

BILL DRAFTING MANUAL 2010

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Montana Legislative Services Division

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PREFACE

Montana's first Bill Drafting Manual was written by the Legislative Council staff during the 1960-61 interim to provide a uniform standard for bill drafting. Its main purpose was to provide the drafter with a reference source to the requirements of Senate and House rules, statutes, the Constitution, and case law, as well as suggestions on the mechanics, technique, and style of legislative drafting.

Our purpose remains the same. The Legislative Services Division staff directs your attention especially to the table of contents, the examples in the appendices, and the index. These resources can be very helpful in locating information pertinent to your needs. In addition, the manual is available online on the legislative website, and users may find it useful to search the text electronically.

The Bill Drafting Manual was revised in 1974, 1975, and 1978 and has been revised each interim since then in order to incorporate recent changes. **This 20th edition of the manual was thoroughly reviewed and extensively revised for 2010.** We hope that you will find the manual with its many revisions and additions to be helpful.

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BILL DRAFTING GENERALLY

1-1. Policy and the Bill Drafter

Bills may be drafted for various persons and groups. Some bills are drafted by the Legislative Services Division staff at the request of a legislator or committee, some are drafted by personnel of departments of state government, and some are drafted by counsel retained by private individuals or groups. The Legislative Services Division bill drafter redrafts each submitted bill draft to meet the standards contained in this manual using the Legislative Automated Workflow System (LAWS).

The drafter's function is to translate the objectives and policies of the person or group for whom the bill is drafted into clear, concise language. The drafter may not express personal thoughts or promote self-interest but must remain an impartial technician.

Bills requested by an agency or a legislative committee must be preintroduced and must contain a "By Request" line. Preintroduction is accomplished by having an individual legislator file a preintroduction form that is provided by and returned to the Legislative Services Division. A copy of the form is contained in Appendix T. See section 4-3(4) and Joint Rule 40-40.

1-2. Constitutionality — Statutory Provisions

A bill is, in essence, a proposed statute. A statute is the vehicle by which the Legislature exercises its lawmaking power. The United States and Montana Constitutions are the fundamental law upon which our government is based, and any statute enacted by the Legislature must conform to them. The Legislature's lawmaking power is limited only by these two Constitutions and by federal statutes. Under the Supremacy Clause (Article VI) of the U.S. Constitution, any act of Congress that is not itself in violation of the U.S. Constitution may not be contravened by a state legislature. Thousands of volumes have been written on the subject of constitutionality of statutes.

The purpose of this manual is not to provide an exhaustive discussion of these problems as they may be encountered in bill drafting but to emphasize that constitutionality is a paramount consideration and to bring to the reader's attention a few of the more frequently occurring problems. At a minimum, all bill drafters should periodically review the entire Montana Constitution, which contains many of the same provisions as the U.S. Constitution, and

then refresh their memories by referring to the Constitutions whenever a potential problem surfaces. The bill drafter is in a unique position with relation to the public sector in general and the legal community in particular because the drafter has the opportunity, with the concurrence of the bill requester, to forestall constitutional difficulties before they cause confusion, litigation, and expense. Frequently, a bill can be drafted to avoid an inherent constitutional problem while still accomplishing the basic goals of the requester.

Many bill drafting requests arise from a particular problem as perceived by an individual or relatively small interest group. The legislator/requester who is solicited to provide a legislative remedy often wishes to address only the particular problem with a minimum of governmental expense and interference. For these reasons, problems involving equal protection of the law (Article II, section 4, Montana Constitution) and special legislation (Article V, section 12, Montana Constitution) tend to occur. Underlying these provisions is the basic precept that state policy should be made to apply evenhandedly to all persons. These provisions, however, are not absolute prohibitions of all forms of discrimination. The courts will apply various standards under these provisions, depending upon the purpose of the statute and its relationship to the type of discrimination proposed, whether the discrimination involves a suspect classification (e.g., race), or whether a fundamental right (e.g., free speech) is adversely affected or upon other considerations. Whenever a requested bill draft would, if passed and approved, confer a benefit or impose a burden on certain individuals, groups, or classes of persons to the exclusion of others, the drafter should consider the constitutional implications.

Because the Legislature is in session only periodically and because of the demands of an increasingly complex and technical society, the Legislature sometimes finds it appropriate to delegate some of its power to another entity. Under the separation of powers doctrine, a branch of government may not exercise the powers properly belonging to another branch (Article III, section 1, Montana Constitution). The Legislature may provide for Executive Branch discretion in carrying out the law only if it provides sufficient statutory standards and criteria to guide the executive agency (*In re Gate City Savings and Loan Association*, 182 M 361, 597 P2d 84 (1979), for insufficient guidelines, and *Grossman v. State*, 209 M 427, 682 P2d 1319 (1984), for sufficient guidelines). Such guidance is particularly important in the context of administrative rulemaking

through which the power to make rules having the force of law may be delegated. (See discussion of bills granting rulemaking power in section 6-3.) On the other hand, the Legislature generally may not interfere with the Executive Branch in the purely administrative aspects of carrying out the law, such as by imposing a hiring freeze or otherwise making specific staffing and resource allocation decisions (*In re Opinion of the Justices to the Governor*, 341 NE 2d 354 (1976); *Anderson v. Lamm*, 195 Colo. 437, 579 P2d 620 (1978)). Further, the Legislature, within its sphere of power, must act as an entire body and may not delegate final decisionmaking authority to a legislative committee (*State ex rel. Judge v. Legislative Finance Committee*, 168 M 470, 543 P2d 1317 (1975)).

Legislative power and responsibility may not be abdicated to private organizations (*State v. Holland*, 37 M 393, 96 P 719 (1908)) or to the federal government (*Lee v. State*, 195 M 1, 635 P2d 1282 (1981), rehearing denied, 38 St. Rep. 1931 (1981)). It is a common temptation to simply incorporate the regulations of a private organization or federal laws or regulations into the Montana law by referential incorporation of laws or regulations "as amended". The problem lies in referentially incorporating future changes in those laws or regulations (i.e., as they may be amended from time to time) because this has the effect of allowing an entity other than the state Legislature to amend Montana law.

When referentially incorporating laws or regulations as they exist at the time of enactment, this incorporation should be expressly stated (e.g., "Eligibility criteria are those provided for in 35 U.S.C. 405, as that statute reads on [the effective date of this act]"). Incorporation by reference of other MCA sections does not present constitutional problems and can often be used to good advantage. (See Internal References, section 2-17.)

If a drafter must resort to the rules of statutory construction in order to explain the effect of a bill, the drafter has done a poor job. The exception to this is the plain meaning rule, which dictates that statutes are to be interpreted using the ordinary meaning of the language in the statutes unless a statute explicitly defines terms otherwise. Some of the rules of statutory construction are found in Title 1, chapter 2, MCA, and in the maxims of jurisprudence contained in Title 1, chapter 3, MCA.

For similar reasons, citing the Administrative Rules of Montana (ARMs) in statute is bad practice because it elevates the status of the

rules and may lead to problems with the unlawful delegation of authority.

For discussion of the constitutional provision dealing with bill titles, see section 4-4.

1-3. Indian Issues

The bill drafter should consider whether the new legislation could affect the Montana Indian tribes. Certain topics, including mining, hunting, fishing, gambling, adoption, and taxation, may affect the Montana tribes. The Legislative Services Division has prepared standard language to provide notification to the tribes. See Appendix P for an example of this form.

Additionally, the bill drafter should be aware that because of the special status of tribal governments and certain attributes of tribal sovereignty, the Legislature may not impose mandates on tribal governments.

If a bill relates to only one specific tribe, it is preferable to use the tribal name whenever possible (i.e., "Crow tribe" or "Blackfoot tribe" in the MCA; "Crow Tribe" or "Blackfoot Tribe" in resolutions). Otherwise, the term "Indian" is preferred. Use of the term "Native American" is discouraged because it is very broad and can properly apply to anyone born in America.

If a bill amends or establishes a program in which tribal governments may be interested in participating, the applicable definition section may need to include a definition of "tribal government". The term is usually defined as "a federally recognized Indian tribe located within the boundaries of the state of Montana". Federal recognition acknowledges the special relationship existing between the federal government and a tribe, confirms the inherent rights and self-governing powers of the tribe, and confers specific benefits and services on the tribe through various federal laws.

Consideration must also be given to the Little Shell Tribe of Chippewa, which has been recognized by the state but not by the federal government.

1-4. Research and Drafting

Research and organizing are steps inherent in all writing. Bill drafting is no exception.

Occasionally, a drafter will have the facts and law sufficiently well in mind so that drafting can be done with little research. However, the precision and complexity of the law usually require research.

The extent of research required depends on the complexity of the drafting problem. The drafter must define that problem and then determine how to achieve the purpose of the bill.

Analysis of the problem to be solved will enable the drafter to determine the sources to consult for more information. Sources of information that must be considered by the drafter include the state and federal Constitutions (see section 1-2); existing federal, state, or local statutes; case law; pending law; and applicable federal, state, or local regulations.

The importance of reviewing existing Montana statutes in the area of law to which the draft relates cannot be overemphasized. Omission of this step often results in conflict, overlap, or redundancy, thus creating more problems than are solved. Therefore, a determination as to which existing Montana statutes, if any, should be repealed or amended must be made with regard to every bill draft. (See section 1-8.)

Research preparation must be as thorough as time allows. A thorough understanding of the legal and practical factors involved in a bill is necessary to ensure production of a bill that will accomplish the purpose of its requester. The drafter has a professional obligation to advise the proponent of possible legal or practical problems of which the drafter is aware.

No one can tell the drafter when enough research is done. The drafter must determine when to stop gathering information and start writing. Legislative timeframes and workload preclude excessive research.

1-5. Organization

Organize the information at hand. Develop an outline that places the elements of the problem in a logical pattern. A bill for only a simple amendment to existing law will present no organizational problem. A major new body of law will require considerable effort to guarantee clarity. Some bill parts are so common that their placement in a bill has been standardized. A drafter must be familiar with the standard bill format discussed in Chapter 4 of this manual before beginning to organize the bill.

Begin to draft the bill when the work is outlined. Rewrite the bill as often as is necessary to achieve clarity, coherence, and unity. Revise the organization of the bill if revision contributes to clarity.

1-6. Timesavers

There are several timesavers that may be used in preparing a draft bill.

(1) (a) The Legislative Services Division staff requires that all MCA statute text be downloaded from the most recent database prepared by the Legislative Services Division. In a section of statute text, new language must be shown as underlined and deleted language must be shown as stricken. Under each downloaded section, there will appear a list of any MCA locations that contain references to that section. The drafter is responsible for checking the sections containing the references and including in the bill draft any necessary amendments to those sections. (See section 1-8.)

(b) If it is impossible to download statute text from the Legislative Services Division's database, the drafter should use the "cut-and-paste" method by taping on a separate sheet of paper a copy of the most recent version of each MCA section to be amended and by indicating new language and deletions in red pen on the copy. A drafter using this method is responsible for including all affected sections from the online internal reference list. (See section 1-8.)

(2) The text of sections that are completely new and that do not amend an MCA section is not underlined.

(3) The Legislative Services Division provides computer drafting aids, called macros, that streamline the drafting process. Various standard phrases and "housekeeping" (noncodified) sections, such as an effective date or severability section, are available to drafters who use the Legislative Services Division bill drafting macros.

(4) When using the cut-and-paste method to draft a large or complex bill, it may be useful to place each section on a separate sheet of paper and rearrange the sections until a cohesive draft is prepared. Under either the downloaded or the cut-and-paste method, section numbers and internal references should not be filled in until the final arrangement is reached.

(5) At the end of the bill draft, write "End" so that it will be clear that it is the end of the bill. Often, there are copies of background material, preliminary drafts, or other documents attached. (Please include a photocopy of the title page and the section text of any non-Montana act actually cited in the bill draft text.)

(6) Bill drafts may be submitted to the Legislative Services Division as a printed copy or by e-mail (preferred). Although the Legislative Services Division uses WordPerfect word processing

software, files from other word processing formats may be accepted by the Legislative Services Division and will be converted to WordPerfect. (If a drafter has a question concerning file compatibility, contact the Legislative Services Division.)

1-7. Drafting Aids

The following serve as aids in drafting bills:

(1) Without creating a potential conflict or overlap, a bill may be patterned after existing Montana statutes. For example, when drafting a bill creating a board to license a particular occupation, the drafter should examine various licensing laws for a suitable model. The drafter, however, must be very careful to make all necessary adjustments to such a model. Not only is it a rare case that allows near verbatim use of existing law in a bill draft, but existing statutes are sometimes poorly organized and unclearly worded; this is particularly true of very old statutes.

(2) Similarly, bills introduced in past sessions may be helpful. The *History and Final Status* may be used to determine whether a bill on a particular topic was introduced in a particular session and, if so, the bill's number. The Office of the Secretary of State has copies of all introduced bills for all past sessions. All versions of bills from the 1991 session through the most recent session are available electronically through the Legislative Services Division. All versions of bills beginning with the 1997 session are available on the legislative website.

When using a bill from a previous session as a "model" for new legislation, all MCA sections must be downloaded from the existing database to ensure that the current version of the law is being amended and all new language (underlined in an MCA section or contained in new sections) must be updated to ensure accurate references to the law.

(3) The printed reports and the online subject search feature available on the LAWS (Legislative Automated Workflow System) status system that displays Bill Draft Requests by Subject and Introduced Bills by Subject can be referenced to see whether an identical or similar bill draft or bill has been requested or introduced during the current session. Each of these information sources groups bill drafts and bills under a specific subject. The short titles can then be checked to help detect similar bills.

(4) Comparison of laws of other states on the same subject is usually very beneficial. In following a law from another state, the

drafter must be very careful to make the bill language conform to Montana law and to Montana drafting practice and style. (Be especially careful to check the Constitutions of both states. What is constitutional in another state may not be constitutional in Montana.) If the draft submitted to the Legislative Services Division is drawn from another state, attach a note indicating that fact. (If the bill becomes law, this information will be used in a "Source" compiler's comment included in the MCA Annotations.) Also, include a photocopy of the title page and the section text of any non-Montana material actually cited in the bill draft text.

(5) A list of uniform and model acts and the latest volume of *Suggested State Legislation*, published by the Council of State Governments and available in the Legislative Reference Center, should be checked to see if a uniform act (which is intended to be followed exactly in substance), a model act, or a suggested act could be used as a guide. If not readily apparent from the draft, a note indicating the source of the draft should be attached as explained in subsection (4).

(6) If time permits, the drafter should consult with experts in the field affected. If the bill affects a governmental or state agency, a discussion with an appropriate staff member from the agency is very helpful and a draft of the proposal may be sent to the agency for comment.

(7) See Chapter 9 for a list of constitutional and statutory provisions and legislative rules relating to bills.

1-8. Use of Online Internal Reference List

When amending or repealing an MCA section, the drafter must check the online internal reference list. The drafter may use a macro to access a list of references to any particular MCA section or may search the MCA on CD-ROM.

Also, whenever an MCA section is downloaded using the bill drafting macros, any references to that section will be displayed directly below it. This is a reminder for the drafter to carefully check the listed sections to determine whether any of them should be amended (and therefore be included in the bill draft).

Even if the section that is referred to is not being repealed or reoutlined, other sections referring to it may need to be amended. The drafter must read each of those sections in their entirety rather than reading just a few words around the internal reference. There may be a defined term or a concept, program, process, or

requirement that is being changed and that is referred to in the other sections and therefore needs to be amended.

A drafter who needs information from the online internal reference list but who does not have access to the Legislative Services Division database should contact the Legislative Services Division.

example The internal reference list for section 30-4-104, MCA, may appear as follows:

Internal References to 30-4-104:
 30-3-102 30-3-102 30-3-102
 30-3-102 30-3-102 30-3-102
 30-4A-105 30-4A-105 30-4A-105
 30-9A-102

In the example above, references to section 30-4-104 appear six times in section 30-3-102, as indicated by the six listings of section 30-3-102. References to section 30-4-104 appear three times in section 30-4A-105. A reference to section 30-4-104 appears once in section 30-9A-102.

When amending section 30-4-104, the drafter must read sections 30-3-102, 30-4A-105, and 30-9A-102 to determine whether the amendment to section 30-4-104 affects those sections. If a drafter is repealing section 30-4-104, it is mandatory that each section that refers to section 30-4-104 be amended to delete the references and to make any other necessary modifications.

example The internal reference list for section 85-7-1832, MCA, may appear as follows:

Internal References to 85-7-1832:
 85-7-1833*

In the example above, the asterisk indicates that a reference to section 85-7-1832 does not actually appear in section 85-7-1833 but is included in a larger reference, such as "85-7-1831 through 85-7-1833". If section 85-7-1832 is repealed or if it is amended so that the reference is no longer accurate, "85-7-1831 through 85-7-1833" must be amended to read "85-7-1831 and 85-7-1833".

The drafter must be extremely careful when renumbering subsections within a section. For instance, if the drafter inserts a new subsection (2)(b) and must renumber the former subsection (2)(b) as (2)(c), all references within that section and in other statutes to subsection (2)(b) and to subsequent subsections of section 1-1-101 are rendered erroneous.

When renumbering subsections within a section, the entire section itself must be read carefully for references to subsections, such as "subsection (3)". These references are not listed on the online internal reference list because the entire section number does not appear in the reference; only the subsection number appears.

1-9. Bill Drafter Checklist

Appendix R and the "Bill Draft Checklist Report" form provide a "Bill Drafter Checklist" that will aid the drafter in ensuring that essential matters have been considered. The completed checklist will also provide the Legislative Services Division with useful information. If the drafter does not have a "Bill Draft Checklist Report" form, the checklist in Appendix R should be copied, filled out, and attached to any bill draft submitted to the Legislative Services Division. Each item on the list calls for a "yes", "no", or "N/A" (not applicable) entry.

STYLE AND LANGUAGE

2-1. Introduction

Bills must be written in a simple, clear, and direct style using complete sentences and proper grammar.

A poorly drafted, ambiguous bill will waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and likely fail to accomplish the purpose of the requester. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.

In Montana, the common-law tradition manifested itself in the timeworn, nonessential phrases and rhetorical flourishes found in our older legislative enactments. The suggestions contained in this chapter are designed to help the drafter avoid similar archaic style and language.

As authority for basic rules of writing, the Legislative Services Division uses the latest edition of the *United States Government Printing Office Style Manual* and *The Gregg Reference Manual, Tenth Edition*, by William A. Sabin. Compounding of words is done according to the *Style Manual* and according to agency guidelines.

2-2. Word Choice

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general:

- (1) never use a long word if a short one will do;
- (2) if it is possible to omit a word and preserve the desired meaning, always omit it; and
- (3) never use a foreign phrase, a scientific word, or a jargon word if there is an everyday English equivalent.

Remember that the bill must be both precise and clear. While striving for unstilted, clear, natural expression, the drafter must avoid becoming conversational. In conversation, the speaker reserves the right to explain what is meant. The drafter is not granted such a right. The entire meaning of a bill could be determined by the choice of one key word, so words must be chosen carefully.

2-3. Tense

Use the present tense. The law speaks in the present, and each law is designed to give a rule for the continuing present. The present

tense is a simple and natural form of expression. "The present tense includes the future as well as the present." (See section 1-2-105(1), MCA.)

preferred The powers conferred in this part **are** in addition and supplemental to the powers conferred by any other general, special, or local law.

avoid The powers conferred in this part **shall be** in addition and supplemental to the powers conferred by any other general, special, or local law.

2-4. Shall, Must, and May

Do not use will, should, and ought.

(1) Shall

Use "shall" when imposing a duty on a person or entity. (Active voice) (See exception in section 4-16.)

examples The licensee shall give the debtor a copy of the signed contract.

Each member shall serve a term of 5 years.

(2) Must

Use "must" when the subject is a thing rather than a person or entity. (Passive voice)

preferred The information must be set forth in the application.

avoid The information shall be set forth in the application.

preferred The application must contain the applicant's name.

avoid The application shall contain the applicant's name.

Use "must" when the subject is a person or entity that is acted upon. (Passive voice)

preferred The judge must receive the application by the deadline.

avoid The judge shall receive the application by the deadline.

Use "must" to express requirements about what a person or an entity must be or have rather than what a person or entity must do.

preferred A candidate must be designated by the board and must be 18 years of age or older.

avoid A candidate shall be designated by the board and shall be 18 years of age or older.

preferred The nominee must meet the requirements of 37-3-305.

avoid The nominee shall meet the requirements of 37-3-305.

preferred The applicant must have a master's degree.

avoid The applicant shall have a master's degree.

preferred The committee must include four physical therapists.

avoid The committee shall include four physical therapists.

(3) May

Use "may" to confer a discretionary right, privilege, or power.

example The applicant may renew the application.

(4) May not

Use "may not" to express a prohibition.

Use "may not" if the verb that it qualifies is in the active voice.

preferred The applicant may not submit more than one application.

avoid The applicant must not submit more than one application.

preferred The applicant may not be a convicted embezzler.

avoid The applicant shall not be a convicted embezzler.

(5) Mandates and prohibitions

When qualifying a verb in the active voice, "shall" is used as mandatory and "may not" or "may only" as prohibitory.

preferred The applicant shall sign the application.

avoid The applicant must sign the application.

preferred The applicant may not submit more than one application.

avoid The applicant must not submit more than one application.

avoid The applicant shall not submit more than one application.

preferred The applicant may submit only one application.

Use "shall" only in an imperative or mandatory sense and "may" in a permissive sense. When a right, privilege, or power is conferred, "may" should be used.

Do not use "shall" to confer a right because that implies a duty to enjoy the right.

preferred The officer is entitled to an annual salary of \$40,000.

preferred The officer must receive an annual salary of \$40,000.

avoid The officer shall receive an annual salary of \$40,000.

preferred The annual salary is \$40,000.

avoid The annual salary shall be \$40,000.

2-5. Negatives

"Nor" may be used alone as a conjunction or with "neither".

Do not use "nor" in the same clause with any other negative; use "or" instead.

correct There are no pens or pencils in the storeroom.

incorrect There are no pens nor pencils in the storeroom.

2-6. Voice

It is preferable to draft in the active voice rather than in the passive voice.

preferred The board shall appoint a director. (Active voice)

avoid A director must be appointed by the board. (Passive voice)

Because the subject does or "acts upon" the verb in a sentence, the sentence is in the "active voice".

2-7. Number

Use the singular instead of the plural when possible. The singular includes the plural. (See section 1-2-105(3), MCA.)

preferred A defendant in a civil action who prevails in that action is entitled to the defendant's reasonable costs. (Singular)

avoid Defendants in civil actions who prevail in those actions are entitled to their reasonable costs. (Plural)

2-8. Articles and Such

"A person who violates" is preferred to "any person who violates", "each person who violates", or "all persons who violate". Consistent use of the articles "a" or "an" results in smoother writing and more precise expression.

