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SECTION 1-5. PURPOSE.

This Manual explains and illustrates the basic principles of drafting bills and other legislative documents.

Although this Manual is extensive, you may encounter situations that are only partially covered by this Manual or not covered at all.

Some of the principles in this Manual are absolute, such as the language of an enacting clause, and must be followed.

Other principles, however, are not absolute. Sometimes you will have to draft a legislative document that does not strictly adhere to these principles because of extenuating circumstances, such as the directions of a Senator or Representative, prior negotiations agreeing to specific language, time constraints, the need to model the language on existing statutory language, court opinions interpreting words or phrases in existing statutes, and the complexity of the language.

The goal is to always follow good drafting practices, but sometimes that goal is limited by the circumstances.

SECTION 1-10. BILLS.

In Illinois the only type of legislative document that may become law is a bill. The Illinois Constitution is explicit: "The General Assembly shall enact laws only by bill." Ill. Const., art. IV, sec. 8, subsec. (a).

SECTION 1-15. LEGISLATIVE DOCUMENTS AFFECTING BILLS.

(a) AMENDMENTS. A bill is often amended in the house of origin, the second house, or both. An amendment makes specific changes to the language of the bill. Although it is a distinct legislative document, an amendment does not exist independently of the bill it amends; the bill is always the basic document.

(b) MOTIONS TO CONCUR OR RECEDE. When a bill passes the house of origin, that house's amendments, if any, are incorporated into the bill and an engrossed bill is printed. The second house then considers the engrossed bill and may further amend it before passage. If the second house amends the bill, the house of origin may then adopt a motion either to concur or not to concur in one or more of the second house's amendments. If the house of origin does not concur in all amendments, the second house may then adopt a motion either to recede or refuse to recede from its disputed amendments.

(c) CONFERENCE COMMITTEE REPORTS. Sometimes the house of origin does not concur in one or more of the amendments adopted by the second house. If the second house then refuses to recede from any disputed amendment, a conference committee, consisting of members of both houses, is usually appointed to consider the differences between the houses. If a majority of the committee agrees, a conference committee report suggesting a resolution of the dispute is submitted to both houses for further action. The conference committee report may simply recommend that one house recede from or concur in the disputed amendments, or it may recommend that one house recede from certain amendments and the other house concur in other amendments. Often, a conference committee report also urges both houses to further amend the bill. In this respect a conference committee report serves the same function as an amendment.

(d) VETO MOTIONS. The Governor has extensive veto powers. Ill. Const., art. IV, sec. 9. The Governor may veto any bill in its entirety and may veto any item of an appropriation bill. In either case the General Assembly may (i) do nothing and the bill dies or an item of appropriation dies or (ii) override the total or item veto by adopting a motion to override by an affirmative vote of three-fifths of the elected members of each house.

The Governor may also reduce the amount of any item of an appropriation bill. The General Assembly may (i) do nothing and the reduction stands or (ii) restore the item to its original amount by adopting a motion to restore by an affirmative vote of a majority of the elected members of each house. When the Governor signs an appropriation bill and returns it with his or her reduction message to the General Assembly, the items of the bill become law in their reduced form. 1973 Op.Atty.Gen., p. 158. If the General Assembly thereafter restores some or all of the items to their original amounts, those restored amounts supersede the reduced amounts.

The final veto power of the Governor is known as an amendatory veto. The Governor may return a bill to the General Assembly with specific recommendations for change. The General Assembly then has 3 possible responses: it may do nothing and the bill dies, it may override the amendatory veto in the same manner as a total or item veto, or it may accept the Governor's proposed changes by adopting an amendatory veto motion. An amendatory veto motion is like an amendment; it makes specific changes to the language of the bill based on the Governor's recommendations.

SECTION 1-20. CONSTITUTIONAL JOINT RESOLUTIONS.

Article XIV of the Illinois Constitution allows the General Assembly to initiate changes to the Illinois Constitution and United States Constitution. Section 1 allows the General Assembly to initiate a referendum on the question of calling an Illinois Constitutional Convention. Section 2 allows the General Assembly to initiate a referendum on the question of amending the Illinois Constitution. Section 3 allows the General Assembly to initiate various actions concerning the United States Constitution. Each of these initiatives is taken by means of a joint resolution adopted by both houses.

SECTION 1-22. APPOINTMENT MESSAGES.

The Illinois Constitution provides that the "Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for". Ill. Const., art. V, sec. 9, subsec. (a). Statutes also grant various State officers the authority to appoint persons to positions with State agencies, boards, and commissions with the advice and consent of the Senate. Senate Rules set forth the procedures for confirmation of appointees.

Senate Rule 10-2 requires the Legislative Reference Bureau to draft all appointment messages and sets forth the appointment message form.

SECTION 1-25. OTHER LEGISLATIVE DOCUMENTS.

