRSA §4-A, subsection 3.

<u>Maximum period of imprisonment authorized by the statute</u>	<u>Class into which the crime is converted</u>
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

If a criminal penalty outside the Code is not drafted to conform to the classification system set forth in the Code, 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 is the same as the language set out in subchapter B for drafting penalty provisions within the Code.

It is possible in exceptional circumstances to exempt penalty provisions from conformity with the Code. For example, the Legislature may wish to provide that a certain type of conduct be defined as criminal conduct but feel that an imprisonment penalty is undesirable. 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".

IV. 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: 3. Penalty. Any person, club, association, corporation or any member or officer of a club, association or corporation who promotes, competes or otherwise engages in a boxing contest, exhibition or in sparring without complying with subsections 1 and 2, commits a civil violation for which a forfeiture of not more than \$500 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 bringing 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, shall be subject to a civil penalty of not more than \$5,000, payable to the State, to be recovered in a civil action.

V. MISCELLANEOUS DRAFTING PROBLEMS

A. 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 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) 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.

B. States of Mind. The drafter should be aware of several important changes made by the Maine Criminal Code in the area of criminal state of mind. 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 statutes 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 the 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.

VI. 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.

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 section 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 section 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 section 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 certif-

icate 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. Section 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 6DRAFTING TO UNIFORM LAWS

Uniform laws, (i.e., 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 by-laws of the National conference, the Revisor of Statutes is an associate member of the conference. Drafters may direct any questions on form or procedure to him).

If an amendment is 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 different section or subsection number 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 National Conference has established rules for drafting uniform laws, which are available in the State Law Library.

CHAPTER 7ADVISORY REFERENDA

Occasionally a Legislator may wish to submit an issue to the voters of the State to determine their feelings before the Legislature takes any action on that issue. This may be done through the use of an advisory referendum. A bill proposing an advisory referendum directs the Secretary of State to hold a referendum to determine the sentiment of the voters of Maine on a designated issue. It does not enact any statutory law.

The following are examples of the forms which are used for advisory referenda during 1st session or 2nd session.

FIRST SESSION

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 purpose of this advisory referendum.

SECOND SESSION

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 se-

lectmen 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 purposed 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. This legislation consists 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 Revisor of Statutes 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. Without some form of standardization, each sunset law might establish an entirely different review procedure. This would result in various agencies 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 Revisor of Statutes 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.

I. SUNSET OF STATE AGENCIES

State agencies which are to be terminated under sunset legislation unless renewed by the legislature should be placed in 3 MRSA chapter 23.

All sunset legislation calling for the termination or review of a state program or other statutory provision should be allocated to 1 MRSA chapter 29. 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 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 sets out that provision and 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 legisla-

tive 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 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 opinions 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. The request must spell out the circumstances which constitute the solemn occasion or raise the 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

<u>VOLUME</u>	<u>TITLE</u>	
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

ANNOTATED VOLUMES

<u>VOLUME</u>	<u>TITLE</u>	
10	18	Decedents' Estates and Fiduciary Relations**
	18-A	Probate Code ***
	19	Domestic Relations
11	20	Education
	20-A	Education
	21-A	Elections
12	22	Health and Welfare
12-A	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-A	Liquors
14	29	Motor Vehicles
	30-A	Municipalities and Counties
14-A	30-A	Municipalities and Counties
	31	Partnerships and Associations
15	32	Professions and Occupations
	33	Property
15-A	34-A	Corrections
	34-B	Mental Health and Mental Retardation
	35-A	Public Utilities and Carriers
16	36	Taxation
16-A	37	Veterans' Services
	37-B	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

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).

330P

43A Y10 1.17

TS 10 4.2

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).

NORMAL

<u>SESSION</u>	<u>CONVENED</u>	<u>ADJOURNED</u>	<u>EFFECTIVE DATE</u>
105th Regular	1/ 6/71	6/24/71	9/23/71
Special	1/24/72	3/10/72	6/ 9/72
106th Regular	1/ 3/73	7/ 4/73	10/ 3/73
Special	1/ 2/74	3/29/74	6/28/74
107th Regular	1/ 1/75	7/ 2/75	10/ 1/75
Special	1/19/76	4/29/76	7/29/76
Special	6/14/76	6/14/76	9/13/76
108th 1st Reg	1/ 5/77	7/25/77	10/24/77
2nd Reg	1/ 3/78	4/ 6/78	7/6/78
Special	9/ 6/78	9/15/78	#
Special	10/18/78	10/18/78	1/17/79
Special	10/18/78	10/18/78	1/17/79
Special	12/ 6/78	12/ 6/78	3/ 7/79
109th 1st Reg	1/ 3/79	6/15/79	9/14/79
Special	10/ 4/79	10/ 5/79	#
Special	10/10/79	10/11/79	#
2nd Reg	1/ 2/80	4/ 3/80	7/ 3/80
Special	5/22/80	5/22/80	#

110th 2nd Reg	12/ 3/80	6/19/81	9/18/81
1st Spec	8/ 3/81	8/ 3/81	11/ 2/81
2nd Spec	1/ 6/82	4/13/82	7/13/82
4th Spec	4/28/82	4/29/82	7/29/82
5th	5/13/82	5/13/82	8/12/82

Spec

111th 1st Reg	12/ 1/82	6/24/83	9/23/83
1st Spec	9/ 6/83	9/ 7/83	12/ 7/83
2nd Spec	11/18/83	11/18/83	2/17/84
2nd Reg	1/ 4/84	4/25/84	7/25/84
3rd Spec	9/ 4/84	9/11/84	12/11/84

112th 1st Reg	12/ 5/84	6/20/85	9/19/85
1st Spec	11/13/85	11/13/85	2/12/86
2nd Reg	1/ 8/86	4/16/86	7/16/86
2nd Spec	5/28/86	5/30/86	8/29/86

#No nonemergency mearsures enacted at these sessions.

110th 2nd Reg
 111th 1st Reg
 112th 1st Reg
 110th 1st Spec
 111th 1st Spec
 112th 1st Spec
 110th 2nd Spec
 111th 2nd Spec
 112th 2nd Spec