"Such" or "said", as in "such person" or "said board", should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board", "an institution",

"a person", "these laws", etc., or by employing the appropriate pronoun, such as "it". However, "such" may be needed occasionally to identify the thing to which it refers and should be used if necessary to avoid ambiguity or to avoid an excessive amount of language.

2-9. Pronouns

Use a pronoun only if its antecedent (the word for which the pronoun stands) is unmistakable. A pronoun must agree with its antecedent in number and person.

Use a plural pronoun when the antecedent consists of two nouns joined by "and" and a singular pronoun when the antecedent consists of two singular nouns joined by "or" or "nor". When "or" or "nor" joins a singular noun and a plural noun, a pronoun should agree in number with the nearer noun.

preferred A director, officer, or agent of a bank may not purchase any obligation of the bank for **the person's** own personal benefit.

avoid A director, officer, or agent of a bank may not purchase any obligation of the bank for **their** own personal benefit.

2-10. Gender

The Legislative Council has adopted a policy that all bills be drafted using gender-neutral terms. For example, in referring to a person who writes a statute, refer to the "drafter", not the "draftsman". An example of this type of gender neutrality can be found in the Workers' Compensation Act, in which "workers' compensation" was formerly referred to as "workmen's compensation". Creating an artificial gender-neutral term is unacceptable. Referring to a presiding officer as a "chair" or "chairperson" is an example of the use of an artificial designation. Use "presiding officer" instead.

There are two easy methods that the drafter may employ to avoid using gender-based pronouns. The first method omits the use of the pronoun. For example, instead of writing "A board member is entitled to \$50 for each day that **he** attends a board meeting", write "A board member is entitled to \$50 for each day of attendance at a board meeting". The second method is to repeat the noun instead of

the pronoun. For example, instead of writing "If the director determines that the plan does not meet statutory requirements, **he** shall adopt a temporary plan", write "If the director determines that the plan does not meet statutory requirements, **the director** shall adopt a temporary plan".

The use of a combination of gender-specific pronouns is not an acceptable method of using gender-neutral language. For example, a drafter may not use "he or she", "his or her", or "he/she".

WAYS TO MAKE TERMS GENDER-NEUTRAL

<u>OLD TERM</u>	<u>GENDER-NEUTRAL TERM</u>
actor	no change
airman	aircrew member
alderman	city council member
boatman	boater
bondsman	bonding agent
brakeman	brake tender
brother	sibling
brotherhood	fraternal organization
businessman	business person
businessmen	business people (persons)
care of himself	provide self-care
chainman	surveyor's assistant
chairman	presiding officer (not chair)
clergyman	member of the clergy
co-ed	student
committeeman	committee member
congressman	member of the house of representatives
councilman	council member
craftsman	skilled worker or artisan
dairyman	dairy producer
daughter	child
doorman	door attendant
draftsman	drafter
eight-man board	eight-member board
enlisted man	enlisted person
entryman	no change
father	parent (some exceptions)

<u>OLD TERM</u>	<u>GENDER-NEUTRAL TERM</u>
ferryman	ferry operator
fieldman	field worker
fireman	firefighter
fisherman	angler
flagman	flag person
foreman	lead supervisor
foreman (jury)	jury supervisor
fraternal organization	no change
fraternity	no change
grandfather, grandmother	grandparent
grandfather clause	no change
guardsmen	guard members
headmaster	no change
his own	the person's own
holds himself out to be	a person represents to the public that the person is
housewife	homemaker (not housespouse)
human	no change
husband	spouse
husbandry	no change
journeyman	no change
landlord	no change
layman's terms	plain language
layman	layperson
maiden name	birth name
mailman, postman	mail carrier
manhole	no change
mankind	humanity, humankind, the human race, people, society
manmade	artificial, synthetic, constructed, manufactured (changes caused by human activity)
manned, unmanned	staffed, unstaffed
manpower	personnel, staffing, workforce, labor force, labor supply
manslaughter	no change
marksmanship	no change
materialman's lien	use "construction lien" if possible
matron	jail guard

<u>OLD TERM</u>	<u>GENDER-NEUTRAL TERM</u>
midwife	no change
militiaman	militia member
mother	parent (some exceptions)
motorman	driver
nurseryman	nursery operator
nursemaid	child-care provider
ombudsman	no change
parts man	parts person
patrolman	patrol officer
policeman	police officer
postmaster	no change
poundmaster	no change
quartermaster	no change
remainderman	no change
repairman	repair worker repairer
salesman, salesmen	salesperson, salespeople
serviceman	service member
signal man	signaler
sister	sibling
son	child
spokesman	representative
sportsman	hunter or angler
recreational user	outdoor recreationist conservationist
statesman	government leader
stepfather, stepmother	stepparent
stockman	stockgrower
supporting himself	providing self-support
thresherman	thresher
tillerman	tiller operator
tradesman	skilled worker
trainman	train operator train worker train crew member
unable to care for himself	unable to provide self-care
vestryman	vestry member
warehouseman	warehouse agent
warehouse worker	warehouse operator

<u>OLD TERM</u>	<u>GENDER-NEUTRAL TERM</u>
watchman	security guard
weighmaster	no change
widow, widower	surviving spouse
wife	spouse
workmanlike, workmanship	no change
workingmen	workers
yardmen	yard workers

2-11. Redundant Adjectives and Adverbs

Avoid adjectives such as "real", "true", and "actual" and adverbs such as "duly" and "properly". Because these ideas are normally implied, expressing them in some instances may create doubt that they are implied elsewhere.

preferred The applicant shall write the applicant's age in the appropriate blank.

avoid The applicant shall write the applicant's **actual** age in the appropriate blank.

2-12. Consistency

To avoid confusion, the drafter must be consistent in word usage. For instance, if the drafter uses "employee" in one section, "worker" should not be used in another section merely for the sake of literary variety. ("Poetic licenses" are never issued to bill drafters.) Also, the drafter should not use the same word to denote different things.

2-13. Provisos

Provisos are clauses introduced by "provided, however", "provided that", and "provided further". They should be avoided.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. It must be defined by the court before it can be interpreted. "The word 'provided', when used in a legislative enactment, may create a condition, limitation, or exception to the Act itself, or it may be used merely as a conjunction meaning 'and' or 'before', and as to what sense the word was used must be determined from the context of the Act." (*State ex rel. Board of County Commissioners v. Bruce*, 104 M 500, 516, 69 P2d 97 (1937))

Introduce an exception or limitation with "except that", "but", or "however" or, better yet, simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in an outlined list following the introductory sentence.

2-14. The Exception

The exception is used to exempt something from the application of the law and should be stated precisely in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by the rule. If there is a simple exception to the rule, the exception may be placed at the end of the rule.

example A license must be obtained by each person except a person who:

- (1) is 65 years of age or older;
- (2) has resided in the state for less than 1 year;

and

- (3) claims

An alternative is to place the exception in a separate subsection and incorporate it by reference into the subsection stating the rule.

example (1) Except as provided in subsection (2), the board may

(2) The provisions of this section do not apply to

2-15. Use of "That" or "Which"

The word "that" begins a restrictive clause that:

- (1) restricts, limits, or describes the word modified; and
- (2) is necessary to the meaning of the sentence.

The clause is essential rather than parenthetical, so commas **should not be** used to enclose the clause.

example A fence that conforms to the provisions of 81-4-101 is a legal fence.

The word "which" begins a nonrestrictive clause that:

- (1) does not restrict the word modified; and

(2) gives additional, supplemental, or descriptive information about the word modified.

The meaning of the sentence is complete without the "which" clause, so commas **should be** used to enclose the clause.

example A fence, which may be a legal fence according to the provisions of 81-4-101, must be built within 30 days after receiving the permit.

2-16. If, When, Where, or Whenever

The word "where" denotes place only.

If the application of a provision of an act is limited by the single occurrence of a condition that may never occur, use "if" to introduce the condition, not "when".

example If the suspect resists arrest, the officer may use force to subdue the suspect.

If the condition may occur more than once with respect to the object to which it applies, use "whenever", not "if", or "when".

example Whenever the officer receives a call, the time must be noted in the officer's report.

If the condition is certain to occur, use "when", not "if" or "whenever".

example When the statute takes effect, all pending proceedings must be dismissed.

2-17. Internal References

Prior to 1979, creation of internal references to other sections, parts, or chapters of the MCA was discouraged in bill drafting because of the rule of *Gustafson v. Hammond Irrigation District*, 87 M 217, 287 P 640 (1930). In *Gustafson*, the Supreme Court held that reference to a statute is as that statute existed at the time of its adoption and subsequent repeal or modification of the statute does not affect the reference to the statute in another statute. This rule had the effect of requiring the statutory researcher to trace through the Session Laws to determine when each internal reference was created and how the referenced section read at that time.

At the request of the Code Commissioner, the 1979 Legislature amended section 1-2-108, MCA, to add a subsection (2) reversing the *Gustafson* rule. The use of internal references is, therefore, no longer flatly discouraged and can often be used to provide brevity. However, see *State v. Conrad*, 197 M 406, 643 P2d 239 (1982), for a discussion of the applicability of this statute to criminal matters involving retroactive application of an internal reference. (Note that the retroactivity issue was resolved by 1983 amendment subsequent to *Conrad*.) Avoid overusing internal references because it is difficult to comprehend a section of the law when it has to be read together with many other sections. For a discussion of related issues, see section 2-18.

2-18. Use of "This Act"

Use of the words "this act" is not acceptable except in noncodified sections (see section 4-2) or when used in brackets with "[the effective date of this act]". The use of "this act" often creates a problem because the word "act" must be changed to an appropriate term, such as "title", "chapter", "part", or "section" when the law is codified. References to "this act" may be avoided by substituting references to specific bill sections that will be codified (e.g., "[sections 1 through 24]" when sections 25 and 26 are a repealer section and an effective date section).

It is particularly important to avoid use of "this act" if a bill contains amendments to existing MCA sections because technically the act includes only the deletions or additions, or both, to the amended MCA sections and not the remainder of those sections. Therefore, use of "this act" could cause confusion concerning its specific reference and present difficulties in changing "this act" to an MCA reference during codification. In such cases, specific references (whether to the MCA sections being amended, to other MCA sections, parts, or chapters, to new bill sections, or to any combination thereof) must be substituted for "this act". For the same reason, when referring to an MCA section that is being amended, reference must be made to the MCA section number, not the bill section number; to refer to the bill section is to refer only to the amendment.

This admonition does not apply to use of "this act" in housekeeping sections that will not be codified, such as effective date, severability, and applicability sections.

2-19. Words to Be Avoided

The left-hand column of the following list includes some words and phrases that should be avoided unless there are special reasons to the contrary. Some are flowery, some are archaic, and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those that the average reader understands more readily.

<u>AVOID</u>	<u>USE</u>
absolutely null and void and of no effect	void
aforesaid; aforementioned; beforementioned	the; that; those (see "hereinafter")
afforded or accorded and/or	given either X or Y, or both; X and Y or either of them
any and all	(either word)
as (in clauses of reason)	because
at such time as	when; whenever
attorney-at-law and counselor-at-law	attorney
be and the same is hereby	is
bonds, notes, checks, drafts, and other evidences of indebtedness	evidence of indebtedness
bring an action	sue
carry out	execute; complete; administer
chairman	presiding officer
deal with	address; conduct
deem	consider
does not operate to	does not
due to (normally used only after some form of the verb "to be")	because
during such time as	while
during the course of	during
each and all	(either word)
employ (meaning to use)	use
enter into a contract with	contract with

AVOID

every
 every person; all persons
 evidence, documentary or
 otherwise
 evince
 examine witnesses and
 hear testimony
 fail, refuse, or neglect
 for the duration of
 for the purpose of
 for the reason that
 forthwith
 from and after
 full and complete
 full force and effect (use with
 regard to surety bonds)
 give consideration to
 give recognition to
 have knowledge of
 have need of
 he or she; his or her; he/she

 hereafter

 hereinafter; hereinbefore;
 hereinabove; above; below;
 following; preceding

 in case
 in cases in which
 in order to
 in the event that
 in 1-1-501 to 1-1-511, inclusive
 institute; initiate

USE

each
 a person

 evidence
 show

 take testimony
 fail
 during
 for
 because
 immediately
 after
 full

 force; effect
 consider
 recognize
 know
 need
 refer to the subject - "the
 licensee", "permitholder", etc.
 after [the effective date of this
 act]; after (calendar date)

 (these are objectionable when
 referring to the position of a
 section or other statutory
 provision; if reference is
 necessary, specify the chapter,
 part, section, or subsection by
 number)

 if
 when; if; whenever
 to
 if
 in 1-1-501 through 1-1-511
 begin; start

AVOIDUSE

insure (verb, to make sure)	ensure
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is hereby authorized and it shall be the person's duty to	shall
is hereby vested with power and authority and it shall be the person's duty in carrying out the provisions of this part to	shall
it is the person's duty to	shall
it is lawful to	may
law passed	law enacted
legislative assembly	legislature
make application	apply
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
means and includes	means; includes
monies, moneys	money
Native American	Indian
necessitate	require
nexus	connection; link; tie
none whatever	none; no
null and void	void
occasion (verb)	cause
of a technical nature ordered, adjudged, and decreed	technical ordered
or, in the alternative	or
party	person (unless referring to a party to a suit or action)
per annum	a year

AVOID

per day
 per foot
 per hour
 period of time
 person of suitable age
 and discretion
 pled
 prosecute its business
 proven
 provided (conjunction)
 provided, further; provided,
 however; provided that

 provision of law
 registered or certified mail
 render (meaning to give)
 revenues

 rules and regulations
 said (as adjective)
 same
 section 1-1-101
 shall have the power to
 sole and exclusive
 subdivision; clause; paragraph
 subsequent to
 such

 the place of abode
 to wit

 unless and until
 until such time as
 whatsoever
 whensoever
 wheresoever
 while (in clauses of reason)
 whosoever
 whomsoever

USE

a day
 a foot
 an hour
 period; time

 adult (or state age)
 pleaded
 conduct its business
 proved
 if; but

 if; except; but; however (or start
 a new sentence)
 law
 certified mail
 give
 revenue (except where defined
 in law)
 rules (or, if federal, regulations)
 the; that; those
 it
 1-1-101
 may
 exclusive
 subsection
 after
 (do not use if an article can be
 used with equal clarity)
 residence
 (this is verbiage; delete it or use
 "namely")
 unless; until
 until
 whatever
 when; if; whenever
 where
 although, because
 whoever
 (archaic; improper)

2-20. Citations

(1) MCA

The statutes of Montana are cited as the "Montana Code Annotated" or "MCA". The MCA is arranged topically by title (see preface to the MCA) and is further subdivided into chapters, parts, and sections. Section 1-2-108, MCA, provides that a statute that refers to another portion of the MCA is presumed to refer to the Montana Code Annotated. Therefore, the designation "Montana Code Annotated" or "MCA" is omitted within the MCA or within language intended to be codified. Section 1-2-108, MCA, also provides that a reference to a portion of the MCA is presumed to be a reference to that portion as it may be amended. In other words, no reference to the year of enactment or amendment is necessary to cite the MCA.

- (a) as provided in Title 2, chapter 4, part 2,
- (b) as provided in part 3 of this chapter
- (c) as provided in 19-5-401 or 19-5-409(2) or (4)
- (d) in resolutions or preambles, "as provided in section 19-5-401, MCA,"

(2) Montana Constitution

The Montana Constitution is formally cited as "The Constitution of the State of Montana" and more usually cited as "the Montana constitution" in the MCA or "the Montana Constitution" (capitalized) in other references. The Montana Constitution is arranged topically in articles and sections.

- (a) as provided in Article X, sections 5 and 7, of the Montana constitution
- (b) Article V of The Constitution of the State of Montana
- (c) in resolutions or preambles, "as provided in Article IX, section 5, of the Montana Constitution"

(3) United States Constitution

The federal Constitution may be cited as "the United States constitution" in the MCA and as "the United States Constitution" in other references.

- (a) Article I, section 8, paragraph 17, of the constitution of the United States
- (b) fifth amendment to the United States constitution
- (c) 5th and 14th amendments to the United States constitution

- (d) Article VI, clause 2, of the United States constitution
- (e) in resolutions or preambles, "as provided in Article II, section 1, of the United States Constitution"

(4) Session Laws

Session Laws are the compilation of all legislation passed into law by a specific legislative session. Session Laws are arranged by legislative session year and are divided into chapters (one chapter for each bill that is passed), which are further divided into sections.

- (a) Chapter 5, Laws of 2007,
- (b) section 2, Chapter 5, Laws of 2007,
- (c) sections 2, 3, and 4, Chapter 5, Laws of 2007, (do not use "through")
- (d) section 5, Chapter 1, Special Laws of August 2010,

(5) Rules

Official rules are occasionally cited in legislation.

- (a) Rule 4D, Montana Rules of Civil Procedure,
- (b) Rule 26(b)(4)(A) through (4)(C), Montana Rules of Civil Procedure,
- (c) Rule 202(b), Montana Rules of Evidence,
- (d) ARM 4.5.101 (See section 5-7.)

(6) Federal Materials

Federal materials are occasionally cited in legislation.

- (a) 18 U.S.C. 922 (no section symbol or word "section")
- (b) 42 U.S.C. 409(b) and (d)
- (c) Titles 10 and 32 of the United States Code
- (d) Title 10, chapter 55, of the United States Code
- (e) 42 U.S.C. 1396a(e)(2)(A)(ii) through (e)(2)(C)(x)
- (f) 42 U.S.C. 7401, et seq. (1988 & Supp. II 1990),
- (g) 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, 10 U.S.C. 673b,
- (h) 50 App. U.S.C. 460
- (i) 49 CFR, part 4, 301 and 302, federal class C,
- (j) 42 CFR, part 441, subpart G,
- (k) 21 CFR 103.31 and 23 CFR
- (l) Subchapter V of the federal Clean Air Act
- (m) Subchapter IV of the Social Security Act
- (n) subchapter S. of the Internal Revenue Code
- (o) section 125 of the Internal Revenue Code

- (p) section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended,
- (q) Public Law 100-485
- (r) section 2 of Public Law 99-145
- (s) authorized by Chapter 28, Subchapter IV, Part B, 20 U.S.C. 1071, et seq., Part C, 20 U.S.C. 1078aa, et seq.,

(7) Miscellaneous

- (a) supreme court Order No. 86-223, dated . . .
- (b) Initiative Measure No. 5
- (c) House Bill No. 567, Laws of 1989, (old appropriation bills)
- (d) Cause No. CV-78-110-BLG-JDS (D. Mont.)
- (e) 2007 MT 206, 338 Mont. 541, 167 P.3d 886 (2007)
- (f) an opinion by the Attorney General, issued on December 3, 2007, 52 A.G. Op. 4, held that . . .
- (g) Montana Constitutional Convention, Verbatim Transcripts, Volume VI, page 2097

FORM GUIDE

3-1. Capitalization

Capitalization rules for bill drafting represent an exception to standard usage. In drafting bills, capitalize as little as possible. Capitalization has no legal significance, and the lower case is easier to read and write.

(1) Capitalize the first word in a sentence. The first word in each subsection following a colon must also be capitalized if each item expresses a complete thought and follows a complete introductory sentence.

(2) Capitalize months and days of the week.

(3) Capitalize names of specific publications, such as "*North American Industry Classification System Manual*" or "*Survey of Current Business*".

(4) Capitalize "Montana" (but not "state") in "state of Montana". Capitalize "County" but not "city" in the name of a county or city, such as "Cascade County", "Cascade and Chouteau Counties", or "city of Missoula".

(5) Capitalize names of specific persons or places, such as "Charles Marion Russell", "Rocky Mountains", or "Sluice Boxes state park", and specific national regions, such as "Pacific Northwest". Capitalize "North American continent". Capitalize geographic names, such as Flathead Valley (but not "community college") in "Flathead Valley community college". Do not capitalize words that indicate state geographic locations, such as "northern Montana". Capitalize the names of lakes or rivers, such as "Yellowstone River" and "Ackley Lake". Do not capitalize the words basin, canal, dam, or reservoir. See section 23-1-116, MCA, for examples.

(6) Capitalize names of historic events, such as "World War II", and holidays, such as "Christmas Day" and "Lincoln's and Washington's Birthdays".

(7) Capitalize works of art according to MCA style rules, e.g., "the statue by Robert Scriver entitled "symbol of the pros"" and "the paintings entitled "farm girl", "the Bozeman trail", and "the Mullan road"".

(8) Capitalize references to a statute compilation, such as "MCA". Do not capitalize "the statutes", "the codes", or "the Montana constitution" unless the full and exact title is used (e.g., "The Constitution of the State of Montana"). Do not capitalize the words "chapter" or "section" when referring to the MCA or the Constitution,

but capitalize the name of a particular title in the MCA, such as "Title 19"; the name of an article in the Constitution, such as "Article V, The Legislature"; and a chapter in the Session Laws, such as "Chapter 5, Laws of 2007". Also, capitalize and spell out such terms as "Montana Rules of Civil Procedure".

(9) Capitalize scientific names, including kingdom, phylum, class, order, family, and genus, but do not capitalize the species name. For example, "species of the family Salmonidae", "species of the genus Sander", or "walleye (*Sander vitreus*)".

(10) Capitalize names of races, citizens, and languages, such as "the tribal councils of the respective Indian tribes", "Spanish", or "French".

(11) Capitalize words pertaining to deity, such as "an act of God".

(12) Capitalize the name of a particular act, such as "Montana Major Facility Siting Act".

(13) Do not capitalize official titles of state, county, or municipal officers, agencies, or institutions, such as "governor", "department of transportation", "board of county commissioners", or "Montana state university-northern". The same style is used for officers, agencies, or institutions at the federal level, such as "president", "U.S. department of agriculture", "congress", or "supreme court", and for national organizations, such as "American red cross".

(14) Do not capitalize a class designation, such as "class one". However, this rule does not apply to certain classifications, such as railroad classifications, hunting or fishing license classifications, or state land classifications. (See section 3-5.)

(15) Do not capitalize "subchapter" or "section" when referring to the Internal Revenue Code, such as "subchapter S. of Chapter 1" or "section 985 of the Internal Revenue Code".

(16) Because a resolution is usually a more formal document and because the resolution itself is presented or mailed to an agency or person and is not printed in the MCA, standard capitalization rules are followed when drafting a resolution. Examples are "State of Montana", "Department of Agriculture", "Department", "Legislative Branch", "Montana University System", "Legislature", and "Montana Congressional Delegation".

3-2. Punctuation

In addition to striving for clear expression through the proper use of words, the drafter must employ correct punctuation to support the words and avoid ambiguity.

(1) Comma

If a sentence consists of two independent clauses, each with a subject and predicate, use a comma before the conjunction.

example The commission shall report annually to the governor, and it must have the report printed for public distribution.