Other types of legislative documents, notably death and other nonconstitutional resolutions, may be adopted by one or both houses; unlike bills and constitutional joint resolutions, however, they do not change statutory or constitutional law. Some resolutions, however, do have legal effect. See the examples concerning school mandate waivers and authorization of toll highways in Section 80-5 of this Manual and concerning executive reorganization in Section 87-5 of this Manual.

The General Assembly also considers various procedural questions in the form of resolutions or motions. These resolutions and motions do not have the force of statutory or constitutional law.

SECTION 1-30. SCOPE OF THIS MANUAL.

This Manual discusses legislative documents affecting statutory or constitutional law: bills, legislative documents that affect bills, and constitutional joint resolutions. This Manual also discusses other types of resolutions, as well as appointment messages. This Manual does not discuss procedural resolutions and motions.

SECTION 1-35. REFERENCES TO RULES

References to House Rules and Senate Rules are to those of the 97th General Assembly as of December, 2012.

SECTION 1-40. ETHICAL CONSIDERATIONS.

(a) RULES OF PROFESSIONAL CONDUCT. Section 5.03 of the Legislative Reference Bureau Act, 25 ILCS 135/5.03, provides as follows:

Sec. 5.03. The reference bureau shall afford to any member of the General Assembly, upon his request, such legal assistance and information as may be practicable in the preparation of bills, memorials, resolutions, orders and amendments, alterations, changes thereto, and revisions and substitutes thereof, proposed to be introduced into the General Assembly by that member.

As an LRB attorney, you practice law when you afford members of the General Assembly legal assistance. The practice of law is regulated by the Illinois Rules of Professional Conduct (IRPC) adopted by the Illinois Supreme Court. IRPC, Preamble.

This Section discusses those rules that are the most relevant to you as an LRB attorney. Other rules may affect your practice of law as an LRB attorney, however, and you should review the rules on a regular basis.

(b) GENERAL ASSEMBLY AS CLIENT. The Legislative Reference Bureau's duty is to afford legal assistance to members of the General Assembly. Because the Rules of Professional Conduct regulate an attorney's relationship with a client, a fundamental question must be answered: As an LRB attorney, who is your client? Is it the General Assembly, or is it an individual legislator?

The Legislative Reference Bureau is a legislative support services agency and is subject to the Legislative Commission Reorganization Act of 1984 (25 ILCS 130/) and policies established by the Joint Committee on Legislative Support Services. 25 ILCS 130/1-3; 25 ILCS 135/1. The statutes governing the LRB indicate that the

client is the General Assembly. While drafting requests are processed on behalf of individual legislators, the General Assembly (through the Joint Committee on Legislative Support Services) ultimately directs the LRB's activities in affording legal assistance to legislators and thus is the client.

Because the General Assembly is the client, Rule 1.13 is particularly relevant to LRB attorneys in providing legal assistance to legislators. That rule provides in part as follows:

RULE 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

The "organization" is the General Assembly, and "its duly authorized constituents" are the individual members.

Because the General Assembly is the client, and not individual legislators, you may draft bills for each of several legislators even though the bills are adverse to each other or otherwise at cross purposes. You may also draft, for one or more legislators, amendments that are adverse to a bill you drafted for another legislator. If individual legislators were your clients, these drafting activities would violate Rule 1.7, which provides in part that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." It is in the General Assembly's best interest that LRB attorneys draft legislation requested by any legislator, even when the requests of individual legislators may be adverse to one another.

(c) **CONFIDENTIALITY.** You may not reveal the confidences and secrets of a legislator without the legislator's consent. Your unauthorized disclosure probably would violate Rule 1.6, which provides in part that "a lawyer shall not reveal information relating to the representation of a client ..." unless otherwise authorized to do so under the Rules of Professional Conduct. Revealing the confidences of individual legislators would disrupt an integral part of the legislative process and thus would not be in the best interest of the General Assembly (your client).

This means that all requests for bills, resolutions, amendments, and other legislative documents received by the Legislative Reference Bureau are confidential. Information concerning the nature of a request and who submitted it, and even whether a request on a given topic has been received by the LRB, may not be discussed with anyone other than the requester and persons authorized by the requester. Keep current projects, copies of rough drafts, and other work materials covered or otherwise out of view so that information about a request is not inadvertently conveyed to an unauthorized person. Sometimes the requester will authorize you to discuss the request with anyone you feel might have information necessary to prepare a draft. Any specific instructions from the requester take precedence over the general rule of confidentiality.

Even after a bill, resolution, or amendment has been introduced, information concerning who may have actually requested the legislation and what alternatives were considered and rejected during the drafting process remain confidential.

If a person other than the requester asks about a request, advise the person that drafters cannot reveal information about requests--not even whether a request has been received on a given subject. Advise the person to contact whomever the person thinks may have made such a request and have that other person give you permission to discuss the request, if one exists.