An exception to this rule occurs when a sentence starts with a dependent clause that applies to both independent clauses that follow. No comma separates the independent clauses because it would make the introductory dependent clause seem to apply only to the first independent clause.

example If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendation is considered not approved and the bill is returned to the governor for further consideration.

Do not use a comma to separate two predicates joined by a coordinating conjunction.

example The commission **shall report** annually to the governor and **must have** the report printed for public distribution.

Set off a parenthetical phrase or clause with two commas.

example The report, which must be approved by a majority of the commission members, must be sent to the governor before July 1 of each year.

Words, phrases, or clauses in a series are separated by commas.

example The department shall provide the board with reasonably necessary supplies, equipment, and clerical services.

A comma is used before the conjunction connecting the last two items in a series.

example wheat, corn, barley, and rye

Do not set off an essential clause with a comma. An essential clause is one that is necessary to the meaning of the sentence and cannot be omitted.

correct Application must be made by July 1 if a permit is wanted.

incorrect Application must be made by July 1, if a permit is wanted.

correct An insurer may not disburse \$100 or more unless a signed voucher is received.

incorrect An insurer may not disburse \$100 or more, unless a signed voucher is received.

(2) Semicolon

Use a semicolon between two main clauses not joined by one of the simple coordinating conjunctions (and, but, or, nor).

example Letters and other private communications in writing belong to the person to whom they are addressed and delivered; however, they cannot be published against the will of the writer.

A semicolon is most often used at the end of subsections that do not contain complete sentences.

(3) Colon

A colon is used in legislative drafting to introduce a series in outline form.

example Each policy must contain:
(1) the names of the parties to the contract;
(2) the subject of the insurance; and
(3) the risks insured against.

(4) Parentheses and Brackets

Do not use parentheses or brackets as punctuation. Parentheses are used to enclose numerals or letters in outline designations. Use brackets to enclose internal references, such as "[section 3]", to enclose "this act", and to enclose references to the effective date of a section or an act. In rare instances, brackets may be inserted in the MCA during the codification process to denote erroneous language or language that becomes effective or that terminates on the occurrence of a contingency or a particular date.

(5) Quotation Marks

In American usage, printers usually place a period or comma inside closing quotation marks whether it belongs logically to the quoted matter or to the whole sentence or context. In bill drafting, a period or a comma should be placed outside quotation marks if it does not belong to the quoted matter. In drafting, always use double quotes.

In legislative drafting, quotation marks are used only to enclose titles or texts of acts or laws referred to or incorporated by reference, to enclose defined words or phrases, or to enclose amended MCA sections. In addition, quotation marks are used to enclose text following terms such as entitled, the word, the term, marked, designated, classified, named, endorsed, cited as, referred to as, known as, or signed. Names of acts are not quoted in the title of a bill or resolution.

example (4) The state of Montana accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work".

example A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "GAME" TO INCLUDE THE JAVELINA."

example (1) "Agency" means an authority, board, bureau, commission, department, or other entity of state or local government.

example Section 1-1-218, MCA, is amended to read:
"1-1-218. Words giving joint authority.
 Words giving a joint authority to three or more

public officers or other persons are construed as giving ~~such~~ the authority to a majority of them unless it is otherwise expressed in the ~~act~~ law giving the authority."

example A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO INCLUDE"

3-3. Abbreviations and Acronyms

Abbreviations are seldom used in the MCA and are seldom used in other legislative writing, except that "Montana Code Annotated" should be abbreviated to "MCA" in resolutions and preambles. Do not add "MCA" to a section number within the text of a section of the MCA. (See section 1-2-108(1), MCA, which provides that it is presumed that the section number refers to the Montana Code Annotated.)

One example of the acceptable use of an abbreviation in the MCA is "et seq." when referring to the United States Code or the Code of Federal Regulations.

The use of acronyms should be avoided in the MCA. Because the reader may not be familiar with a particular acronym, the full expression should be used. Exceptions include "CFR" for Code of Federal Regulations and "U.S.C." for United States Code.

3-4. Numbers

Numbers one through nine are spelled out, and numbers 10 and over are written in numerals. Numbers at the beginning of a sentence should be spelled out.

five, 22, 1,000, 1 million, 1.5 billion
Fifteen members serve on the committee.

(1) Money

6 mills, 0.02 cent, 0.1 cent (use for 1/10 of 1 cent), 0.5 cent, 1 cent, 1 1/2 cents, 3.7 cents, 25 cents, \$1, \$25, \$37.50, \$100, \$2,000, \$25,000, \$1.25 million, \$1.259 million (three digits after the decimal point), \$1,369,400, \$3 million, \$3.5 million

(2) Measurements

2 inches (feet, yards, meters, acres, etc.)
8 feet 2 inches
2 feet x 3 inches
15 x 30 feet (but a "15-foot by 30-foot room")
7.5 milligrams
1.5 liters
5 pounds (bushels, barrels, gallons, etc.)
3 ounces
3 acres (horsepower, etc.)
35 degrees F
1 megawatt-hour unit
1/2 mile
0.5% of alcohol by volume

(3) Age

6 years old
52 years, 10 months, 6 days
a 3-year-old child
65th birthday
"a person who is 18 years of age or older" (not "over 18 years of age")
"a person who is under 6 years of age"
"a person who is 18 years of age or older and under 66 years of age" (not "between the ages of 18 and 65")

(4) Time

3 days
5th and 20th days
2 weeks
1 month
2 1/2 months
4 calendar quarters
3 fiscal years
2 bienniums (not biennia)
noon (not "12 noon")
midnight (not "12 midnight")
9 a.m. (not "9:00 a.m." or "9:00 o'clock a.m.")
1 p.m.
1:30 p.m.
one-half hour before sunset

(5) Percentages

0.3%
3%, 25%
3/4 of 1%
1/2 of 1% or 0.5% (not "1/2%")
57.5%
2 percentage points

An irregular fraction should not be expressed as a decimal — 1/3 of 1% (not 0.333%) and 8 1/3% (not 8.333%).

(6) Unit Modifiers

5-day week (measurement)
10-year sentence (measurement)
1-year term (measurement)
five-person board (not unit of measurement)
1-year, 2-year, and 3-year terms (but "term of 5 years")
four-wheel-drive vehicle
20-cent raise (but "\$1 million limit")
4.0 cumulative grade point average

(7) Ordinals

First through ninth are spelled out; 10th and over are numerals.

first term
fifth tax year
fourth amendment
15th amendment
4th and 15th amendments (exception—see subsection (9))
15th birthday
35th day

(8) Fractions

Fractions standing alone or followed by "of a" or "of an" are spelled out, such as "one-half day", "one fifty-sixth", or "three-fourths of an inch". Mixed fractions are written in numerals, such as "2 1/2 times". (This rule holds true even in measurements, but see exception under "Percentages" in subsection (5).)

In a unit modifier, use figures, such as "1/2-inch pipe" or "3/4-ton truck".

(9) Numbers in Series

Figures are used in a group of two or more numbers when any one is 10 or greater: "The farm has 3 cows and 12 sheep."

3-5. Classes, Grades, Etc.

The drafter should search the existing MCA to determine if there are references to certain classifications and should follow the capitalization used in current law.

property tax classification — class one, class twelve
 gaming — class 1 gaming; see 23-5-112
 hazardous waste management facility — class III
 compensation plan No. 2
 school grades are expressed: "1st grade", "2nd grade", "12th grade"
 teacher or specialist certificates — see 20-4-106
 hunting and trapping licenses — Class A-6, Class C-2
 fishing license — Class A, Class B-4
 railroads — Class III
 state lands — Class 4
 tow truck operators, equipment, trucks — class C, class D, etc.
 waters — class 1 waters; see 23-2-301
 motor carriers — Class A, Class B, etc.
 motor carrier authority — Class A, Class B, etc.

3-6. Dates — Fiscal Years

(1) Dates should be expressed as follows:

December 31 (not "December 31st" or "31st day of December")
 December 31, 2012, (with comma following year in a complete date, unless at the end of a sentence)
 December 2012
 October, November, and December 2012
 2012-2013 interim

(2) A period of time is expressed as follows:

For the period beginning July 1, 2011, and ending June 30, 2012,

For the fiscal year ending June 30, 2012,
 For the biennium beginning July 1, 2011, and ending June 30,
 2013,
 For the 2013 biennium (meaning the period from July 1, 2011,
 through June 30, 2013—avoid this type of reference)
 For school fiscal years beginning on or after July 1, 2012,
 For fiscal years 2012 and 2013

Fiscal year 2012 begins on July 1, 2011, and ends June 30, 2012.

Fiscal year 2013 begins on July 1, 2012, and ends June 30, 2013.

- (3) An effective date of July 1 should be expressed as "after June 30, 2011" or "effective July 1, 2011". ("From July 1, 2011", "after July 1", or "between July 1 and" might be construed to mean a beginning date of July 2 and should be avoided.)
- (4) It is better to refer to a day rather than to the time that an event will occur, such as "90 days after the day on which judgment is entered", not "90 days after the time". Usually, a period is measured in whole days, not the time of day.

3-7. Bill Titles and Catchlines

In bill titles and catchlines, follow the above rules.

Bills must be drafted so that all title provisions are in the "ING" form.

"AN ACT **ALLOWING** A DISTRICT COURT"

"AN ACT GENERALLY **REVISING**"

"AN ACT **CREATING** THE CLEAN AIR ACT OF MONTANA;"

3-8. Amending Text

- (1) Strike before adding, and keep blocks of striking and adding together whenever possible.

preferred The information contained therein ~~shall not be an official accounting~~ in the certificate is not a public record.

avoid The information contained in the certificate is not a public record ~~therein shall not be an official accounting.~~

avoid The information contained ~~therein~~ in the certificate shall is not be an a official public accounting record.

(2) Do not strike a portion of a "unit", whether it is a single word, a hyphenated word, a parenthetical phrase, a quoted word or words, or a number with a symbol.

To change a capitalized word to a lower case word

incorrect Except as otherwise provided, ~~T~~the vehicle . . .

correct The Except as otherwise provided, the vehicle . . .

To change a plural term to a singular term

incorrect The persons shall . . .

correct The ~~persons~~ person shall . . .

To change a percentage

incorrect Each taxpayer shall pay ~~25~~50% to the state.

correct Each taxpayer shall pay ~~25%~~ 50% to the state.

To change a dollar amount

incorrect The school district allowance is ~~\$7,000~~\$6,000.

correct The school district allowance is ~~\$7,000~~ \$6,000.

To change a hyphenated word to one word

incorrect The program is not on-site. (striking only the hyphen)

correct The program is not ~~on-site~~ onsite.

To change a quoted word or phrase***incorrect*** "Book_ value"***correct*** "~~Book value~~" "Book" value**To remove parentheses*****incorrect*** as provided in {26 U.S.C. 1603},***correct*** as provided in {~~26 U.S.C. 1603~~} 26 U.S.C. 1603,**3-9. Striking and Adding Subsection References**

The following form must be used when striking or adding subsection references in an MCA section:

- (1) Striking, Adding, and Changing Subsection References in Section Text

Striking subsections

1-2-345(6)	1-2-345(6)
1-2-345(6)(a)	1-2-345(6)(a)
1-2-345(6)(a)(i)	1-2-345(6)(a)(i)

Adding subsections

1-2-345(6)	1-2-345(6)(<u>a</u>)
1-2-345(6)(a)	1-2-345(6)(a)(<u>ii</u>)

Changing subsections

1-2-345(6)(a)	1-2-345(6)(a)(<u>7</u>)(<u>a</u>)
	or
	1-2-345(6)(a) # <u>1-2-345(7)(a)</u>
subsection (2)(c)	subsection (2)(c) # (<u>2</u>)(<u>d</u>)
subsection (6)(a)	subsection (6)(a) # (<u>7</u>)(<u>a</u>)
1-2-345(6)(b)	1-2-345(<u>6</u>)(<u>a</u>) and (6)(b)
1-2-345(6) through (9)	1-2-345(6)(<u>7</u>) through (9)

(2) Striking a Subsection and Renumbering Subsequent Subsections

~~(1) "Application" means an official form provided by the department and used to record information.~~

~~(2)(1)~~ "Citizen group" means a gathering of concerned persons.

~~(3)(2)~~ "Department" means the department of environmental quality.

3-10. References to MCA Sections

(1) List multiple references in order by title, chapter, and part.

examples 3-4-502 and 3-4-508
2-4-409, 2-8-340, and 10-3-403
Title 2, chapter 3, part 1, and 20-4-301
40-6-301 and Title 42, chapter 1, part 3

(2) Refer first to the other section and then to the section that you're in.

examples 52-1-501 and this section
1-1-101, 15-1-501, 20-9-420, and this section
52-1-501(6)(a)(ii)(B) and subsections (5) and (8) of this section

In the last example, use both the terms "subsections" and "of this section" in order to clarify that (5) and (8) belong to the section that you're in.

(3) List the section number before the subsections.

examples 35-5-201(4) and (5)
35-5-201(6) through (8)
35-5-201(2)(a), (2)(c), or (2)(d)
35-5-201(5)(a)(i), (5)(a)(ii), (5)(a)(iv), or (5)(a)(vi)
35-5-201(9)(b)(ii)(B) and (10)

(4) Refer to subsections within the section that you're in by using the word "subsection" before the outline designation. The

outline designation always begins with the first level of outlining.

examples subsections (5) and (6)
subsection (2)(a)(ii)(C) or (2)(a)(iii)(A)
subsections (16) through (20)
subsection (2), (3), or (4)

- (5) When the language is in a subsection that refers only to that level, e.g., (ii), the reference should still begin with the first level of outlining. If the language is in (4)(a)(ii) and a provision applies only to (ii):

example applies only to this subsection (4)(a)(ii)

- (6) When the language is in (4), use "this subsection", not "this subsection (4)" unless there are multiple levels of outlining. If the language is in (4)(a)(ii) and a provision applies to all of (4):

example applies to this subsection (4)

- (7) Never refer to the MCA section by its own number—always use "this section". Do not put brackets around "this section".

THE BILL AND ITS PARTS

4-1. Introduction

A bill is a proposed law as introduced in the Legislature. The bill does not become a law (an "act" or "statute") until passed by the Legislature and signed by the Governor or passed over the Governor's veto or in the case of a referendum, upon approval by the electorate. If the Governor does not sign or veto a bill within 10 days after receiving it, it becomes a law without signature.

A bill that has become a law is delivered to the Secretary of State, who assigns a chapter number to it in the order that the bill is received by that office. All laws that pass in any one legislative session are first published in the order of passage in a publication entitled *Laws of Montana* (Year). This publication is referred to as the Session Laws. All permanent new provisions are assigned MCA section numbers by the Code Commissioner's staff and are incorporated into the Montana Code Annotated.

The proper form and arrangement of a bill have been defined primarily by custom. The Montana Constitution addresses bill titles in Article V, section 11. Section 5-4-101, MCA, prescribes the form of the enacting clause. None of the other bill parts are mandated by law or rule. However, the following form is now used by the Legislative Services Division. By legislative rule, all bills, before they are introduced, must comply with the format, style, and legal form prescribed by the Legislative Services Division. Bills not prepared by the Legislative Services Division staff must be reviewed by that staff and entered on the automated bill drafting system before introduction.

4-2. Bill Arrangement

(* a mandatory part of a bill)

1. Bill Identification*
 - (a) bill draft number (LC ____)
 - (b) House or Senate designation and number
 - (c) sponsor line
 - (d) "By Request" line (not on all bills)
2. Title*
3. Preamble
4. Enacting Clause*
5. Body*

Codified

- (a) short title
- (b) purpose section
- (c) definitions
- (d) basic provisions
- (e) penalty

Noncodified

- (f) repealer
- (g) transfer of funds
- (h) appropriation
- (i) unfunded mandate laws superseded
- (j) transition
- (k) notification to tribal governments
- (l) directions to code commissioner
- (m) codification instruction
- (n) coordination instruction
- (o) saving clause
- (p) severability clause or
nonseverability clause
- (q) extraordinary vote required
- (r) contingent voidness
- (s) effective date
- (t) applicability
- (u) termination

4-3. Bill Identification**(1) Bill Draft Number**

The number appearing at the top right-hand corner of a bill, such as "LC 0001.01", is the number assigned by the Legislative Services Division staff as the bill request is received. The LC number is used to identify the bill during the drafting process prior to the time of introduction and assignment of a House or Senate bill number.

(2) Designation and Number

The blank preceding the words "BILL NO." is used to identify the bill as a House or Senate bill, and the blank following will contain the number of the bill, which will be filled in when the bill is introduced.

(3) Sponsor Line

The second line of a bill is used to identify the sponsor. The sponsor signs the bill prior to introduction. If there is more than one sponsor, the chief sponsor signs first.

(4) By Request Line

Bills formally proposed by an agency or committee are subject to specific rules regarding preintroduction deadlines. Joint Rule 40-40 provides that if a bill is proposed by a legislative committee or is introduced by request of a state agency, that fact must be indicated by inserting "By Request of the _____" after the names of the sponsors. Because the "By Request" line gives the public notice that the bill was proposed and introduced on behalf of an agency or committee, it may not be removed from a bill.

62nd Legislature

LC 0001.01

_____BILL NO._____

INTRODUCED BY _____

BY REQUEST OF THE _____

4-4. Title

(1) General

The title identifies the bill to the legislators and the public and must clearly summarize the contents of the bill. The drafter should be familiar with the substantial body of case law that has developed over defects in titles.

Article V, section 11(3), of the Montana Constitution provides:

Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

The main purpose of the constitutional provision is to ensure that the title of a bill gives reasonable notice of the content to legislators

and the public. It also prevents multisubject legislation from being passed by the combined votes of the advocates of separate measures when no single measure could be passed on its own merits. The Montana Supreme Court has interpreted this provision to require a clause in the title to reflect an issue that would be considered important by legislators voting on the bill. *White v. State*, 233 M 81, 759 P2d 971 (1988).

Title challenges under this section of the Constitution may be brought on the grounds that the title or the body of the bill indicates that the bill contains more than one subject or that the title does not clearly express the subject of the bill, or both.

The Montana Supreme Court has considered the question of sufficiency of title numerous times. In order to more fully comprehend title drafting problems, the drafter should read the cases cited in this section or at least review the case notes and Attorney General's opinions contained in the MCA Annotations to Article V, section 11, of the Montana Constitution. Under the 1972 Constitution, if a law is challenged as having a defective title, the action must be brought within 2 years after the effective date of the law.

The following statement from the 1962 Bill Drafting Manual still holds true today:

A comparison of legislative acts passed through the years shows an evolution from simple, concise one-sentence titles used during early legislative [sic] sessions to the drawn-out detailed and sometimes incomprehensible titles of today. The inclusion of excessive detail in a title often obscures the primary purpose of the bill; it also compounds the opportunity for error.

If a title is too lengthy, it becomes more difficult for the amendment drafter to find and remove provisions that correspond to language being removed from the bill by amendment.

(2) Exceptions to Sufficiency of Title Provision

As stated in Article V, section 11(3), of the Montana Constitution, general appropriation bills and bills for the codification and general revision of the laws are exempt from the unity of subject and clear expression of subject rules.

(3) General Appropriation Bills

In order to fall within the exception referred to in subsection (2), an appropriation bill must be a general appropriation bill; that is, it may embrace nothing but appropriations for "the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools". (See Article V, section 11(4), of the Montana Constitution and section 17-8-103(2), MCA.) Further, an incidental provision in an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Supreme Court has held that provisions relating to the expenditure of the money appropriated or its accounting may be included in an appropriation bill without being mentioned in the title (*State ex rel. Davidson v. Ford*, 115 M 165, 171, 141 P2d 373 (1943)). However, in *Helena v. Omholt*, 155 M 212, 468 P2d 764 (1970), the Supreme Court stated that "appropriation bills should not be held to amend substantive statutes by implication. . . . Such tactics are recognized as exceedingly bad legislative practice." (The appropriation bill in question contained a section that was irreconcilable with an existing statute, and the lower court had held that the appropriation measure, being a later bill, impliedly repealed the earlier statute.) The Attorney General relied on *Helena v. Omholt* in finding that a provision in the 1981 general appropriations act should not be given effect because it was in conflict with a permanent substantive statute. Therefore, provisions other than actual appropriations should be included in a general appropriation bill only if they are germane to expenditures or accounting and consistent with permanent substantive law.

See section 6-1 for additional information on appropriation bills.

(4) General Revision

In *State ex rel. Cotter v. District Court*, 49 M 146, 150, 140 P 732 (1914), the Supreme Court stated that a bill whose plain purpose was to revise the laws on a particular subject, as well as an omnibus revision bill covering many subjects, is within the revision exception.

In the past, the Supreme Court has found that certain bills come within the general revision exception although the titles do not specifically designate the bills as such. To date, the Supreme Court has always found a bill within the exception when the title indicated that the bill was a general revision.

If a bill is intended to be a general revision, the title should so state.

example "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC SCHOOLS; AMENDING"

The drafter may wish to advise the requester that a bill that generally revises the law may be expanded to address numerous other matters (some of which may not be supported by the original requester) through later amendments in either the House or Senate.

(5) Including List of Amended or Repealed Sections

There is diversity of opinion as to whether reference by number only to an MCA section to be amended or repealed is sufficient in a title. Therefore, the number of each section to be amended or repealed and an indication of the subject matter of the amendment or repeal must be included in the title. "Reference in the title of the amendatory Act to the subject matter of the section to be amended need not be so comprehensive as to constitute a complete index to or abstract of the section. 'All that is required in such case is a reasonable degree of certainty as to the statute to be amended.'" (See *State v. Duncan*, 74 M 428, 437, 240 P 978 (1925).)

Therefore, the title of a bill should both indicate the general purpose of the amendment and list the MCA sections being amended or repealed. The section numbers must be listed in numerical order.

example "AN ACT AMENDING THE LAWS RELATING TO THE SALE OF LANDS FOR TAXES BY COUNTY TREASURERS; ELIMINATING CERTAIN REQUIREMENTS; AMENDING SECTIONS 7-1-101 AND 7-1-102, MCA; AND REPEALING SECTIONS 7-1-109 AND 7-1-110, MCA."

If the only purpose of a bill is to repeal one or more sections, the title must indicate the subject matter and list the section numbers.

example "AN ACT DELETING THE DEFINITION OF "REGISTERED MAIL"; AND REPEALING SECTION 1-1-202, MCA."

(6) Including Appropriations

In *Hill v. Rae*, 52 M 378, 158 P 826 (1916), the Supreme Court held that when an appropriation is incidental to the larger single subject of legislation, it need not be made by separate bill. In order

to facilitate legislative handling of appropriations, it is necessary to mention the appropriation in the title by including the provision "PROVIDING AN APPROPRIATION". If a bill contains a statutory appropriation (which must reference and be listed in section 17-7-502, MCA), that fact must also be mentioned in the title by including the provision "PROVIDING A STATUTORY APPROPRIATION".

(7) Including Provision Regarding Creation of State Debt

When a bill creates a state debt, that fact must be stated in the title. (See Appendix P for an example.)

When the state pledges its full faith and credit and taxing power to the payment of bonds, a "debt" is created and the enacting legislation must be approved by either a two-thirds vote of the members of each house of the Legislature or a majority of the electors voting on the issue. General obligation bonds always constitute debt. When the state issues "revenue bonds" for which the principal and interest are payable from revenue derived from the project created by the bond proceeds, those bonds do not constitute "debt" and may be approved by a majority of the Legislature. It is unresolved whether the Legislature may by a majority vote issue revenue bonds for which the principal and interest are payable from revenue derived from a specific tax dedicated to a specific fund and that are statutorily required to contain a statement that they do not constitute a debt within the meaning of Article VIII, section 8, of the Montana Constitution. Other authorizations, such as a long-term lease with an option to purchase, have been held to constitute debt. The drafter should research the issue thoroughly and include appropriate language intended to give notice in the title.

(8) Including Provision When Unfunded Mandate Superseded

When a bill contains a section that specifies that the provisions of the bill expressly supersede and modify the requirements of sections 1-2-112 through 1-2-116, MCA, which require the Legislature to provide funding for any new duties imposed on local governments or school districts, there must be a provision in the title that states "SUPERSEDING THE UNFUNDED MANDATE LAWS". (See section 6-2 and Appendix P.)

(9) Including Provision Regarding Rulemaking Authority

If the bill establishes new rulemaking authority or if it expands the rulemaking authority of an Executive Branch entity, a provision must be added to the title that states "PROVIDING RULEMAKING AUTHORITY". (See section 6-3 regarding bills granting rulemaking authority.)

(10) Including Effective Dates, Applicability Dates, and Termination Dates

It is necessary to include effective dates, other than October 1, in the title.

examples PROVIDING AN EFFECTIVE DATE
 PROVIDING EFFECTIVE DATES
 PROVIDING AN IMMEDIATE EFFECTIVE DATE
 PROVIDING A DELAYED EFFECTIVE DATE
 PROVIDING A CONTINGENT EFFECTIVE DATE

If a specific effective date is not provided, an appropriation law becomes effective on July 1 following passage and approval. A statute providing for the taxation or imposition of a fee on motor vehicles becomes effective on January 1 following passage and approval unless a different effective date is specified. All other statutes take effect on October 1. Delayed and contingent effective dates should be used only in extraordinary circumstances.

In addition to listing an effective date or dates in the title, the drafter must also include title provisions relating to applicability dates and termination dates.

examples PROVIDING AN APPLICABILITY DATE
 PROVIDING A TERMINATION DATE

(11) Short Bill Title

One of the main ways to identify a bill, in addition to the bill number itself, is the short bill title. The short bill title is limited to a length of 80 characters (letters, hyphens, and spaces between words). The short bill title accompanies the bill number when information about the bill is displayed as part of the LAWS (Legislative Automated Workflow System) Internet application.

For example, the short bill title accompanies the bill number when bills are listed on the Senate and House agendas, on the committee

hearing schedules listed on the legislative website, and on the daily status reports.

The short bill title is originally written by the person assigning the bill draft requests when a bill draft request is first entered on the online LAWS system. When the assigned drafter completes an initial bill draft and uses a macro to transmit it electronically, the drafter may choose to update the information on the LAWS system by entering a revised short bill title.

The short bill title may be updated at various times as the bill moves through the legislative process, but it must be revised by the amendment drafter if amendments change the title of the bill significantly. The drafter of the amendments receives a prompt to consider revising the short title when adopted committee amendments are transmitted electronically ("beamed up") to the amendments coordinator. This prompt will not appear when floor amendments are beamed up because they have not yet been voted upon.

The short bill title typically begins with an active verb, such as "Revise", "Establish", "Provide", "Allow", "Remove", "Extend", etc., or with a qualifying adverb, such as "Generally Revise". It may include abbreviations. The short bill title does not include the formal bill title introduction ("A BILL FOR AN ACT ENTITLED: "AN ACT . . .") or a listing of the sections amended or repealed.

4-5. Preamble

The preamble, which is optional, follows the title and precedes the enacting clause. Because of its placement, it is not part of the text of the act and does not become a part of the law. It is a preliminary statement of the reasons for the enactment of the law and begins with the word "WHEREAS". A preamble may be used as an extrinsic aid in construing a law. (See Appendix B for an example.)

example

WHEREAS, in *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983), the United States Supreme Court held that due process requires that persons under official detention have a constitutional right to receive adequate medical care regardless of their ability to pay and further held that responsibility for costs is a matter of state law.

4-6. Enacting Clause

The enacting clause, which is prescribed by law, separates the identification portion of the bill from the body of the bill.

example BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4-7. Short Title

A section creating a short title for a significant new area of law is suitable if an act creates new law in a definable area. A short title enables quick future identification. Do not include a year in the short title.

Although short title sections have increased in popularity among legislators, it may not be advisable to codify that language, particularly if the bill contains amendments to multiple areas of existing law. The drafter should consult the Code Commissioner to determine if a short title section should be excluded from the codification instruction in a bill.

example NEW SECTION. **Section 1. Short title.** [Sections 1 through 17] may be cited as the "Reclamation and Development Grants Program Act".

4-8. Purpose Section

Courts have relied on purpose sections to construe unclear and ambiguous language. Of course, clear and unambiguous language is always preferable to reliance on a purpose section. A well-drafted act should not require an extraneous statement to recite reasons for its enactment or what it seeks to accomplish. However, occasionally it is necessary to express the reason prompting enactment or the policy or purpose of an act. A good example is when the statute imposes a burden on a particular class of persons, thus requiring at least a rational basis for treating them differently from other persons. In *Oberg v. Billings*, 207 M 277, 674 P2d 494 (1983), the Montana Supreme Court stated that "While the courts are seldom concerned with the wisdom of legislation, the purpose of the legislation is of vital concern where the constitutionality of a statute is challenged as a denial of equal protection." If a purpose section is preferred to a preamble, it becomes a part of the law. The purpose should be stated concisely in a section at the beginning of the bill following the enacting clause (or following the short title section, if there is one).

4-9. Definitions

(1) To avoid repetition and to ensure clarity, a well-drafted bill often contains a definition section that precedes the basic provisions of the bill. A definition section is of definite advantage to:

(a) define a general term in order to avoid its frequent repetition, such as ""Employee deductions" means all authorized deductions made from the salary and wages of an officer or employee of a state agency.";

(b) avoid repeating the full title of an officer or of an agency, such as ""Board" means the board of environmental review.";

(c) give an exact meaning to a word that has several dictionary meanings;

(d) define a technical word that has no popular meaning in commonly understood language; and

(e) limit the meaning of a term that, if not defined, would have a broader meaning than intended.

(2) (a) Do not define a word if it is used in the sense of its ordinary dictionary meaning.

(b) Certain words are defined in Title 1, chapter 1, MCA. If a word is used in the same sense as it is defined in that chapter, it is unnecessary to define it again in a bill. There are also definition sections that apply to entire titles, such as section 45-2-101, MCA (Criminal Code), or to several chapters, such as section 72-1-103, MCA (Probate Code).

(c) Section 1-2-107, MCA, provides: "Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears." The courts have held that standard introductory language, such as "as used in this part", indicates a contrary intention.

(3) Definitions must be arranged alphabetically.

(4) Do not include substantive provisions in definition sections.

(5) After a word is defined, use the defined word, not the description or a synonym.

(6) If there are definitions already in the MCA that the drafter wants to apply to the bill, draft language such as "mental disorder, as defined in 53-21-102". Don't refer to the subsection in which the definition is contained, such as "53-21-102(9)", because definition sections are always in alphabetical order and subsection numbers are often affected by amendment. If appropriate, draft a codification instruction incorporating the new act into the title, chapter, or part

of the MCA where the definitions are already contained. Do not repeat the definitions. (See section 4-19.)

(7) Do not define a word that is never used in the bill.

example NEW SECTION. Section 3. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means an individual, association, partnership, corporation, or estate or any other entity.

4-10. Organization of Provisions

A bill that only amends or repeals existing laws may not present any organizational problem. Sections of the MCA are always amended in the bill in numerical order. However, an act that creates a new body of law must be thoughtfully organized.

(1) One Main Provision

Most new legislation is concerned with just one main idea. Generally, the substantive provisions of an act (section 4 in the example below) will be followed by subordinate provisions, including the authority to administer it and the means to make it effective (sections 5 and 6 in the example below).

example NEW SECTION. Section 4. Registration of tramways required. A passenger tramway may not be operated in this state unless it is registered with the board. . . .

NEW SECTION. Section 5. Powers and duties of board. The board shall:

(1) adopt rules to implement the provisions of [sections 1 through 12];

(2) hold hearings relating to the granting, suspension, or revocation of the registration; and

(3) grant registration and issue registration certificates to applicants who have complied with

[sections 1 through 12] and rules adopted under [sections 1 through 12].

NEW SECTION. Section 6. Remedies to enforce compliance. If an operator fails to comply with an order or rule of the board, the board may:

- (1) suspend or revoke the registration of the tramway;
- (2) bring injunctive proceedings

Do not include unnecessary procedural provisions that are already contained in the Montana Administrative Procedure Act or court rules. Authorization for the adoption of procedural provisions may be delegated through rulemaking authority.

(2) Several Related Main Provisions

Each main provision with its related subordinate provisions should be separate from the other main provisions and drafted in detail as if it constituted the entire bill.

(3) Series of Related and Equal Provisions

Bills containing equal provisions relating to a common subject are arranged in a logical order. A bill may address the same provisions as they relate to several state agencies. In this case, the new material should be organized so that the sections that apply to a particular agency appear adjacent to one another in the bill.

4-11. New Sections — Catchlines

Sections creating new law in an area not covered by present statutes are referred to as "new sections". The basic provisions of a new law should be divided into sections, each of which contains one idea or thought.

Each section must begin with a boldfaced caption or "catchline". With the exception of the Uniform Commercial Code, catchlines are not part of the law. (See sections 1-11-103 and 30-1-109, MCA.) The catchline should be as brief as possible and clearly show what the section topic is. If the drafter feels that the catchline must be quite long to cover the meaning of the section, the content of the section itself is probably too broad. If more than one thought is set forth in a catchline, each thought is separated by a dash (—). The catchline should not be a complete sentence.

Amendments to an existing section of the MCA may not strike all of the substantive language in the section and replace it with new language. This procedure has the effect of repealing existing law and enacting new law and is not acceptable.

The Joint Rules also provide: "A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length." (See Joint Rule 40-80.) The question of whether a subsection may be amended without setting out the entire parent section at length has never been adjudicated in Montana. (Ease of amendment is just one more reason for dividing new law into short, concise sections.) The computerized updating of the MCA database requires that an entire section be amended, not just a subsection. As noted earlier, all bills that are not prepared by the Legislative Services Division staff must be reviewed by the staff and entered on the automated bill drafting system before introduction.

If it is necessary to amend the Session Laws, the drafter must refer to the session law chapter number. (See Appendix E for examples of bills amending the Session Laws.)

4-13. Designating New Sections

Any section that does not amend the MCA, Session Laws, the Constitution, or Administrative Rules of Montana must be designated "NEW SECTION". (See section 5-7 regarding amendment of Administrative Rules of Montana.) This designation includes noncodified housekeeping sections, such as repealers and effective dates, and sections in bills containing all new language. Section 4-2 contains a list of noncodified sections and shows the order in which they must appear in a bill.

4-14. Name Change Amendments

When a name change is made in a bill, the drafter must search the MCA for that term. (See Appendix S.) Each section that contains an occurrence of the term must be amended in the bill to reflect the name change.

In addition, a section must be included in the bill that directs the Code Commissioner to make the name change wherever a reference to the term appears in legislation that is enacted or amended by the 2011 Legislature.

example NEW SECTION. Section 10. Name change —
directions to code commissioner. Wherever a

reference to a county welfare office appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change it to a reference to a local office of public assistance.

4-15. Outline Style

There is no rule fixing the length of a section. Generally, a section should include only a single idea. The shorter the section, the more quickly it may be understood and the easier it is to amend if amendment is needed. Each paragraph in a bill must be given a subsection designation. Although a large amount of text in a single subsection that contains numerous ideas is difficult for the reader to comprehend and should be outlined or broken into separate subsections, outlining can be overused and may make further amendment of the section text more difficult and references elsewhere in the law more complex. Outline order for subsections is as follows:

- (1) If (1) is used, there must be a (2).
- (2)
- (3)
- (a) If (a) is used, there must be a (b).
- (b)
- (c)
- (i) If (i) is used, there must be a (ii).
- (ii)
- (iii)
- (A) If (A) is used, there must be a (B).
- (B)
- (C)
- (I) If (I) is used, there must be a (II).
- (II)
- (III)
- (4)

Only the second-to-last item of a series may have an "and" or an "or" (e.g., (a), (b), or (c)).

Sections or subsections are indented except when the (1) follows the catchline. If there is a lead-in phrase or sentence that ends with a colon and is followed by a (1), that (1) is indented.

example **15-2-101. Duties of board.** (1) The board shall adopt rules relating to public safety
 (2) The board shall hold hearings

example **15-2-101. Duties of board.** The board, under the provisions of 15-2-102, shall:
 (1) adopt rules relating to public safety;
 (2) hold hearings . . . ; and
 (3) arrange all meetings

When a complete sentence follows a dependent clause within a subsection, the dependent clause and the sentence end with periods.

example **2-7-506. Duties of department.** The department shall adopt rules governing the:
 (1) criteria for the selection of the independent auditor;
 (2) procedures and qualifications for placing applicants on the roster;
 (3) procedures for reviewing the qualifications of independent auditors on the roster. **The review must be used to justify continued inclusion on the roster.**
 (4) fees payable to the department for application for placement on the roster.

Note that when a sentence is added to the next-to-last outline designation, the coordinating conjunction ("and" or "or") is lost. The drafter may wish to insert language in the lead-in to specify that "any" or "all" of the following outline designations apply or may wish to reorder the outline designations to keep the coordinating conjunction.

If language preceding a colon is a complete thought and each of the numbered (and indented) subsections can stand alone, the first letter is capitalized and the sentence ends with a period. Otherwise, the first letter is in lowercase and the sentence ends with a semicolon.

example **17-1-1701. Definitions.** As used in this part, the following definitions apply:

(1) "Bonds" includes all instruments representing indebtedness, the borrowing of money, or a charge on specific revenue.

(2) "Public body" means any political or governmental subdivision of the state.

example

17-1-1702. Budget amendment. (1) An approved budget amendment is an approval by the budget director of a request submitted through the budget division to:

- (a) obtain financing . . . ;
- (b) transfer excess funds . . . ; or
- (c) increase the appropriation as provided in subsection (2)

If possible, include all identical language in the section in the lead-in phrase before the colon. Do not repeat it in each subsection.

avoid

17-7-201. Definitions. As used in this part, the following definitions apply:

- (1) "Building" includes a:
 - (a) **facility or structure** constructed or purchased wholly or in part with state money;
 - (b) **facility or structure** at a state institution; or
 - (c) **facility or structure** owned or to be owned by a state agency, including the department of transportation.
- (2) The term does not include a:
 - (a) **facility or structure** owned or to be owned by a county, city, town, school district, or special improvement district; or
 - (b) **facility or structure** used as a component part of a highway or water conservation project.
- (3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

preferred

17-7-201. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Building" includes a **facility or structure**:

- (i) constructed or purchased wholly or in part with state money;
 - (ii) at a state institution; or
 - (iii) owned or to be owned by a state agency, including the department of transportation.
- (b) The term does not include a facility or structure:
- (i) owned or to be owned by a county, city, town, school district, or special improvement district; or
 - (ii) used as a component part of a highway or water conservation project.
- (2) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

4-16. Penalty

If a violation of an act is to result in a penalty, a separate section may be devoted to setting forth the penalty. The wording of this section is patterned after that used in the Montana Criminal Code of 1973. Consequently, penalty language uses the words "shall be", which is an exception to the "shall/must" rule stated in section 2-4.

example

NEW SECTION. Section 8. Penalty. A person convicted of violating 1-1-101 **is** guilty of a misdemeanor and **shall be** fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

4-17. Repealer

It may be necessary to repeal one or more statutes that conflict with a new act. Each statute to be repealed must be listed separately. If an entire chapter or part is to be repealed, list the sections separately but do not include reserved sections.

A statement that "all acts or parts of acts in conflict herewith are repealed" is improper and ineffective.

Whenever a bill repealing a section is drafted, the same bill must amend any other section in the MCA containing a reference to the section being repealed. (See section 1-8.)

example

NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are repealed: 2-2-101. Statement of purpose.

- 2-2-102. Definitions.
- 2-2-103. Public trust -- public duty.
- 2-2-104. Ethical requirements for public officers and public employees.
- 5-16-101. Appointment and composition.
- 5-16-102. Qualifications.
- 5-16-103. Term of office.
- 5-16-104. Vacancies.

A section of Session Law, such as a termination section, from a previous session may also be repealed. For example, if substantive law was to terminate after a certain period of time, the law can be made permanent by repealing the termination section of the act. The Session Law must be amended because termination sections (and other housekeeping and appropriation sections) are not codified and assigned section numbers in the MCA.

If both MCA sections and Session Law sections are being repealed in the same bill, there must be two separate repealer sections.

When more than one section of the same Session Law chapter is repealed, the section numbers must be listed individually rather than referring to "sections 4 through 7" in order to support certain search functions in the LAWS status system.

example NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are repealed:

- 2-2-101. Statement of purpose.
- 2-2-102. Definitions.
- 2-2-103. Public trust -- public duty.
- 15-24-1101. Federal property held under contract by private person subject to taxation.

NEW SECTION. Section 9. Repealer. Sections 4, 5, 6, and 7, Chapter 568, Laws of 2003, are repealed.

If a bill repeals a termination provision, the "garbage", i.e., the parenthetical material at the beginning and end of any affected section, must be stricken. If the section has two versions, the "garbage" is stricken from the temporary version and the second version is stricken in its entirety to reflect the repeal of the termination provision. If an affected section is contained in the bill

for purposes of some other amendment, these changes are made in the bill. If the section is not in the bill, these changes are made to the section during the codification process.

Changes to unamended sections that are necessitated by the repeal of the termination section must be listed by the drafter on a "Message to Codifier" form ("strawberry sheet") for use during codification. (See Appendix Q.)

example **15-1-230. (Temporary) Report on income tax credit to committee.** The department shall report to the revenue and transportation interim committee at least ~~once~~ twice each year on the number and type of taxpayers claiming the credit under 15-30-2328, the total amount of the credit recaptured, and the department's cost associated with administering the credit. (~~Terminates December 31, 2013—sec. 7, Ch. 4, L. 2005; secs. 2, 3, 4, Ch. 208, L. 2007.~~)

4-18. Transition

A transition section sets out provisions for the orderly implementation of legislation. A transition section can help avoid problems that may result from an abrupt change in law. A transition section usually has a continuing effect for a temporary period of time. A transition section is not codified.

example NEW SECTION. Section 10. Transition. For property tax purposes, mill levies imposed in 2010 on bentonite production occurring in tax year 2009 for fiscal year 2011 are generally payable in November 2010 and May 2011.

example NEW SECTION. Section 10. Transition. A local government that is imposing impact fees adopted on or before [the effective date of this act] shall bring those fees into compliance with [this act] by October 1, 2010.

4-19. Placement and Applicability — Codification Instruction **— Directions to Code Commissioner**

(1) Placement

The drafter may not assign section numbers to new sections or assign specific section numbers when renumbering existing MCA sections because of the possibility of the same number being assigned to more than one section and because logical placement cannot be determined until all of the legislation passed during a session is studied as a whole. However, the drafter may propose placement of the new law and express this intent by attaching a "Message to Codifier" form ("strawberry sheet") to the bill draft. (See Appendix Q.)

(2) Applicability of Existing Law

Often it is not enough merely to suggest where a section should be codified. In most instances, it is vital that the drafter express the intent to apply present law to the new law. Present law may be incorporated by reference into a bill by use of a codification instruction. A codification instruction ensures that definitions, penalties, and other provisions in the existing title, chapter, or part will apply to the section being codified there.

(3) Codification Instruction

A codification instruction is used to avoid repeating definitions, rulemaking authority, penalties, other substantive law, etc., and to ensure that an established body of law with its previously construed terms will apply to new law.

Whenever a bill contains new sections, a codification instruction must be included in the draft or, in the case of an entirely new body of law (to be codified as a new title, chapter, or part), a "Message to Codifier" form ("strawberry sheet") must be attached, whichever is appropriate. The standard codification instruction must be used in its entirety.

example

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 6, part 7, and the provisions of Title 2, chapter 6, part 7, apply to [sections 1 through 5].

In rare instances, directions to the Code Commissioner may also be used to effect renumbering and reintegrating of MCA sections into a different title, chapter, or part of the MCA. If a section is being renumbered, the drafter must ensure that the language in that section conforms to the language of the existing statutes in the new location. If it does not conform, the section being renumbered must be amended in the bill in order to ensure conformance.

example NEW SECTION. Section 13. Directions to code commissioner. Sections 20-25-901, 20-25-902, and 20-25-903 are intended to be renumbered and codified as an integral part of Title 19, chapter 4.

4-20. Coordination Instruction

Frequently, the Legislature considers two or more bills that conflict with each other or that must be coordinated in order to allow implementation of the bills. A coordination instruction is drafted as an amendment to one of the affected bills after the bills have been transmitted to the second chamber. To determine whether there is a bill that conflicts with another bill, a committee staffer must perform a "conflict check" on the bills being heard in that staffer's committee by consulting the status report on Code Sections Affected after the transmittal deadline for the affected bills. The Code Sections Affected report contains a list, in numerical order, of all MCA sections proposed for amendment and the bills amending them and is available through the LAWS system. Assuming that other means are not available to resolve conflicts (e.g., negotiation between the sponsor and the sponsor of the other bill), a coordination instruction may be necessary. A typical coordination instruction will void or amend the conflicting provision if the other bill or bills are passed and approved with the troublesome provisions intact.

example COORDINATION SECTION. Section 14. Coordination instruction. If House Bill No. 645 is passed and approved and if it includes a section that amends 1-1-101, then [section 1 of this act], amending 1-1-101, is void.

If a conflict requires the amendment or inclusion of more than one section, each amended MCA section or new section must be contained in a **separate coordination section** in a bill.

example

COORDINATION SECTION. **Section 14. Coordination instruction.** If either House Bill No. 294 or Senate Bill No. 284, or both, and [this act] are passed and approved and if either or both contain a section that amends 19-8-502, then the sections amending 19-8-502 are void and 19-8-502 must be amended as follows:

"**19-8-502. Member's contribution.** (1)"

COORDINATION SECTION. **Section 15. Coordination instruction.** If either House Bill No. 294 or Senate Bill No. 284, or both, and [this act] are passed and approved and if either or both contain a section that amends 19-8-504, then the sections amending 19-8-504 are void and 19-8-504 must be amended as follows:

"**19-8-504. State employer's contribution.** Each month"

COORDINATION SECTION. **Section 16. Coordination instruction.** If either House Bill No. 294 or Senate Bill No. 284, or both, and [this act] are passed and approved, then [section 5 of this act] must read as follows:

"NEW SECTION. **Section 5. Payment of contributions.** The board shall prescribe"

4-21. Saving Clause

Because it is presumed that changes in the law are in full force beginning on the effective date of the act, new laws could disrupt transactions already in progress. The saving clause preserves rights and duties that already have matured or proceedings already begun.

example

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

If a criminal statute is repealed, unless the act itself contains language to the contrary, section 1-2-205, MCA, applies. It provides

that the repeal of a law creating a crime does not bar prosecution of or punishment for an act already committed in violation of that law.

Another method of preserving rights and duties that have matured, particularly with regard to licensure, is to choose a date upon which the persons governed by the act must comply with its operative provision.

example NEW SECTION. **Section 15. Grandfather clause.** The board shall grant a license to practice respiratory care without examination or completion of the requisite educational program to a person who has been performing respiratory care in this state for at least 1 year on [the effective date of this section].

4-22. Severability Section

If a statute is found to be unconstitutional or invalid in part, the court must decide if the invalid portion is severable from the valid portion and looks to legislative intent. The Montana Supreme Court has held that inclusion of a severability clause in a bill creates a presumption that the valid portions of a bill would have been enacted without the invalid portions (*Bacus v. Lake County*, 138 M 69, 354 P2d 1056, 1083 (1960), and *Sheehy v. Public Employees Retirement Division.*, 262 M 129, 864 P2d 762 (1993)) and thus only the invalid portions are voidable. See, however, *White v. State*, 233 M 81, 759 P2d 971 (1988), and Judge Rapkoch's dissent in *Sheehy*. The Montana Supreme Court has also held, in apparent contradiction to Judge Rapkoch's dissent in *Sheehy*, that there is a presumption that the Legislature intended all severable portions of an act to be upheld, regardless of whether an express severability clause appears in the act. *Gullickson v. Mitchell*, 113 M 359, 375, 126 P2d 1106 (1942). Therefore, there is probably no reason to include a severability clause in every bill, but one may be included if the drafter has particularized concerns. Severability clauses are not codified but are published in the Annotations.

example NEW SECTION. **Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid

applications that are severable from the invalid applications.

4-23. Nonseverability Section

In the rare instance that the sponsor intends that the entire act should fail if one of the provisions is declared unconstitutional, a nonseverability clause may be added.

example NEW SECTION. Section 16. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

4-24. Extraordinary Vote Provision

Certain types of bills require extraordinary votes for approval. (See section 5-6.)

example NEW SECTION. Section 17. Two-thirds vote required. Because [section 2] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

4-25. Applicability Date

Do not confuse an applicability date with an effective date. A bill may become effective on passage and approval or on October 1 but apply retroactively or prospectively. To apply retroactively, a law must expressly state that fact (section 1-2-109, MCA). However, see Article II, section 31, of the Montana Constitution for types of law that may not be retroactive.

example NEW SECTION. Section 18. Retroactive applicability. [Sections 1 through 5 and 7 through 9] apply retroactively, within the meaning of 1-2-109, to all occurrences on or after December 1, 2010.

example NEW SECTION. Section 18. Applicability. [This act] applies to tax years beginning after December 31, 2011.

example NEW SECTION. Section 18. Applicability. [This act] applies to contracts or policies issued or renewed on or after January 1, 2012.

4-26. Effective Date

Section 1-2-201(1), MCA, provides:

(1) (a) Except as provided in subsection (1)(b), (1)(c), or (1)(d), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

Passage and approval means the time that a measure either is signed by the Governor or becomes law automatically if not signed within the prescribed time. An effective date should not be included in a bill unless the sponsor wants to delay the effective date (which should be done only in extraordinary circumstances), there is a reason requiring an early effective date, the bill has fiscal impact necessitating a July 1 effective date (see section 6-1), the bill taxes motor vehicles, or the bill is drafted for a special session. An effective date before October 1 may deprive the general public of sufficient notice and deprive administrators of the act of sufficient time to

prepare procedures for the new act. (See also section 13-27-105, MCA, for the effective date of a referendum.)

example NEW SECTION. **Section 19. Effective date.**
[This act] is effective January 1, 2012. (delayed)

example NEW SECTION. **Section 19. Effective date.**
[This act] is effective on passage and approval.
(immediate)

example NEW SECTION. **Section 19. Effective date.**
[This act] is effective July 1, 2011. (early)

Occasionally, it is desirable to make only a portion of the act effective before October 1. In such a case, it is essential to make sure that the effective date section is itself made effective on the earlier date. An effective date section that does not become effective until October 1 cannot operate until October 1 and therefore cannot make other provisions of the act effective before October 1.

preferred NEW SECTION. **Section 19. Effective dates.** (1)
Except as provided in subsection (2), [this act] is effective October 1, 2011.
(2) [Sections 3, 5, and 7] and this section are effective on passage and approval.

avoid NEW SECTION. **Section 19. Effective dates.** (1)
Except as provided in subsection (2), [this act] is effective October 1, 2011.
(2) [Sections 3, 5, and 7] are effective on passage and approval.

Whenever amendments are made to a section that has an existing contingent effective date or delayed effective date, the amendments to that section must have the same effective date as the section, i.e., the amendments cannot become effective before the section itself is effective.

Whenever there is more than one effective date, the effective date section must specify effective dates for all sections in the bill, including October 1, and the title must specify "AND PROVIDING EFFECTIVE DATES".

4-27. Termination

If substantive law in a bill is to terminate after a certain period of time, termination is accomplished by use of a termination section.* The sections of the bill that are to terminate are listed in the termination section. Noncodified sections should not be terminated. A repealer section may not be terminated, i.e., once MCA sections are repealed, they may not be "unrepealed". (See section 4-2 for a listing of codified and noncodified sections.)

example NEW SECTION. **Section 20. Termination.**
[Sections 1 through 16] terminate June 30, 2012.

As the example above shows, sections terminating at the end of a fiscal year should terminate on June 30, not July 1. Sections terminating at the end of a calendar year should terminate on December 31, not January 1.

If substantive law in a bill is to terminate after some other requirement takes place, termination is accomplished by use of a contingent termination section. Termination and contingent termination dates should be used only in extraordinary circumstances.

example NEW SECTION. **Section 20. Contingent termination.** (1) [Sections 1 through 16] terminate on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.
(2) The governor shall transmit a copy of the certification to the code commissioner.

Whenever amendments are made to a section that has a termination date, the amendments to that section must have the same termination date as the section.

SPECIAL TYPES OF BILLS

5-1. Validating Bills

A validating bill is used to cure any irregularities in actions, proceedings, or transactions carried out under authority of existing law. A bond validating act is passed each session by the Montana Legislature. This type of bill may be used to validate other types of actions (such as approval of plats, distribution of revenue according to a prior census, petitions for creation of districts, etc.) as long as it does not impair the obligation of contracts or disturb a vested right. (See Appendix G for a sample validating act.)

5-2. Interstate Compacts

An interstate compact is an agreement among several states that is enacted into law in each participating state. A compact must be enacted in substantially the same form in each party state. For example, the drafter may inspect the various interstate compacts adopted by Montana, such as the Interstate Library Compact (section 22-1-601, MCA), Interstate Compact on Juveniles (section 41-6-101, MCA), Interstate Compact on Mental Health (section 53-22-101, MCA), and Driver License Compact (section 61-5-401, MCA).

5-3. Uniform or Model Acts

(1) Uniform acts are developed by the National Conference of Commissioners on Uniform State Laws and are intended to be followed exactly in substance. The purpose of a uniform act is to cover an area of law by a method that will avoid conflicts among the laws of different states. An example is the Uniform Interstate Family Support Act, Title 40, chapter 5, part 1, MCA.

(2) Model or "suggested" acts are prepared by the committee on suggested state legislation of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. A model act is essentially a suggested method for handling a given area of law by providing guidelines within which a state may substitute sections to accommodate local peculiarities. An example is the Montana Business Corporation Act, Title 35, chapter 1, MCA. Copies of the publication *Suggested State Legislation* by the Council of State Governments are available in the Legislative Reference Center.

(3) The substance of uniform acts may not be modified except to conform to MCA style. Model acts may be modified, and they must

be edited to conform to MCA style. A note indicating the source should be attached to the bill draft.

5-4. Constitutional Amendments

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by legislative referendum. The proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people. Article VI, section 10, provides that bills proposing amendments to the Montana Constitution need not be submitted to the Governor for the Governor's signature. Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment becomes effective on July 1 following certification of the election returns. (See Appendix H for sample formats.)

5-5. Referendums

Article III, section 5, of the Montana Constitution provides that the people may approve or reject by referendum any act of the Legislature except an appropriation of money. The Legislature may order a proposed law to be voted upon by the people, or the people may petition to vote on a law enacted by the Legislature during the immediately preceding session. An "act" does not include a joint resolution ratifying an amendment to the United States Constitution (*State ex rel. Hatch v. Murray*, 165 M 90, 526 P2d 1369 (1974)).

When the Legislature refers an act or a proposed constitutional amendment to the people, the Secretary of State transmits a copy of the act or proposed constitutional amendment to the Attorney General (section 13-27-209, MCA). Section 13-27-312, MCA, requires the Attorney General to examine the proposed ballot issue for legal sufficiency. If the Attorney General determines that the proposed ballot issue is legally sufficient, the Attorney General, pursuant to section 13-27-315, MCA, prepares and forwards ballot statements to the Secretary of State. However, the Attorney General may not prepare statements of implication if the statements were provided by the Legislature. The drafter should become acquainted with Title 13, chapter 27, MCA, Ballot Issues.

See Appendix I for a sample format of a bill for a referendum.

5-6. Bills Requiring Extraordinary Votes

Certain types of bills require extraordinary votes in order to become effective. Examples of bills requiring extraordinary votes are:

(1) a bill to grant to a public entity immunity from suit — two-thirds of each house, Art. II, sec. 18;

(2) a vetoed bill — two-thirds of each house to override, Art. VI, sec. 10;

(3) a bill to appropriate highway revenue for nonhighway purposes — three-fifths of each house, Art. VIII, sec. 6;

(4) a bill creating state debt — two-thirds of each house, Art. VIII, sec. 8;

(5) a bill to appropriate coal severance tax trust fund principal — three-fourths of each house, Art. IX, sec. 5;

(6) a bill to appropriate noxious weed management trust funds — three-fourths of the members of each house, Art. IX, sec. 6;

(7) a bill to appropriate tobacco settlement trust fund principal and one-tenth of interest and income — two-thirds of each house, Art. XII, sec. 4;

(8) a bill to propose calling a constitutional convention — two-thirds of all members, Art. XIV, sec. 1; and

(9) a bill to propose amendment to the Montana Constitution — two-thirds of all members, Art. XIV, sec. 8.

A section establishing that an extraordinary vote is required must be included in the bill; however, a provision regarding the extraordinary vote is **not** included in the title of the bill.

5-7. Bills Affecting Administrative Rules (ARMs)

The Legislature may request the adoption, amendment, or repeal of an administrative rule in a joint resolution or may direct the adoption, amendment, or repeal of any rule by bill. Section 2-4-412, MCA, contains requirements for bills affecting the ARMs.

With regard to the amendment of administrative rules, it is preferable to amend the authorizing statute or implemented statute to impel the agency to amend the rule rather than amending the administrative rule itself in a bill.

BILLS WITH SPECIAL PROVISIONS

6-1. Bills With Fiscal Impact

The state's treasury fund structure is described in section 17-2-102, MCA. Accounts are established within the treasury for the receipt and distribution of the state's money. There is a distinction between appropriations, allocations, fund transfers, and the establishment of or changes to a fee, tax, or fine. The drafter must be careful in the choice of words used in legislative drafting, particularly in drafting bills with fiscal impact, and must be careful when using the word "appropriate" or derivations of the word "appropriate", which indicate an authority to spend. Improper use of the word may cause confusion and result in otherwise avoidable legal challenges. Use of the term "allocate" or the phrase "is available for legislative appropriation" may be more accurate when there is no intent to confer an authority to spend.

(1) Allocations

Allocations are legislative directions to deposit state funds into one or more accounts within the state's treasury fund structure. "Allocation" refers to legislative direction for the deposit of money as the money initially comes into the state treasury. Allocations are not appropriations. A bill changing the allocation of money is not a revenue bill. Bills making changes to allocations will probably not require a fiscal note.

(2) Fund Transfers

A fund transfer is legislative direction to move money that is already in the state's treasury from one fund or account to another with the intent that the money is to be appropriated for the purposes specified for that fund or account. A transfer of funds within the state treasury is not an appropriation and is not a payment of funds out of the state treasury as contemplated by Article VIII, section 14, of the Montana Constitution. In 44 A.G. Op. 43 (1992), Attorney General Racicot determined that an appropriation is not required under either the Montana Constitution or Montana statutes when the transfer between accounts within the state treasury is statutorily authorized or directed.

Transferred money is available for appropriation by the Legislature, but the transfer of the money alone does not authorize expenditure of the money unless the expenditure of money from the

receiving fund or account is already authorized by means of a statutory appropriation. Therefore, an appropriation is required to authorize spending of the money after the money has been transferred. The drafter should determine the manner in which the appropriation of the money is to be made.

If the money is transferred into an account for which there is a statutory appropriation or if the appropriation of the money transferred into the account is to be made in another bill, such as a general appropriations bill, no additional appropriation language is needed in the bill making the transfer of funds.

If the appropriation of the money is to be made in the same bill, an appropriation section is needed and a fiscal note is not required.

As an example, a transfer from the general fund to a state special revenue account is a transfer, not an appropriation, and does not require an appropriation bill or appropriation language.

A fund transfer does not make a bill a revenue bill.

Fund transfers should specify:

- (1) the dollar amount of the transfer or a mathematical calculation of the amount;
- (2) who is to make the transfer (usually the state treasurer); and
- (3) the date when the transfer is to be made.

(3) Revenue Bills

A revenue bill is one that either increases or decreases revenue by enacting, eliminating, increasing, or decreasing fees, taxes, or fines.

The establishment of a fee, tax, or fine or changes to an existing fee, tax, or fine are not appropriations or fund transfers. A bill relating to existing fees, taxes, or fines may or may not include provisions relating to the allocation of the revenue. A fiscal note is not required for a change in the allocation of an existing fee, tax, or fine, but a fiscal note will be required if the allocation is being changed or established as the result of an increase or decrease of an existing fee, tax, or fine or the creation or elimination of a fee, tax, or fine. A bill that enacts a new fee, tax, or fine will always require provisions allocating the revenue. Such a bill is a revenue bill and will require a fiscal note.

(4) Appropriation Bills

An appropriation is legislative authority, implemented by bill, for a governmental entity to expend money from the state treasury for

a specified public purpose. An appropriation authorizes the payment of money **out** of the state's treasury. The fact that the Legislature has allocated money to an agency's account does not authorize the agency to expend that money. An appropriation of the money is required before the agency may spend it. For example, an authorization for a state agency to spend money from the general fund is an appropriation and needs to be accomplished in an appropriation section. Payments to state retirement funds require appropriation because section 17-8-101(3), MCA, provides that retirement funds are not part of the state treasury for appropriation purposes. Ongoing payments made from the state treasury to retirement funds are generally made by statutory appropriation.

Article V, section 11(4), of the Montana Constitution requires every appropriation other than general appropriations for the operation of government, for interest on the public debt, and for public schools to be "made by a separate bill, containing but one subject". (See also discussion of general appropriation bills in section 4-4(3).) The general appropriation bills covering the usual expenses of state government are prepared in accordance with a predetermined format. (See Appendix F for sample format.)

An appropriation must specify:

- (1) the dollar amount of the appropriation or a mathematical calculation to determine the amount;
- (2) the source from which the appropriation is being made (e.g., the general fund);
- (3) the agency to which the appropriation is being made; and
- (4) the purpose for the appropriation. (See Appendix P for an example.)

example NEW SECTION. Section 3. Appropriation. The following money is appropriated from the account established by 69-1-223 to the office of the consumer counsel for the purposes established in [sections 1 and 2]:

Fiscal year 2012	\$200,000
Fiscal year 2013	300,000

example NEW SECTION. Section 1. Appropriation. (1)
There is appropriated from the state general fund to

the department of public health and human services \$250,000 in each year of the biennium beginning July 1, 2011.

(2) The appropriation must be used to pay for costs billed to the state for the precommitment psychiatric detention, precommitment psychiatric examination, or precommitment psychiatric treatment of a person in an involuntary commitment proceeding, as provided in 53-21-132.

The Montana Supreme Court has held that an appropriation may be part of a nonappropriation bill without violating the unity of subject rule if the appropriation is incidental to the single subject of the bill (*Hill v. Rae*, 52 M 378, 158 P 826 (1916), and *State ex rel. Veeder v. State Board of Education*, 97 M 121, 33 P2d 516 (1934)). For example, if a bill creates a governmental agency or program, a section of the bill appropriating money to fund the agency or program would be proper.

Bills statutorily appropriating money by permanent law must conform to the requirements of section 17-7-502, MCA, in order to be effective. Any enacted statute that establishes a statutory appropriation must be listed in 17-7-502(3).

(5) Fiscal Notes

Section 5-4-201, MCA, provides that a bill that has an effect on revenue, expenditures, or the fiscal liability of the state or a local government may not be reported out of committee without an attached fiscal note estimating the dollar amount of the fiscal impact.

The drafter can simplify the process of judging fiscal impact by keeping the fiscal note requirement in mind when drafting bills and indicating on the bill draft that a fiscal note may be required. (See Bill Drafter Checklist, Appendix R.)

The fiscal note requirement does not apply to an appropriation bill carrying a specific dollar amount. However, if a bill contains an appropriation incidental to the single subject of the bill, but the bill has other fiscal implications, the drafter should indicate that the bill may need a fiscal note.

When a bill is reviewed by the Legislative Services Division staff prior to introduction, its possible fiscal impact is considered. If the staff determines that a fiscal note appears to be needed, that information is stamped on the bill by the Legislative Services Division

staff prior to introduction. At the time that a bill is introduced, the President of the Senate or the Speaker of the House must determine whether the bill needs a fiscal note based on the recommendation of the Legislative Services Division staff (Joint Rule 40-100). The stamp helps save the presiding officer time in determining whether a fiscal note should be ordered. Upon determination of the need for a fiscal note, the presiding officer requests it from the Budget Director, who is required by law to return the note within 6 days.

The fiscal note is attached to the bill, and the committee considers it with the bill. If a bill is introduced without a request for a fiscal note or is amended in some way that affects the fiscal impact of the bill, the sponsor, the committee considering the bill, or the majority of the house considering the bill on second reading may request the presiding officer to request a fiscal note or a revised fiscal note.

If a sponsor disagrees with a fiscal note, the sponsor may prepare a fiscal note rebuttal under section 5-4-204, MCA.

(6) Special Effective Dates

A bill's fiscal impact may also necessitate the inclusion of a special effective date. Under section 1-2-201, MCA, unless a different time is prescribed, all bills except appropriation bills and those portions of bills containing statutes providing for taxation or the imposition of a fee on motor vehicles are effective on October 1 following passage and approval. Appropriation bills become effective on July 1, and statutes providing for the taxation of or the imposition of a fee on motor vehicles become effective on January 1 following passage and approval. Statutes enacted during a special session of the Legislature take effect upon passage and approval unless a different time is prescribed in the enacting legislation. (See section 4-26.) Frequently, a nonappropriation bill will have an impact on local or state finances that makes it highly desirable to provide an effective date that coincides with the beginning of the fiscal year. See 39 A.G. Op. 29 (1981), discussing the problems associated with a bill increasing the county road tax levy without providing a July 1 effective date.

6-2. Local Government Impact — Unfunded Mandate

Sections 1-2-112 and 1-2-113, MCA, prohibit the Legislature from creating an unfunded mandate by imposing new duties on local governments and school districts without providing funding to cover the costs of the new duties. Section 1-2-114, MCA, prohibits even

the introduction of a bill that increases local government or school district duties without providing the requisite funding through an additional mill levy or remittance of state funds sufficient to fund the new activity to be performed or the new service or facility to be provided. Section 1-2-115, MCA, provides a means for local governments and school districts to avoid the requirements of any bill that is passed in violation of section 1-2-112 or 1-2-113, MCA.

When drafting bills imposing additional local government or school district duties, a drafter must carefully analyze the draft to determine if the bill falls under the provisions of the applicable statutes by determining if there is funding provided for the new duties, consult with the requester to determine if an alternative is available when funding is not provided, and if there are no alternatives, consider expressly superseding or modifying the statutory restriction. If the provisions of sections 1-2-112 through 1-2-115, MCA, are to be superseded, a section must be contained in the bill and a provision must be contained in the title. See section 4-4(8) and Appendix P.

6-3. Bills Granting Rulemaking Authority

(1) In highly complex, technical fields in which the degree of specificity required is not considered appropriate for comprehensive statutory treatment or when interim authority is necessary to provide for continuing compliance with ever-changing federal law and regulations, the requester may wish to delegate rulemaking authority to an Executive Branch agency. Rules have the force of law (i.e., an enforceable prohibition or mandate of behavior or activity) only if they are:

- (a) adopted under an express grant of legislative authority;
- (b) adopted under statutory guidelines sufficiently specific to satisfy the constitutional separation of powers requirement for a delegation of rulemaking authority;
- (c) adopted in compliance with the procedures outlined in Title 2, chapter 4, part 3, MCA; and
- (d) consistent with and reasonably necessary to effectuate the purpose of the implemented statutes (section 2-4-305(6), MCA).

(2) Subsections (1)(a) and (1)(b) are most significant from the bill drafting standpoint. An express grant of rulemaking authority is created for a new body of law by stating substantially that "The department shall [may] adopt rules to implement [sections 1 through 12]." Section 5-4-103, MCA, provides that a statute delegating rulemaking authority to an agency must contain specific guidelines

describing for the agency and the public what the rules may and may not contain.

(3) A statement that something must be in accordance with rules adopted by the department or that a person or entity is required to follow rules to be adopted by the department or similar language is **not** a grant of rulemaking authority—it is merely a mandate that department rules on the subject be followed.

(4) An existing program that already includes an express grant of rulemaking authority may be modified or expanded by amendment of MCA sections to which the existing express grant of authority applies or by enactment of a new bill section along with a codification instruction making the existing authority apply to the new bill section. (See section 4-19.) The drafter must indicate on the Bill Drafter Checklist whether new rulemaking authority is granted or whether existing rulemaking authority is expanded to the new provisions in the bill, and a provision specifying that rulemaking authority is granted in the bill must be included in the title. (See section 4-4(9).)

(5) A mere implication of power to adopt rules gleaned from implemented statutes because of a perceived necessity for rules is not a sufficient reason to adopt substantive rules as defined in section 2-4-102(13)(a), MCA. Moreover, even a clearly expressed grant of rulemaking authority will be ineffective if it is so broad and unrestricted as to constitute an unconstitutional delegation of legislative authority. (See *In re Gate City Savings and Loan Association*, 182 M 361, 597 P2d 84 (1979).)

(6) Basic policy and guidelines must be determined by the Legislature as set forth in statutory restrictions, standards, and criteria to be followed by the agency in adopting rules. For further discussion of constitutional problems related to delegation of authority and separation of powers generally, see Chapter 1.

(7) Pursuant to section 2-4-309, MCA, an agency may proceed with rulemaking under Title 2, chapter 4, MCA, after the enactment of a statute to be implemented by rule, but a rule may not become effective prior to the effective date of the statute.

(8) A bill may also specifically repeal or direct amendment or adoption of an administrative rule. (See section 5-7 and Appendix K.)

6-4. Bills Creating a New Agency

Title 2, chapter 15, MCA, contains a reference to each agency in the Executive Branch created by statute. In the MCA, the creation of an agency is separated from the functions of that agency.

Whenever an Executive Branch agency is created by bill, one or more sections should deal with its creation and internal organization. These sections will be codified in Title 2, MCA. Article VI, section 7, of the Montana Constitution limits the number of principal departments in the Executive Branch to 20.

In addition, the bill must contain a definition section that includes a definition of the new agency, which in this example is a board.

example NEW SECTION. Section 2. Definitions. In [sections 2 through 12], the following definitions apply:
 (1) "Board" means the board of dogcatchers provided for in [section 1].
 (2) "Dogcatcher" means

In this example, the reference to [sections 2 through 12] will be changed to "this chapter", "this part", or "___ through ___" (section numbers), as appropriate, and [section 1], which creates the board, will be codified as a section in Title 2, chapter 15, MCA. The definition section will be codified with the part of the bill dealing with the functions, powers, and duties of the new agency.

The same rule applies to the creation of any new Legislative or Judicial Branch agency. For example, the composition, terms, and officers of the Environmental Quality Council are provided for in Title 5, MCA, because the Council is a legislative agency. However, the functions of the Council are codified in Title 75, MCA, concerning environmental protection. (See sections 5-16-101 through 5-16-105, MCA, and Title 75, chapter 1, part 3, MCA.)

Whenever a drafter is dealing with a change of an agency's functions or duties, the statutes relating to the creation and composition of the agency must be checked as well as the substantive area of the law.

6-5. Bills Making Legislative Appointments

If a bill contains a provision for the appointment of legislators to a committee or other entity, use the traditional appointment methods, which require the Committee on Committees in the Senate

and the Speaker of the House to make appointments. Nontraditional methods of making appointments often lead to confusion and delay in making those appointments. In addition, make sure that the subject "Legislature" is noted as a subject category for that bill on the LAWS system and send the Executive Director an e-mail providing notice of the proposed new legislative function.

RESOLUTIONS

The only type of legislation other than a bill that may be introduced in either house of the Legislature is a resolution.

7-1. Simple Resolution

A simple resolution may be used to amend the rules of or to provide for the internal affairs of the house adopting it. A simple resolution does not require three readings or a roll call vote as does a bill or joint resolution. See Senate Rule 40-10 for examples of permissible purposes.

7-2. Joint Resolution

A joint resolution is effective upon passage by both houses and need not be submitted to the Governor for the Governor's signature (Article VI, section 10, Montana Constitution). See Joint Rule 40-60 for a list of permissible purposes.

The law provides that disasters and emergencies be dealt with by the Legislature by joint resolution (sections 10-3-302(3), 10-3-303(3) and (4), 10-3-505(5), and 90-4-310, MCA). A negotiated labor settlement may also be submitted by joint resolution (section 39-31-305(3), MCA).

Resolutions do not have the force of law. In *Gildroy v. Anderson*, 162 M 26, 507 P2d 1069 (1973), the Supreme Court stated, "The effect and validity of a joint legislative resolution must be decided upon a consideration of the purpose intended to be accomplished and in light of the applicable provisions of the Montana Constitution." The court went on to say, "A joint resolution is not a general law and cannot be used to control the discretion of the governor."

The format of resolutions has been prescribed by custom, and a bill drafting macro provides the basic structure. Examples are presented in Appendices M and N.

The preamble of a resolution is identical to the preamble of a bill. It begins with "WHEREAS" and states the purpose of or reason for the resolution.

In a resolution, a resolving clause "NOW, THEREFORE, BE IT RESOLVED BY . . ." takes the place of the enacting clause of a bill. The body of a resolution may consist of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED". The drafter may wish to number the paragraphs, as shown in the

second example in Appendix N, as an alternative, rather than continue to repeat language.

Standard capitalization rules are followed when drafting a resolution.

BILL AMENDMENTS

8-1. Introduction

Proposed amendments may be prepared by the Legislative Services Division staff, committee staffs, lobbyists, or legislators themselves. Amendments adopted by a standing committee are included in a Standing Committee Report. Amendments must be drafted by Legislative Services Division staff before they may be included in a Standing Committee Report.

Floor amendments must also be drafted by Legislative Services Division staff.

The set of amendments must identify the specific copy of the bill to be amended, i.e., introduced (white); second reading (yellow); third reading (blue); second house, second reading (tan); or reference bill (salmon). Only the most recent copy of the bill may be amended.

8-2. Reminders When Amending Bills

(1) (a) Check that changes made by amendment are reflected in the title if necessary. These changes include the insertion or removal of all amended or repealed MCA section numbers (listed in numerical order) and related descriptive language.

(b) Update the short bill title if necessary (see section 4-4(11)).

(c) Remember that appropriation, effective date, applicability, and termination provisions must be reflected in the title, as well as provisions regarding creating a state debt, providing rulemaking authority, and superseding the unfunded mandate laws. Provisions regarding extraordinary vote requirements are **not** included in the title.

(d) Watch for the 100-word limitation in the title of a referendum.

(2) Amend the catchline, if necessary.

(3) Amend entire words, not portions of words (e.g., to change spelling or capitalization).

(4) Check amendment language for clarity, spelling, punctuation, outlining, style, and consistency with the rest of the bill.

(5) Make sure that new internal references in the amendment are accurate.

(6) Check the entire bill for any references to terms, figures, or dates that are being changed or provisions that are being deleted, i.e., the amendment appears in all appropriate places.

(7) (a) If "department", "board", etc., are used in new language, check that the terms are defined for the title, chapter, or part where the language is being added to an MCA section or for the title, chapter, or part where a new section will be codified.

(b) Check that new definitions are in alphabetical order and that they are used and used consistently.

(c) If a defined term is added, deleted, or changed, check that language in the bill works with the term as amended and check all existing sections of law to which the definition applies to see if additional sections will require amendment. (If a defined term is deleted by amendment, there should be no reference to that term in the title, chapter, or part to which the definition had applied.) (See Appendix S for tips on searching.)

(8) If a program or concept is amended out of the bill, make sure that reference to the program or concept is taken out everywhere in the bill.

(9) If bill section numbers are changed, check the entire bill for internal references to those sections. Especially watch "housekeeping" (noncodified) sections. Run an electronic search of the bill for brackets to find all bracketed internal references. Search for "[".

(10) If an amendment causes reoutlining:

(a) check that section's outline and recheck subsection references in that section;

(b) search the entire bill for internal references to the former subsection numbers of the reoutlined section; and

(c) check the online internal reference list unless the provision being amended is a new section. (See section 1-8.)

(11) (a) If additional sections are being repealed, be sure to check that both the title and repealer section reflect the amendment and check the online internal reference list and amend any sections affected.

(b) Make sure that an MCA section is not being **both** amended and repealed in the bill (unless a delayed effective date for the repealer allows both).

(c) If an amendment removes the repeal of a section, address any stricken references to the repealed section and strike any sections in the bill that were included only because of references to the repealed section.

(12) If an amendment removes the repeal of a section, check to see if any section is in the bill because it contained a concept relating

to the repealed section. For example, if a repealed section providing for an account is unrepealed, then any section containing language that was stricken regarding the account needs to be amended to reinsert the stricken language. (Check to make sure that the section is still substantively amended.)

(13) (a) Note that if there is more than one effective date in the bill, amendments may not include references to "[the effective date of this **act**]"; use "[the effective date of this **section**]".

(b) To avoid listing references to many sections in the bill, use the following language in an effective date section (this applies to an original bill draft as well):

"(1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 3, 7, and 52] are effective January 1, 2012."

(14) Check that a termination provision does not terminate a repealer section. A repealer section, along with other housekeeping sections, must be excluded from the termination.

(15) If an amendment is adding a coordination instruction, check the bill referenced in the amendment and make sure that the coordination provisions work.

(16) Remember that Article V, section 11, of the Montana Constitution states that a bill may not be altered or amended on its passage through the Legislature so as to change its original purpose. This particularly applies to substitute bills. If the amendment would entirely change the original direction of the bill or enter a new subject area not covered by the original bill, a constitutional problem is likely.

(17) If an amendment removes the only substantive amendment from an MCA section, amend the entire section out of the bill because it no longer relates to the stated purpose of the bill. When a section is removed from a bill for this reason, the title and any affected internal references must also be amended.

(18) Do not draft an amendment to strike the end of one section and to continue striking through the catchline or the middle of the following section (this cannot be done because of the coding that appears around sections in the bill).

(19) Previously adopted amendments may not be "stripped". A new set of amendments must be drafted and voted on to strike and reinsert the previous language, or a motion may be made to reconsider the action adopting floor amendments if a committee

report on second reading adopting those floor amendments has not yet been adopted by the Committee of the Whole.

8-3. Substitute Bill

If the proposed amendment is very extensive, it may be easier to rewrite the entire bill. This is called a substitute bill. The Joint Rules provide that if the amendment is relevant to the title and subject matter of the original bill and is so extensive that a standard amendment would be long and difficult to comprehend, the bill may be amended by striking all of the bill following the enacting clause and substituting an entirely new bill. (See section 8-5(17) and Appendix O.)

The title of a bill may not be stricken in its entirety and replaced. The subject matter of a bill with a "generally revising" title may be narrowed to a single subject by amendments and may revert to a general revision bill through a later set of amendments. However, a bill that originally addresses a narrow subject may not be amended to become a bill "generally revising" the law.

8-4. Governor's Amendments

The Governor's amendatory veto power, provided for in Article VI, section 10, of the Montana Constitution, authorizes the Governor to return a bill to the Legislature with recommendations for amendment. The Governor's staff submits the proposed amendments electronically to the Executive Director or the Legal Services Director. The recipient may draft the amendments or assign the drafting to staff. The process is then the same as for all other amendments, including drafting, editing, and correcting the amendments and transmitting them electronically. However, prior to transmitting the amendments to the amendments coordinator, the amendment drafter must return the drafted amendments to the member of the Governor's staff who transmitted the proposed amendments to the Legislative Services Division. The Governor's staff will then notify the drafter as to whether the amendments are correct. When the amendments are approved, they are then transmitted to the appropriate amendments coordinator for consideration by the Committee of the Whole.

8-5. Amendment Language Samples

(1) Amend title

1. Title, lines 5 through 7.
Following: "A PERSON" on line 5
Strike: remainder of line 5 through line 7 in their entirety
Insert: "WHO HAS SERVED A SENTENCE"

(2) Insert language only

1. Page 1, line 23.
Following: "statement"
Insert: "in simple language"

(3) Strike language and insert new language

1. Page 1, line 7.
Strike: "10% of the payment due"
Insert: "4%"

2. Page 2, line 10.
Following: "~~12%~~"
Insert: "12%"

3. Page 4, line 5.
Strike: "The" through "act."
Insert: "The department shall enforce the provisions of this section."

Note: It can help readability to strike an entire sentence and insert a whole new sentence rather than insert many "choppy" amendments into a sentence. It is acceptable to strike an entire sentence even if there are words in the sentence that are already shown as stricken.

(4) Insert sections and renumber

1. Page 4.
Following: line 1
Insert: "NEW SECTION. **Section 2. Restrictions on bargaining.** Nothing in this chapter requires or allows a board of trustees of a school district to bargain collectively upon any matter other than matters specified in 39-31-305."
Renumber: subsequent sections

2. Page 5.

Following: line 3

Insert: "**Section 4.** Section 53-6-205, MCA, is amended to read:
"53-6-605. Departmental reports to legislature. The department shall achieve full implementation of the program, as set forth in this chapter and related sections, no later than ~~January~~ April 1, 2012.""

Insert: "NEW SECTION. **Section 5. Reports — filing.** The reports submitted pursuant to 53-6-605 must be filed in the office of the secretary of state."

Insert: "NEW SECTION. **Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 53, chapter 6, part 6, and the provisions of Title 53, chapter 6, part 6, apply to [section 5]."

Renumber: subsequent sections

Note: Because a macro is used to insert each MCA section or new section in a set of amendments, the word "Insert:" will appear in front of each section that is inserted even if the sections are in a block.

(5) Strike and insert columnar figures in appropriation bills

1. Page 12, line 20.

Strike: "45,000" "47,000"

Insert: "44,954" "46,955"

(6) Strike language only

1. Page 1, line 22.

Strike: "department,"

Note: This example shows an amendment that does not include a "following" instruction. It is unnecessary to provide a "following" instruction for every amendment if the word or words to be stricken can be easily identified on the line.

2. Page 4, line 23.

Following: "public,"

Strike: "the"

Note: Use a "following" instruction if there is more than one "the" on the line.

3. Page 5, line 16.

Strike: "doctor, lawyer, ACCOUNTANT,"

Note: Show language to be stricken exactly as it appears in the bill.

4. Page 3, lines 4 and 5.

Strike: "poultry" on line 4 through "livestock" on line 5

(7) Strike certain lines in their entirety

1. Page 1, line 21 through page 2, line 1.

Following: "vagrancy." on line 21

Strike: remainder of line 21 through page 2, line 1 in their entirety

(8) Strike a section

1. Page 1, line 11 through page 3, line 6.

Strike: section 3 in its entirety

Renumber: subsequent sections

(9) Strike a subsection

1. Page 2, line 24 through page 3, line 15.

Strike: subsection (e) in its entirety

Renumber: subsequent subsections

(10) Strike a long passage

1. Page 4, line 21 through page 5, line 5.

Following: "city" on line 21

Strike: remainder of line 21 through "day" on page 5, line 5

(11) Strike and renumber subsequent sections or subsections

1. Page 2, lines 1 through 12.

Strike: section 10 in its entirety

Renumber: subsequent sections

2. Page 3, line 21 through page 4, line 2.

Strike: subsections (a) and (b) in their entirety

Renumber: subsequent subsections

(12) Change one level of outlining

1. Page 4, line 15.
Strike: "(1)"
Insert: "(a)"
Reorder: subsequent subsections

(13) Change several levels of outlining

1. Page 5, lines 1.
Strike: "(1)" on line 1
Insert: "(a)"
Reorder: subsequent subsections
2. Page 5, line 2.
Strike: "(a)"
Insert: "(i)"
Reorder: subsequent subsections
3. Page 5, line 3.
Strike: "(i)"
Insert: "(A)"
Reorder: subsequent subsections

(14) Strike and replace a section

1. Page 12, lines 5 through 21.
Strike: section 13 in its entirety
Insert: "**Section 13.** Section 1-1-101, MCA, is amended to read:
"**1-1-101. Definition of law.** "Law" is'"

Note: In some instances, it can help readability to strike an entire amended section and insert the same section with different amendments rather than insert many "choppy" amendments into a section that is already heavily amended.

(15) Strike and replace a subsection

1. Page 14, lines 7 through 21.
Strike: subsection (c) in its entirety
Insert: "(c) A person who violates this section is guilty of a misdemeanor."

(16) More than one amendment on the same line

1. Page 12, line 23.
Following: "registrant"
Insert: "or licensee"
Following: "proper"
Strike: "inspection"
Following: "REGISTRATION"
Insert: "or license"

(17) Amend a bill as a substitute bill; strike all of the bill after the enacting clause

1. Title, lines 5 through 15.
Strike: "PROVIDING" on line 5 through "OFFENSE;" on line 15
Insert: "CLARIFYING THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED A SENTENCE AND IS NO LONGER UNDER STATE SUPERVISION MAY BE GRANTED THE PRIVILEGE OF OCCUPATIONAL LICENSURE; DEFINING LICENSURE AS A PRIVILEGE;"

2. Page 1, line 23 through page 52, line 6.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. Purpose. It is the public policy of the legislature of the state of Montana to"
Insert: "NEW SECTION. Section 2. Licensure defined as privilege. Licensure is a privilege to be granted or revoked as a police power of the state"
Insert: "NEW SECTION. Section 3. Restoration of rights to felons. Laws for the punishment of crime must be founded on the principles of prevention and reformation"
Insert: "NEW SECTION. Section 4."

SELECTED PROVISIONS RELATING TO BILL DRAFTING

The following is a list of constitutional, statutory, and Joint Rule provisions that a bill drafter should review and consult.

9-1. Montana Constitution

Article II. Declaration of Rights

Section 4. Equal protection

Section 5. Freedom of religion

Section 7. Freedom of speech, expression, and press

Section 18. State subject to suit

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges

Article III. General Government

Section 1. Separation of powers

Section 5. Referendum

Article V. The Legislature

Section 11. Bills

Section 12. Local and special legislation

Article VI. The Executive

Section 10. Veto power

Article VIII. Revenue and Finance

Section 1. Tax purposes

Section 2. Tax power inalienable

Section 6. Highway revenue nondiversion

Section 8. State debt

Section 9. Balanced budget

Article XIII. General Provisions

Section 1(3). No retrospective law

Article XIV. Constitutional Revision

Section 8. Amendment by legislative referendum

9-2. Montana Code Annotated

Title 1 — General Laws and Definitions, especially:

Chapter 1, part 2 — General Definitions of Terms Used in Code

Chapter 2 — Statutory Construction

Chapter 11 — Publication and Updating of the Code — Code Commissioner

Title 2, chapter 4, part 4 — Legislative Review of Administrative Rules

102 Selected Provisions Relating to Bill Drafting

Title 5, chapter 4 — Legislative Branch — Bills
Title 13, chapter 27 — Ballot Issues

9-3. Rules of the Montana Legislature

Joint Rules

Chapter 4. Legislation

COMPUTERIZED BILL DRAFTING

10-1. Bill Drafting System

The Legislative Services Division staff drafts bills using WordPerfect software. Drafters retrieve existing MCA sections from the MCA database directly into their bill draft documents.

The bill identification information, the enacting clause, and introductory amending clauses are inserted into the bill draft document through the use of macros.

The macros provide sequential numbering of sections and special publishing codes used in preparing camera-ready copy for publishing the Session Laws and the MCA.

Following the legislative session, the newly enacted or amended laws are incorporated into the existing MCA database during the codification process to create the updated text of the Montana Code Annotated.

10-2. Electronic Search Capabilities

(See Appendix S for tips on searching)

Bill drafters are expected to use the search capability of the MCA on CD-ROM when drafting bills and amendments.

When framing a search, it is important that the drafter have a good idea of the words or phrases that might have been used to express the concept being searched. For example, if the search is for all sections of the MCA providing statutes of limitations, the phrase "statute of limitations" may not have been used. Instead, the language in the MCA may read "suit must be brought within 6 years", "if the action is not brought within 6 years, it is barred", or even "the period of limitations is 6 years". A search for sections that define criminal conduct might include "felony", "misdemeanor", "fine", "may be fined", "may be imprisoned", "punishable by", "it is unlawful to", "guilty", "upon conviction of", and possibly "crime", "criminal", or "offense".

Words may be used in senses other than the one for which the drafter is searching. For example, a drafter may wish to search for language relating to arrest or search warrants. A search for the word "warrant" alone would include not only search and arrest warrants but warrants issued by the State Auditor, warrants for distraint, and the verb form "if conditions warrant".

Certain concepts are so narrow in scope that all or most references are likely to appear in one title of the MCA. A search may

be made of only certain designated portions of the MCA by limiting the search to a title, chapter, or part using the search functions of Folio on the CD-ROM .

Persons who have access to the "LEXIS" or WESTLAW legal research systems may conduct their own searches of the MCA using those systems, or a search may be done on the CD-ROM or Internet version of the MCA.

Sample — Bill With Amendatory Language Transferring Funds

62nd Legislature

LC 0001.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MUNICIPAL COURT
5 JUDGE AND THE JUDGE'S LAW PARTNERS TO PRACTICE LAW BEFORE
6 ANY COURT OF THIS STATE EXCEPT THE MUNICIPAL COURT OF THAT
7 JUDGE; AMENDING SECTIONS 3-1-601, 3-1-603, AND 3-1-604, MCA; AND
8 PROVIDING EFFECTIVE DATES.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 3-1-601, MCA, is amended to read:13 **"3-1-601. Certain officers not to practice law or administer estates. (1) A**

14 Except as provided in 3-1-604, a justice or judge of a court of record or clerk of
15 any court may not practice law in any court in this state or act as attorney, agent,
16 or solicitor in the prosecution of a claim or application for lands, pensions, or
17 patent rights or other proceedings before a department of the state or general
18 government or a court of the United States during his the justice's or judge's
19 continuance in office.

20 (2) Neither the court administrator nor an assistant may practice law in any
21 of the courts of this state while holding his the position of court administrator or
22 assistant.

23 (3) A justice or judge of a court of record may not act as administrator or
24 executor of any estate for compensation."

25

26 **Section 2.** Section 3-1-603, MCA, is amended to read:27 **"3-1-603. No judicial officer of court of record to have partner practicing**

28 **law. (1) A** Except as provided in subsection (2), a judicial officer of a court of
29 record may not have a partner acting as attorney or counsel in any court of this
30 state.

Sample — Bill With Amendatory Language Transferring Funds

62nd Legislature

LC 0001.01

1 (2) An attorney who is a partner of a municipal court judge may act as
2 attorney or counsel in any court of this state except the municipal court of the
3 attorney's partner."

4

5 **Section 3.** Section 3-1-604, MCA, is amended to read:

6 **"3-1-604. Restrictions on municipal court judges.** A municipal court judge
7 may not practice law before the judge's own municipal court or hold office in a
8 political party during the judge's term of office."

9

10 NEW SECTION. **Section 4. Effective dates.** (1) Except as provided in
11 subsection (2), [this act] is effective October 1, 2011.

12 (2) [Sections 1 and 3] and this section are effective on passage and approval.

13

-END

Sample — Bill With Amendatory Language Transferring Funds

62nd Legislature

LC 0002.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY TO TRANSFER TO THE GENERAL FUND FROM
7 THE HAZARDOUS WASTE/CERCLA ACCOUNT AN AMOUNT NOT TO
8 EXCEED \$1 MILLION; AMENDING SECTION 75-10-621, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 75-10-621, MCA, is amended to read:14 **"75-10-621. Hazardous waste/CERCLA special revenue account.** (1)

15 There is a hazardous waste/CERCLA special revenue account within the state
16 special revenue fund established in 17-2-102.

17 (2) There must be paid into the hazardous waste/CERCLA

18 account:

19 (a) revenue obtained from the interest income of the resource indemnity trust
20 fund under the provisions of 15-38-202, together with interest accruing on that
21 revenue;

22 (b) all proceeds of bonds or notes issued under 75-10-623 and all interest
23 earned on proceeds of the bonds or notes; and

24 (c) revenue from penalties or damages collected under the federal
25 Comprehensive Environmental Response, Compensation, and Liability Act of
26 1980, as amended in 1986 (CERCLA).

27 (3) ~~Appropriations~~ Except as provided in subsection (6), appropriations may
28 be made from the hazardous waste/CERCLA account only for the following
29 purposes and subject to the following conditions:

30 (a) not more than one-half of the interest income received for any biennium

Sample — Bill With Amendatory Language Transferring Funds

62nd Legislature

LC 0002.01

1 from the resource indemnity trust fund may be appropriated on a biennial basis
2 for:

3 (i) implementation of the Montana Hazardous Waste Act, including regulation
4 of underground storage tanks and the state share to obtain matching federal
5 funds;

6 (ii) implementation of Title 75, chapter 10, part 6, pertaining to state
7 assistance to and cooperation with the federal government for remedial action
8 under CERCLA;

9 (iii) expenses of the department in administering and overseeing the
10 implementation of Title 75, chapter 10, parts 4 and 6; and

11 (iv) state expenses relating to investigation and remedial action for any
12 hazardous substance defined in 75-10-602; and

13 (b) to the extent funds are available after the appropriations in subsection
14 (3)(a), the department may, as appropriate, seek authorization from the
15 legislature or, when the legislature is not in session, through the budget
16 amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

17 (i) state participation in remedial action under section 104 of CERCLA;

18 (ii) state costs for maintenance of sites at which remedial action under
19 CERCLA has been completed; and

20 (iii) the state share to obtain matching federal funds for underground storage
21 tank corrective action.

22 (4) For the purposes of subsection (3)(b), the legislature finds that a need for
23 state special revenue to obtain matching federal funds for underground storage
24 tank corrective action or for remedial action under section 104 of CERCLA
25 constitutes a serious unforeseen and unanticipated circumstance for the purpose
26 of meeting the definition of "emergency" in 17-7-102. The legislature further finds
27 that the inability of the department to match the federal funds as the funds
28 become available would seriously impair the functions of the department in
29 carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

30 (5) There is no dollar limit to the hazardous waste/CERCLA account. ~~Unused~~

Sample — Bill With Amendatory Language Transferring Funds

62nd Legislature

LC 0002.01

1 Except as provided in subsection (6), unused balances remain in the account until
2 appropriated by the legislature for the purposes specified in this section.

3 (6) Before June 30, 2013, the department shall transfer from the hazardous
4 waste/CERCLA account to the general fund an amount not to exceed \$1 million."

5

6 NEW SECTION. Section 2. Effective date. [This act] is effective on passage
7 and approval.

8

-END-

Appendix B
Sample — Bill With Preamble

111

62nd Legislature

LC 0003.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING PROCEDURES FOR
6 DISCIPLINING ATTORNEYS THAT ARE INCONSISTENT WITH ORDERS AND
7 RULES OF THE SUPREME COURT; REPEALING SECTIONS 37-61-304,
8 37-61-305, AND 37-61-306, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10

11 WHEREAS, the Montana Supreme Court has original and exclusive
12 jurisdiction to discipline persons admitted to practice law in Montana pursuant to
13 Article VII, section 2(3), of the Montana Constitution and Title 37, chapter 61,
14 MCA, and its inherent jurisdiction; and

15 WHEREAS, the Montana Supreme Court, by its orders governing the
16 disciplining of persons admitted to practice law in Montana, established a
17 Commission on Practice to receive and investigate complaints of misconduct by
18 lawyers in Montana; and

19 WHEREAS, the Montana Supreme Court, by its orders governing the
20 disciplining of persons admitted to practice law in Montana, also established
21 grievance committees in each judicial district to assist the Commission on
22 Practice in its investigation and processing of complaints of misconduct by
23 attorneys in Montana; and

24 WHEREAS, sections 37-61-304 through 37-61-306, MCA, also address
25 procedures for investigating and processing complaints of misconduct by
26 attorneys in Montana; and

27 WHEREAS, the procedures set forth in sections 37-61-304 through
28 37-61-306, MCA, are inconsistent with the procedures established by the
29 Montana Supreme Court in its orders.

30 THEREFORE, the Legislature of the State of Montana finds that it is

Appendix B
Sample — Bill With Preamble

62nd Legislature

LC 0003.01

1 appropriate to repeal these inconsistent sections.

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4

5 NEW SECTION. Section 1. Repealer. The following sections of the Montana

6 Code Annotated are repealed:

7 37-61-304. Complaints filed in office of clerk.

8 37-61-305. Complaints filed with attorney general or district judge.

9 37-61-306. Special investigator.

10

11 NEW SECTION. Section 2. Effective date. [This act] is effective on passage

12 and approval.

13

-END-

Appendix C
Sample — Bill With All New Sections

113

62nd Legislature

LC 0004.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING A SCHOOL
5 DISTRICT TO ESTABLISH AND MAINTAIN A FIREARMS SAFETY
6 EDUCATION COURSE; AND AUTHORIZING A DISTRICT TO USE A COURSE
7 DEVELOPED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, A
8 LAW ENFORCEMENT AGENCY, OR A FIREARMS ASSOCIATION."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. **Section 1. Firearms safety education.** The trustees of a
13 district are encouraged to establish and maintain a firearms safety education
14 course. The trustees may adopt a course of instruction developed by the
15 department of fish, wildlife, and parks, a law enforcement agency, or a firearms
16 association as its firearms safety education course. Instructors from the
17 department of fish, wildlife, and parks, a law enforcement agency, or a firearms
18 association or a person recognized by the trustees as having expertise in firearms
19 safety education may be used to provide the instruction.

20

21 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended
22 to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions
23 of Title 20, chapter 7, part 1, apply to [section 1].

24

-END-

Sample — Bill With Amendatory and New Sections

62nd Legislature

LC 0005.01

1 municipality to let contracts related to the improvements.

2 (4) The department shall adopt necessary rules for the construction, repair,
3 maintenance, and marking of state highways and bridges."

4

5 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended
6 to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions
7 of Title 60 apply to [section 1].

8

9 NEW SECTION. Section 4. Effective date. [This act] is effective July 1,
10 2012.

11

-END-

Appendix E
Sample — Bill Amending Session Law

117

62nd Legislature

LC 0006.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING PERMANENT THE
5 PROVISION THAT ELIMINATES USURY LIMITS UNDER THE MONTANA
6 RETAIL INSTALLMENT SALES ACT; AMENDING SECTION 5, CHAPTER 276,
7 LAWS OF 1985, AND SECTION 6, CHAPTER 509, LAWS OF 1995;
8 REPEALING SECTION 7, CHAPTER 554, LAWS OF 1987, SECTIONS 2 AND
9 5, CHAPTER 155, LAWS OF 1989, AND SECTION 4, CHAPTER 498, LAWS OF
10 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13

14 **Section 1.** Section 5, Chapter 276, Laws of 1985, is amended to read:

15 "**Section 5. Effective date — termination.** [This act] is effective on passage
16 and approval and terminates July 1, 1987."

17

18 **Section 2.** Section 6, Chapter 509, Laws of 1995, is amended to read:

19 "**Section 6.** Section 5, Chapter 276, Laws of 1985, is amended to read:

20 "**Section 5. Effective date — termination.** [This act] is effective on passage
21 and approval and terminates July 1, 1987 2011.""

22

23 NEW SECTION. **Section 3. Repealer.** Section 7, Chapter 554, Laws of 1987,
24 sections 2 and 5, Chapter 155, Laws of 1989, and section 4, Chapter 498, Laws
25 of 1995, are repealed.

26

27 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage
28 and approval.

29

-END-

62nd Legislature

LC 0007.01

1 county population.

2 (3) The governing body of a county may impose, revise, or revoke a local
3 vehicle tax ~~for a fiscal year~~ by adopting a resolution before July 1 ~~of the fiscal~~
4 ~~year~~, after conducting a public hearing on the proposed resolution. The resolution
5 may provide for the distribution of the local vehicle tax. (*Terminates June 30,*
6 ~~2011~~ 2015 ~~— sec. 1, Ch. 217, L. 1993.~~)

7 **61-3-537. (Effective July 1, ~~2011~~ 2015) Local option vehicle tax.** (1) A
8 county may impose a local vehicle tax on vehicles subject to a tax under 61-3-504
9 at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the
10 tax imposed under 61-3-504.

11 (2) A local vehicle tax is payable at the same time and in the same manner
12 as the tax imposed under 61-3-504 and is distributed in the same manner, based
13 on the registration address of the owner of the motor vehicle.

14 (3) The governing body of a county may impose, revise, or revoke a local
15 vehicle tax ~~for a fiscal year~~ by adopting a resolution before July 1 ~~of the fiscal~~
16 ~~year~~, after conducting a public hearing on the proposed resolution."

17

18 **Section 2.** Section 4, Chapter 749, Laws of 1991, is amended to read:

19 "**Section 4. Termination.** [This act] terminates June 30, ~~1993~~ 2015."

20

21 **Section 3.** Section 1, Chapter 217, Laws of 1993, is amended to read:

22 "**Section 1.** Section 4, Chapter 749, Laws of 1991, is amended to read:

23 "**Section 4. Termination.** [This act] terminates June 30, ~~1993~~ 2011 2015."

24

25 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage
26 and approval.

27

-END-

Appendix F
Sample — Common Appropriation Bill

121

62nd Legislature

LC 0008.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY FOR
5 THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE
6 EFFECTIVE DATE."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 NEW SECTION. **Section 1. Appropriations.** The following amounts are
11 appropriated from the state general fund for fiscal years 2011, 2012, and 2013 for
12 the operation of the 62nd legislature and the costs of preparing for the 63rd
13 legislature:

14 LEGISLATIVE BRANCH (1104)

15 1. House of Representatives (26) \$4,617,043

16 2. Senate (25) 2,651,550

17 3. Legislative Services Division (22) 657,352

18

19 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage
20 and approval.

21

-END-

Sample — Appropriation Bill to Satisfy Judgment Against State

62nd Legislature

LC 0009.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO THE
5 DEPARTMENT OF LIVESTOCK TO SATISFY A FINAL JUDGMENT IN CAUSE
6 NO. 79-14-GF, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
7 MONTANA, GREAT FALLS DIVISION, IF THE CASE IS UPHELD ON APPEAL."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 NEW SECTION. **Section 1. Appropriation.** There is appropriated from the
12 general fund to the department of livestock \$391,500 for full payment of all
13 obligations and judgments against the defendants in Cause No. 79-14-GF, United
14 States district court, district of Montana, Great Falls division, entitled "M. P.
15 Doran, et al., Plaintiffs v. James W. Glosser, et al., Defendants". This
16 appropriation is effective only if the United States district court judgment filed and
17 entered on March 23, 2006, is expressly upheld and made final following appeal
18 to the United States court of appeals, ninth circuit. Any unexpended portion of
19 this appropriation reverts to the general fund.

20

-END-

Appendix G
Sample — Extension of Bond Validating Act

125

62nd Legislature

LC 0010.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE APPLICATION OF
5 THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND
6 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 **Section 1.** Section 17-5-205, MCA, is amended to read:

11 **"17-5-205. Application.** The application of the Bond Validating Act, Title 17,
12 chapter 5, part 2, is extended to bonds issued and proceedings taken prior to
13 ~~February 1, 2007~~ [the effective date of this act]."

14

15 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage
16 and approval.

17

-END-

Appendix I
Sample — Referendum for Statutory Amendment

133

62nd Legislature

LC 0014.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RAISING THE LEGAL DRINKING
5 AGE TO 25; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO
6 THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTION 16-3-301,
7 MCA; AND PROVIDING AN EFFECTIVE DATE."*

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 16-3-301, MCA, is amended to read:

12 **"16-3-301. Unlawful purchases, sales, or deliveries.** (1) It is unlawful for a
13 licensed retailer to purchase or acquire beer from anyone except a brewer or
14 wholesaler licensed under the provisions of this code.

15 (2) It is unlawful for a licensee, an employee of the licensee, or any other
16 person to sell, deliver, or give away or cause or permit to be sold, delivered, or
17 given away any alcoholic beverage to:

18 (a) a person under ~~24~~ 25 years of age;

19 (b) an intoxicated person or any person actually, apparently, or obviously
20 intoxicated.

21 (3) A minor or other person who knowingly misrepresents qualifications for
22 the purpose of obtaining an alcoholic beverage from a licensee is equally guilty
23 with the licensee and, upon conviction, is subject to the penalty provided in
24 45-5-624. However, this code may not be construed as authorizing or permitting
25 the sale of an alcoholic beverage to any person in violation of any federal law.

26 (4) A licensee shall display in a prominent place in the premises a placard as
27 issued by the department stating fully the consequences for violations of the
28 provisions of this code by persons under ~~24~~ 25 years of age."

29

30 NEW SECTION. **Section 2. Effective date.** If approved by the electorate,

Sample — Referendum for Statutory Amendment

62nd Legislature

LC 0014.01

1 [this act] is effective January 1, 2013.

2

3 NEW SECTION. **Section 3. Submission to electorate.** [This act] shall be
4 submitted to the qualified electors of Montana at the general election to be held
5 in November 2012 by printing on the ballot the full title of [this act] and the
6 following:

7 [] FOR raising the legal drinking age to 25.*

8 [] AGAINST raising the legal drinking age to 25.*

9 -END-

*Note: The title is limited to 100 words, and the FOR and AGAINST statements are limited to 25 words each.

Appendix K
Sample — Bill Generally Directing Amendment
to Administrative Rule

62nd Legislature

LC 0016.01

1 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage
2 and approval.

3

4 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies
5 retroactively, within the meaning of 1-2-109, to tax years beginning after
6 December 31, 2010.

7

-END-

Sample — Bill Directing Specific Amendment of Administrative
Rule and Repealing Administrative Rule

62nd Legislature

LC 0017.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAX CREDIT
5 FOR NEW OR EXPANDING MANUFACTURERS; DIRECTING THE
6 AMENDMENT OF ARM 42.23.511; REPEALING ARM 42.23.517; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
8 DATE."

9

10 WHEREAS, the law allows a tax credit for new or expanding corporations; and

11 WHEREAS, the Legislature, in passing that law, intended to limit the law to
12 manufacturers only and to give a tax credit to any form of manufacturing
13 business, such as a sole proprietorship or partnership, and not just to
14 corporations.

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 **Section 1.** The Department of Revenue shall amend ARM 42.23.511 to read:

19 "42.23.511 CREDIT FOR NEW OR EXPANDING CORPORATIONS

20 MANUFACTURERS (1) Sections 15-31-124 through 15-31-127, MCA, as
21 amended, allow a tax credit equal to 1% of wages paid by a new or expanding
22 ~~corporation~~ manufacturer. Any ~~corporation~~ manufacturer seeking credit under
23 15-31-124 through 15-31-127, MCA, shall conclusively demonstrate its eligibility
24 to the department. The department's decision shall be final.

25 (2) Each ~~corporation~~ manufacturer seeking a credit under 15-31-124 through
26 15-31-127, MCA, shall show:

27 (a) that it is a ~~corporation~~ preregistered pursuant to Title 35, chapter 1, MCA,
28 ~~as amended~~ the manufacturer is preregistered as a valid existing business under
29 the laws of this state;

30 (b) that it was registered for the first time during the tax year for which the first

Sample — Bill Directing Specific Amendment of Administrative Rule and Repealing Administrative Rule

62nd Legislature

LC 0017.01

1 credit is claimed or that the industry meets the definition of expanding per
2 15-31-124, MCA, as amended; and

3 (c) that ~~the corporation is engaged in manufacturing~~ the applicant is a
4 manufacturer as that term is defined in 15-31-124, MCA; ~~and~~

5 ~~(d) that the product manufactured is one, which prior to its production by the~~
6 ~~corporation, was not then currently produced in this state."~~

7

8 NEW SECTION. Section 2. Repealer. ARM 42.23.517 is repealed.

9

10 NEW SECTION. Section 3. Effective date — applicability. [This act] is
11 effective on passage and approval and applies to tax years beginning after
12 December 31, 2013.

13

-END-

Appendix L
Sample — Joint Resolution Requesting Adoption
of Administrative Rule

141

62nd Legislature

LC 0018.01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
6 ADOPTION OF A RULE BY THE DEPARTMENT OF FISH, WILDLIFE, AND
7 PARKS PROVIDING FOR THE EXAMINATION OF APPLICANTS FOR
8 OUTFITTERS' LICENSES AT LOCATIONS OUTSIDE HELENA.

9

10 WHEREAS, the Department of Fish, Wildlife, and Parks licenses outfitters by
11 examining applicants for licenses at its Helena offices; and

12 WHEREAS, the Department could examine applicants at its regional
13 headquarters with little administrative inconvenience and by so doing would
14 relieve the license applicants of an unwarranted burden.

15

16 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
17 OF REPRESENTATIVES OF THE STATE OF MONTANA:

18 That the Fish, Wildlife, and Parks Commission be requested to immediately
19 initiate proceedings to adopt a rule setting out procedures for the examination of
20 applicants for outfitters' licenses at the various regional headquarters of the
21 Department of Fish, Wildlife, and Parks.

22

-END-

Appendix M
Sample — Simple Resolution

145

62nd Legislature

LC 0020.01

1 HOUSE RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA THAT WHENEVER PRACTICABLE, ITS MEMBERS SHALL
6 SALVAGE USED PAPER FOR RECYCLING.

7

8 WHEREAS, the Legislature and offices of state government use large
9 amounts of paper each year; and

10 WHEREAS, this Legislature, this state, and this nation are concerned about
11 the waste of paper; and

12 WHEREAS, the efficient use of forest products is of great concern to all of our
13 citizens; and

14 WHEREAS, this House of Representatives desires to make a concerted effort
15 toward a continual program of salvaging paper products for reuse; and

16 WHEREAS, a new industry in the State of Montana has indicated its
17 willingness to cooperate with an immediate program of recycling.

18

19 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
20 REPRESENTATIVES OF THE STATE OF MONTANA:

21 That the members of this House of Representatives immediately institute a
22 used-paper recycling program by depositing used paper in the proper
23 receptacles.

24 BE IT FURTHER RESOLVED, that the Chief Clerk of the House contact the
25 proper authorities and make all arrangements necessary to carry out this
26 program.

27

-END-

Appendix N
Sample — Joint Resolution

147

62nd Legislature

LC 0021.01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS
6 TO DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

7

8 WHEREAS, hundreds of Montanans lose their lives in traffic accidents each
9 year; and

10 WHEREAS, one out of every five traffic accidents on the open highways is the
11 result of a head-on collision; and

12 WHEREAS, etc.

13

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 That members of the motoring public of Montana be encouraged to drive with
17 their headlights on low beam in the daytime to deter head-on collisions on the
18 open highways.

19 BE IT FURTHER RESOLVED, that the Secretary of State send copies of this
20 resolution to the Montana Congressional Delegation and to the publisher of each
21 newspaper in the state.

22 BE IT FURTHER RESOLVED, that this resolution, etc.

23

-END-

Appendix N
Sample — Joint Resolution
(Using Outline Form)

149

62nd Legislature

LC 0022.01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED
6 STATES CONGRESS TO TAKE ACTION TO REQUIRE COVERAGE OF THE
7 COST OF LONG-TERM CARE AND PRESCRIPTION DRUGS BY THE
8 FEDERAL MEDICARE PROGRAM.

9

10 WHEREAS, the ever-increasing cost of prescription drugs and long-term care
11 is beyond the income of most senior citizens; and

12 WHEREAS, the Medicare program omits prescription coverage; and

13 WHEREAS, billions of dollars are wasted because Congress will not allow
14 Medicare to use competitive bidding in ordering supplies and equipment.

15

16 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
17 OF REPRESENTATIVES OF THE STATE OF MONTANA:

18 (1) That the United States Congress is urged to enact legislation to place
19 long-term care and prescription drugs in the Medicare program and that Congress
20 give Medicare the right to use competitive bidding for purchasing prescription
21 drugs and other supplies.

22 (2) That the United States Congress revise or eliminate those statutes and
23 regulations that cause or contribute to the high cost of research and development
24 of prescription drugs in the United States.

25 (3) That the Secretary of State send a copy of this resolution to the President
26 of the United States, the Speaker of the United States House of Representatives,
27 the Majority Leader of the United States Senate, and to each member of the
28 Montana Congressional Delegation.

29

-END-

Sample — Joint Resolution Requesting Interim Study

62nd Legislature

LC 0023.01

1 practices;

2 (2) investigate options for improving the energy-efficient building codes and
3 practices in Montana; and

4 (3) etc.

5 BE IT FURTHER RESOLVED, that the study consider:

6 (1) the results of recent state and regional studies on the characteristics of
7 nonresidential and residential building practices; and

8 (2) etc.

9 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any
10 findings or conclusions be presented to and reviewed by an appropriate
11 committee designated by the Legislative Council.

12 BE IT FURTHER RESOLVED, that all aspects of the study, including
13 presentation and review requirements, be concluded prior to September 15, 2012.

14 BE IT FURTHER RESOLVED, that the final results of the study, including any
15 findings, conclusions, comments, or recommendations of the appropriate
16 committee, be reported to the 63rd Legislature.

17

-END-

Appendix O
Sample — Substitute Bill

155

62nd Legislature

LC 0025.01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING SALES OF NEW
5 DRUGS; AND AMENDING SECTION 50-31-111, MCA."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 (Refer to Introduced Bill)

9 Strike everything after the enacting clause and insert:

10

11 NEW SECTION. **Section 1. Sale or donation of new drug unlawful —**

12 **exceptions.** Except as provided in [section 2], a person may not sell, offer for
13 sale, hold for sale, or give away a new drug unless:

14 (1) a federal application has been approved;

15 (2) the drug is not subject to federal law; or

16 (3) an application has been filed with the department containing:

17 (a) a summary of the conclusions drawn from investigation of the drug;

18 (b) a list of the substances of which the drug is composed; and

19 (c) a sample of the label proposed as identification for the drug, which may

20 not:

21 (i) be false or misleading; or

22 (ii) contain a name used by a registered drug unless:

23 (A) permission has been granted and a license has been obtained; or

24 (B) the name is for temporary use.

25

26 NEW SECTION. **Section 2. Nonapplication.** [Section 1] does not apply to

27 any drug subject to 50-31-102 if the drug:

28 (1) is commercially sold in the United States; and

29 (2) has been tested by the department.

30

Appendix O
Sample — Substitute Bill

62nd Legislature

LC 0025.01

1 **Section 3.** Section 50-31-111, MCA, is amended to read:

2 **"50-31-111. When labeling requirement complied with.** (1) A requirement
3 made by or under authority of this chapter that a word, statement, or other
4 information ~~shall~~ must appear on the label is not complied with unless the word,
5 statement, or other information also appears on the outside container or wrapper,
6 if ~~any~~ there ~~be~~ is one, of the retail package of the article or is easily legible
7 through the outside container or wrapper.

8 (2) A new drug must meet the labeling requirements provided for in [section
9 1]."

10

11 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are
12 intended to be codified as an integral part of Title 50, chapter 31, and the
13 provisions of Title 50, chapter 31, apply to [sections 1 and 2].

14

-END-

Appendix P
Sample Bill Form — Complete

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	62nd Legislature	LC 0026.01
BILL IDENTIFICATION (Designation & No.)	1	_____ BILL NO. _____
(Sponsor)	2	INTRODUCED BY _____
(State agency or committee requester, if any)	3	BY REQUEST OF _____
	4	
TITLE	5	A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SAMPLE
	6	BILL FOR THE BILL DRAFTING MANUAL; ELIMINATING
	7	STATUTES RELATED TO PASSENGER ROPEWAYS;
	8	PROVIDING AN APPROPRIATION; CREATING A STATE DEBT;
	9	SUPERSEDING THE UNFUNDED MANDATE LAWS; PROVIDING
	10	RULEMAKING AUTHORITY; AMENDING SECTIONS 2-17-301
	11	AND 17-7-502, MCA; AMENDING SECTION 4, CHAPTER 749,
	12	LAWS OF 1991, AND SECTION 1, CHAPTER 217, LAWS OF
	13	1993; REPEALING SECTIONS 23-2-702, 23-2-703, AND 23-2-704,
	14	MCA; REPEALING SECTION 6, CHAPTER 20, SPECIAL LAWS
	15	OF NOVEMBER 1993; AND PROVIDING EFFECTIVE DATES, A
	16	RETROACTIVE APPLICABILITY DATE, AND A TERMINATION
	17	DATE."
	18	
PREAMBLE (Optional)	19	WHEREAS, pursuant to the authority provided in section
	20	5-11-112, MCA, the State of Montana has delegated the Bill Drafting
	21	Manual Committee to provide a sample bill form to aid in drafting
	22	bills to be considered by the Legislature; and
	23	WHEREAS, the Committee has drafted a composite bill
	24	containing unrelated sections and uncharacteristically inaccurate
	25	internal references in order to provide examples of various bill parts
	26	and to demonstrate the format used in drafting, amending, or
	27	repealing statutes and session law.
	28	
ENACTING CLAUSE (Mandatory)	29	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
	30	MONTANA:

62nd Legislature

LC 0026.01

BODY
(Short title) 1 NEW SECTION. Section 1. Short title. [Sections 1 through 4
2 and 6 through 8] may be cited as the "Bill Sample Act".
3

(Purpose) 4 NEW SECTION. Section 2. Purpose. The purpose of [sections
5 1 through 4 and 6 through 8] is to create a bill, the structure of which
6 may be used by drafters as an example of correct style and form.
7

(Definitions) 8 NEW SECTION. Section 3. Definitions. As used in [sections 1
9 through 4 and 6 through 8], the following definitions apply:
10 (1) "Department" means the department of public health and
11 human services provided for in 2-15-2201.
12 (2) "Legislative services division" has the meaning provided in
13 5-11-111.
14 (3) "Montana constitution" or "constitution" means The
15 Constitution of the State of Montana.
16 (4) "Recodify" means to compile, arrange, rearrange, and
17 prepare the Montana Code Annotated for publication.
18

(Basic provisions) 19 NEW SECTION. Section 4. Department head. Each
20 department head shall supervise the functions vested in the
21 department.
22

(Amendatory
language) 23 **Section 5.** Section 2-17-301, MCA, is amended to read:
24 **"2-17-301. Supervision of mailing facilities.** The ~~controller~~
25 department shall maintain and supervise the central mailing
26 facilities."
27

(New language) 28 NEW SECTION. Section 6. Code commissioner. There is
29 within the legal services office of the legislative services division a
30 code commissioner.

Appendix P
Sample Bill Form — Complete

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62nd Legislature

LC 0026.01

1 **NEW SECTION. Section 7. Sale or donation of new drug**
2 **unlawful — exceptions — rulemaking authority.** A person may
3 not sell, offer for sale, hold for sale, or give away a new drug unless:
4 (1) a federal application has been approved;
(Outline form) 5 (2) the drug is not subject to federal law; or
6 (3) an application has been filed with the department containing:
7 (a) a summary of the conclusions drawn from investigation of
8 the drug;
9 (b) a list of the substances of which the drug is composed; and
10 (c) a sample of the label proposed as identification for the drug,
11 which may not:
12 (i) be false or misleading; or
13 (ii) contain a name used by a registered drug unless:
14 (A) permission has been granted and a license has been
15 obtained; or
16 (B) the name is for temporary use.
17 (4) The department shall [may] adopt rules regarding the
18 dispensation of new drugs pursuant to the standards established in
19 [sections 1 through 4 and 6 through 8].
20
21 **NEW SECTION. Section 8. Penalty.** A person convicted of
(Penalty) 22 violating 45-2-102 shall be fined an amount not to exceed \$500 or
23 be imprisoned in the county jail for a term not to exceed 6 months,
24 or both.
25
26 **Section 9.** Section 4, Chapter 749, Laws of 1991, is amended
(Amend session 27 to read:
law) 28 "**Section 4. Termination.** [This act] terminates June 30, ~~1993~~
29 2015."
30

Appendix P
Sample Bill Form — Complete

62nd Legislature

LC 0026.01

1 **Section 10.** Section 1, Chapter 217, Laws of 1993, is amended
2 to read:

3 **"Section 1.** Section 4, Chapter 749, Laws of 1991, is amended
4 to read:

5 **"Section 4. Termination.** [This act] terminates June 30, ~~4993~~
6 2014 2015."

7

8 NEW SECTION. Section 11. Repealer. The following sections
(Repealer) 9 of the Montana Code Annotated are repealed:

10 23-2-702. Definitions.

11 23-2-703. Ropeways not common carriers or public utilities.

12 23-2-704. Unlawful to endanger life or cause damage.

13

14 NEW SECTION. Section 12. Repealer. Section 6, Chapter 20,
15 Special Laws of November 1993, is repealed.

16

17 NEW SECTION. Section 13. Transfer of funds. The
(Transfer of funds) 18 department of fish, wildlife, and parks is authorized to transfer
19 money appropriated in [sections 1 through 4] among fund types.

20

21 NEW SECTION. Section 14. Transfer of funds. Any general
22 fund reversions for fiscal year 2011 in excess of \$15.9 million and
23 any general fund reversions for fiscal year 2012 in excess of \$6
24 million must be transferred to the long-range program account to be
25 used to fund capital projects.

26

27 NEW SECTION. Section 15. Appropriation. There is
(Appropriation) 28 appropriated \$1 million for each of fiscal years 2012 and 2013 from
29 the state special revenue account created in [section 4] to the
30 department of transportation for the purposes described in [section

Appendix P
Sample Bill Form — Complete

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62nd Legislature

LC 0026.01

1 1].

2

(Unfunded
mandate)

3 NEW SECTION. **Section 16. Unfunded mandate laws**
4 **superseded.** The provisions of [this act] expressly supersede and
5 modify the requirements of 1-2-112 through 1-2-116.

6

(Transition)

7 NEW SECTION. **Section 17. Transition.** A general powers
8 local government that is imposing impact fees adopted on or before
9 [the effective date of this section] shall bring those fees into
10 compliance with [this act] by October 1, 2012.

11

(Notification)

12 NEW SECTION. **Section 18. Notification to tribal**
13 **governments.** The secretary of state shall send a copy of [this act]
14 to each tribal government located on the seven Montana
15 reservations and to the Little Shell Chippewa tribe.

16

(Name change)

17 NEW SECTION. **Section 19. Name change — directions to**
18 **code commissioner.** Wherever a reference to the fish and game
19 commission, meaning the commission established in 2-15-3402,
20 appears in legislation enacted by the 2011 legislature, the code
21 commissioner is directed to change it to an appropriate reference to
22 the fish, wildlife, and parks commission.

23

(Codification
instruction)

24 NEW SECTION. **Section 20. Codification instruction —**
25 **directions to code commissioner.** (1) [Sections 1 through 3 and
26 6 through 8] are intended to be codified as an integral part of Title 2,
27 chapter 6, part 7, and the provisions of Title 2, chapter 6, part 7,
28 apply to [sections 1 through 3 and 6 through 8].

29 (2) [Section 4] is intended to be codified as an integral part of
30 Title 2, chapter 5, and the provisions of Title 2, chapter 5, apply to

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LC 0026.01

1 [section 4].

2 (3) Title 5, chapter 23, parts 8 and 9, are intended to be
3 renumbered and codified as an integral part of Title 2, chapter 7.

4

5 COORDINATION SECTION. **Section 21. Coordination**(Coordination
section)

6 **instruction.** If House Bill No. 56 is passed and approved and if it
7 includes a section that amends 56-4-401, then [section 5 of this act],
8 amending 2-17-301, is void.

9

10 COORDINATION SECTION. **Section 22. Coordination**

11 **instruction.** If either House Bill No. 294 or Senate Bill No. 284, or
12 both, and [this act] are passed and approved and if either or both
13 contain a section that amends 19-8-502, then the sections amending
14 19-8-502 are void and 19-8-502 must be amended as follows:

15 **"19-8-502. Member's contribution.** (1) Each member is
16 required to contribute into the pension trust fund ~~8.5%~~ 10% of the
17 member's monthly compensation, which must be deposited to the
18 member's credit in the pension trust fund.

19 (2) Each employer, pursuant to section 414(h)(2) of the federal
20 Internal Revenue Code of 1954, as amended and applicable on July
21 1, 1985, shall pick up and pay the contributions that would be
22 payable by the member under subsection (1) for service rendered
23 after June 30, 1985.

24 (3) The member's contributions picked up by the employer must
25 be designated for all purposes of the retirement system as the
26 member's contributions, except for the determination of a tax upon
27 a distribution from the retirement system. These contributions must
28 become part of the member's accumulated contributions but must
29 be accounted for separately from those previously accumulated.

30 (4) The member's contributions picked up by the employer must

Appendix P
Sample Bill Form — Complete

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LC 0026.01

1 be payable from the same source as is used to pay compensation
2 to the member and must be included in the member's wages, as
3 defined in 19-1-102, and the member's compensation as used to
4 define the member's highest average compensation in 19-8-101.
5 The employer shall deduct from the member's compensation an
6 amount equal to the amount of the member's contributions picked
7 up by the employer and remit the total of the contributions to the
8 board."

9

10 COORDINATION SECTION. **Section 23. Coordination**

11 **instruction.** If either House Bill No. 294 or Senate Bill No. 284, or
12 both, and [this act] are passed and approved and if either or both
13 contain a section that amends 19-8-504, then the sections amending
14 19-8-504 are void and 19-8-504 must be amended as follows:

15 **"19-8-504. State employer's contribution.** Each month, state
16 employers shall pay to the pension trust fund a sum equal to ~~9%~~
17 12% of the total compensation paid to their covered employees.
18 The department of fish, wildlife, and parks shall include in its budget
19 and shall request for legislative appropriation an amount necessary
20 to defray the state's portion of the costs of this section."

(Sections 22 and 23 are separate coordination instructions for
the same bill. Two coordination sections are required because a
conflict requires that two MCA sections be amended.)

21 COORDINATION SECTION. **Section 24. Coordination**

22 **instruction.** (1) If both Senate Bill No. 7 and [this act] are passed
23 and approved, then Senate Bill No. 7 is void.

24 (2) If both Senate Bill No. 377 and [this act] are passed and
25 approved, then [sections 1 through 4 of this act] are void. If Senate

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LC 0026.01

1 Bill No. 377 is not passed and approved, then [this act] is void.

2 (3) If House Bill No. 284, House Bill No. 546, and [this act] are
3 passed and approved, then [section 1] of House Bill No. 284 must
4 be amended as follows:

5 **NEW SECTION. Section 1. Environmental rehabilitation and**
6 **prevention account.** (1) There is an environmental rehabilitation
7 and prevention account in the state special revenue fund provided
8 for in 17-2-102.

9 (2) There must be deposited in the account unclaimed or excess
10 reclamation bond money received, pursuant to 82-4-141, and
11 interest earned on the account.

12 (3) Money in the account is available to the department of
13 environmental quality by appropriation and must be used to pay for
14 reclamation of unclaimed mine lands for which the department may
15 not require reclamation by a legally responsible party.

16 (4) Whenever money deposited in the account during a fiscal
17 year exceeds ~~\$250,000~~ \$100,000, the amount deposited in the
18 account during the fiscal year in excess of ~~\$250,000~~ \$100,000 must,
19 at the end of the fiscal year, be transferred to the general fund."
20

(Saving clause) 21 **NEW SECTION. Section 25. Saving clause.** [This act] does not
22 affect rights and duties that matured, penalties that were incurred,
23 or proceedings that were begun before [the effective date of this
24 act].
25

(Severability clause) 26 **NEW SECTION. Section 26. Severability.** If a part of [this act]
27 is invalid, all valid parts that are severable from the invalid part
28 remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that
30 are severable from the invalid applications.

Appendix P
Sample Bill Form — Complete

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62nd Legislature

LC 0026.01

1

(Nonseverability
clause)

2 **NEW SECTION. Section 27. Nonseverability.** It is the intent of
3 the legislature that each part of [this act] is essentially dependent
4 upon every other part, and if one part is held unconstitutional or
5 invalid, all other parts are invalid.

6

(Contingent
voidness)

7 **NEW SECTION. Section 28. Contingent voidness.** If the
8 defined contribution retirement plan enacted by Chapter 498, Laws
9 of 2007, cannot be implemented because of an unfavorable internal
10 revenue service determination or ruling, then [this act] is void.

11

(Extraordinary
vote)

12 **NEW SECTION. Section 29. Three-fifths vote required.**
13 Because 60-3-201(1)(e) authorizes the expenditure of a portion of
14 the gasoline dealers' license tax for weed control along the state
15 road system, Article VIII, section 6, of the Montana constitution
16 requires a vote of three-fifths of the members of each house of the
17 legislature for passage.

18

19 **NEW SECTION. Section 30. Three-fourths vote required.**
20 Because [section 2] appropriates money from the coal severance tax
21 trust fund, Article IX, section 5, of the Montana constitution requires
22 a vote of three-fourths of the members of each house of the
23 legislature for passage.

24

25 **NEW SECTION. Section 31. Three-fourths vote required.**
26 Because [section 1] creates a subfund in the coal severance tax
27 trust fund, Article IX, section 5, of the Montana constitution, as
28 interpreted by the Montana supreme court in *Montanans for the Coal*
29 *Trust v. State*, requires a vote of three-fourths of the members of
30 each house of the legislature for passage.

62nd Legislature

LC 0026.01

1

2 NEW SECTION. **Section 32. Two-thirds vote required.**3 Because [section 2] limits governmental liability, Article II, section
4 18, of the Montana constitution requires a vote of two-thirds of the
5 members of each house of the legislature for passage.

6

7 NEW SECTION. **Section 33. Two-thirds vote required —**8 **contingent voidness.** Because [section 2] limits governmental
9 liability, Article II, section 18, of the Montana constitution requires a
10 vote of two-thirds of the members of each house of the legislature
11 for passage. If [this act] is not approved by at least two-thirds of the
12 members of each house of the legislature, then [section 2] is void.

13

14 NEW SECTION. **Section 34. Two-thirds vote required.**15 Because [section 1] authorizes the creation of state debt, Article VIII,
16 section 8, of the Montana constitution requires a vote of two-thirds
17 of the members of each house of the legislature for passage.

18

19 NEW SECTION. **Section 35. Effective dates.** (1) Except as
(Effective date) 20 provided in subsections (2) and (3), [this act] is effective October 1,
21 2011.22 (2) [Sections 1 through 4 and 9] and this section are effective on
23 passage and approval.

24 (3) [Sections 6 through 8] are effective January 1, 2012.

25

26 NEW SECTION. **Section 36. Effective date.** [This act] is
27 effective on passage and approval.

28

29 NEW SECTION. **Section 37. Retroactive applicability.** [This
(Applicability) 30 act] applies retroactively, within the meaning of 1-2-109, to tax years

Appendix P
Sample Bill Form — Complete

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62nd Legislature

LC 0026.01

1 beginning after December 31, 2010.

2

3 NEW SECTION. Section 38. Applicability. [This act] applies to
4 proceedings begun after December 31, 2011.

5

(Termination) 6 NEW SECTION. Section 39. Termination. [Sections 1 through
7 6] terminate September 30, 2012.*

8

-END-

*Noncodified sections should not be terminated. A repealer section may not be terminated, i.e., once MCA sections are repealed, they may not be "unrepealed". See section 4-2 for a listing of codified and noncodified sections from the bill body.

New amendments to a temporary section must terminate when the temporary section terminates pursuant to section 1-2-203, MCA.

Appendix R
Bill Drafter Checklist

Drafter _____ Phone _____

Note: Each question on the checklist calls for a "yes", "no", or "N/A" response. Section number references are to the Bill Drafting Manual.

- 1 - Conformity with state and federal Constitutions considered (section 1-2)? **Make note of concerns below.** _____
- 2 - Existing Montana statutes reviewed to avoid conflicts, duplication, or confusion (section 1-4)? _____
- 3 - Internal references checked (section 1-8)? _____
- 4 - Title contains one subject clearly expressed (section 4-4)? _____
- 5 - Code placement and applicability considered: codification instruction included in draft or message to codifier attached (section 4-19, Appendix Q)? _____
- 6 - Fiscal note may be required/probable (section 6-1)? _____
- 7 - Local government fiscal impact (section 6-2)? _____
- 8 - Fiscal impact requiring July 1 effective date (sections 4-26, 6-1)? _____
- 9 - Appropriations (section 6-1)? _____
- 10 - Revenue (section 6-1)? _____
- 11 - If state agency bill, "By Request" line included (section 4-3(4))? _____
- 12 - Note attached indicating source of draft (e.g., model act, other state statute, etc.) (section 1-7)? _____
- 13 - Tribal notification required (section 1-3)? _____
- 14 - Short bill title revised to reflect draft (section 4-4(11))? _____
- 15 - Changed/added bill subjects (including fiscal note, revenue, local government impact, constitutional amendment)? _____
- 16 - Grants or extends rulemaking authority (section 6-3)? _____

Drafter's Notes (contacts, changes, discussions, etc.):

REPEALING, RENUMBERING, OR TERMINATING AN ENTIRE CHAPTER OR PART

EXAMPLE: repealing Title 15, chapter 71, part 1

Search section text for: "title 15, chapter 71, part 1"
"title 15, chapter 71, parts" (finds "parts 1 through 4")
"title 15, chapter 71" & part or parts (finds "part 1 of Title 15, chapter 71" or "parts 1 through 4 of Title 15, chapter 71")

Search section text in Title 15 only (limit search) for: "chapter 71, parts"
"part 1"
parts & 1 (finds "parts 1 through 4 of this chapter")

EXAMPLE: repealing Title 30, chapter 8

Search section text for: "title 30, chapter 8"
"title 30, chapters"

Search section text in Title 30 only (limit search) for: "chapter 8"
chapters & 8

CHANGING A DEFINED TERM

Any time that you change a term that is defined in a definition section, you **MUST** search the appropriate part of the MCA for that term and change each occurrence. Think of as many possible (some bad) ways of using the term.

EXAMPLE: "child with disabilities" to "child with a disability"

Search section text for: "child with disabilities"
"children with disabilities"
any other variation that you can think of

CHANGING A PHRASE (DEFINED OR NOT)

EXAMPLE: youth in need of supervision

Search section text for: "youths in need of supervision"
"youth" and "supervision" (finds "a youth who is determined to be in need of supervision")

Appendix S Tips on Searching

EXAMPLE: game wardens' retirement system

Search section text for:

"game wardens retirement" (Folio does not recognize the apostrophe in "wardens")

"game wardens" and "retirement" (finds "highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system")

Appendix T
Preintroduction Form

175

**PRESESSION AUTHORITY TO PREINTRODUCE,
NUMBER, AND DISTRIBUTE A BILL***

**DO NOT RETURN THIS FORM EXCEPT TO INTRODUCE THIS BILL
SIGNING THIS FORM IS THE SAME AS SIGNING THE BILL AND
DELIVERING THE BILL TO THE CHIEF CLERK OF THE HOUSE
OR SECRETARY OF THE SENATE**

(Joint Rule 40-40(6))

To the Executive Director of the Montana Legislative Services Division:

***I understand that signing and returning this form has the same effect as introducing the bill during the session. This preintroduction form will authorize the assignment of a bill number and distribution of the bill prior to the convening of the legislative session.**

Please PREINTRODUCE this bill by typing my name and the names of the additional sponsors (if any) on the bill, numbering the bill, and distributing the bill prior to the convening of the legislative session.

You are hereby authorized to number and distribute LC____.01 prior to the convening of the legislative session. The subject of this bill, as reflected in the title, is:

"AN ACT..."

YES, I WANT TO PREINTRODUCE THIS BILL, AND I AGREE TO SPONSOR LC____.01.

SPONSORED BY _____
CHIEF SPONSOR (SIGN)

CHIEF SPONSOR (PRINT)

(DATE)

Additional sponsors must sign and print their names here:

TO PREINTRODUCE THIS BILL, MAIL THIS FORM, SIGNED AND DATED, TO THE EXECUTIVE DIRECTOR, LEGISLATIVE SERVICES DIVISION, PO BOX 201706, HELENA, MONTANA 59620-1706, OR FAX THE FORM TO (406) 444-3036. A BILL NUMBER WILL BE ASSIGNED, YOUR NAME WILL BE TYPED ON THE BILL, AND THE BILL WILL BE DISTRIBUTED PRIOR TO THE CONVENING OF THE LEGISLATIVE SESSION.

Note: You do not need to return the bill with this form.

DO NOT RETURN THIS FORM EXCEPT TO INTRODUCE THIS BILL.

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