Your communication with any person concerning a legislative document prepared or being prepared by the Legislative Reference Bureau is protected by the attorney-client privilege. (For a discussion of corporate clients and the attorney-client privilege, see Ball, *Corporate Clients and the Attorney-Client Privilege in Illinois State and Federal Courts*, 86 Ill. B J 426 (1998).) That communication also is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/).

(d) IMPARTIALITY. Rule 2.1 provides in part that "in representing a client, a lawyer shall exercise independent professional judgment and render candid advice".

Factors such as who the requester is, the subject matter of the request, and whether the idea is likely to pass or even be introduced should not affect the quality of your work as a drafter unless the requester specifically asks that little time be spent on the project.

You must remain impartial when working on a request. You may suggest policy considerations to the requester, but do not use a request to promote your personal interests. Policy matters are in the requester's domain, not yours.

CHAPTER 5. BILLS IN GENERAL.

- 5-5. PARTS OF A BILL.
- 5-10. SINGLE SUBJECT.
- 5-15. BILLS AND ACTS.

SECTION 5-5. PARTS OF A BILL.

The necessary parts of a bill are a title, enacting clause, and body. Within the body there can be a great variety of different subparts, including new provisions, amendatory provisions, and repealers.

In addition, various laws require each bill to have a synopsis and, when applicable, a note Act or mandate stamp. These are discussed in Chapters 40 and 45.

SECTION 5-10. SINGLE SUBJECT.

Subsection (d) of Section 8 of Article IV of the Illinois Constitution provides, in part, as follows:

Bills, except for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

A substantive bill satisfies the single-subject rule as long as the matters included in the bill have some natural and logical connection to a single subject. *People v. Burdunice*, 211 Ill.2d 264 (2004); *People v. Boclair*, 202 Ill.2d 89 (2002); *People v. Sypien*, 198 Ill.2d 334 (2001); *People v. Malchow*, 193 Ill.2d 413 (2000); *Premier Property Management, Inc. v. Chavez*, 191 Ill.2d 101 (2000); *People v. Cervantes*, 189 Ill.2d 80 (1999); *Arangold Corp. v. Zehnder*, 187 Ill.2d 341 (1999). See also *People v. Wooters*, 188 Ill.2d 500 (1999); *People v. Reedy*, 186 Ill.2d 1 (1999); *Johnson v. Edgar*, 176 Ill.2d 499 (1997); *People v. Dunigan*, 165 Ill.2d 235 (1995); *Geja's Café v. Metropolitan Pier and Exposition Authority*, 153 Ill.2d 239 (1992); *Fuehrmeyer v. City of Chicago*, 57 Ill.2d 193 (1974); *People ex rel. Ogilvie v. Lewis*, 49 Ill.2d 476 (1971). A matter that does not have such a natural and logical connection introduces a second subject and renders the bill unconstitutional.

In some recent cases the Supreme Court has also stated that a legislative act violates the single-subject rule if a bill includes unrelated provisions that by no fair interpretation have any legitimate relation to one another. See *People v. Cervantes*, supra; *People v. Wooters*, supra; *People v. Reedy*, supra; *Johnson v. Edgar*, supra. In *Premier Property Management, Inc.*, supra, however, the Court emphasized that under the Constitution there has never been a second, additional requirement that the provisions within a legislative act be related to each other. There is only one test: whether the matters included within the bill have some natural and logical connection to a single subject. See also *Arangold Corp. v. Zehnder*, supra. In *People v. Sypien*, supra, the Court stated that the test requires a two-tiered analysis: first, whether the bill involves a legitimate single subject (looking at the bill's title); and second, whether the various provisions within the bill all relate to the proper subject at issue. In *People v. Reedy*, supra, the Court stated that in determining whether a bill satisfied the single-subject rule the Court would construe the term "subject" liberally in favor of the legislature.

A summary of recent Supreme Court decisions concerning the single-subject rule follows:

- *People v. Burdunice*, supra. Public Act 89-688 included a topic (matters relating to civil lawsuits against State employees) that was not related to the subject of "criminal law". The Public Act was unconstitutional.
- *People v. Boclair*, supra. Public Act 83-942's title, "AN ACT in relation to criminal justice and correctional facilities", encompassed a single subject: the criminal justice system. All of Public Act 83-942's topics were related to that subject, and the Public Act was constitutional.

- *People v. Sypien*, supra. Public Act 90-456 included a topic (adjudicatory hearings for allegedly abused, neglected, or dependent children) that was not related to the subject of "criminal law". The Public Act was unconstitutional.
- *People v. Malchow*, supra. Public Act 89-8 amended numerous Acts in relation to the subject of "criminal and correctional matters". While 3 of those Acts (the Medical Practice Act of 1987, the Code of Civil Procedure, and the Civil Administrative Code of Illinois) might seem unrelated to that subject, a closer look at their amendatory provisions showed that those provisions were indeed related to that subject. The Public Act was constitutional.
- *Premier Property Management, Inc. v. Chavez*, supra. Public Act 90-514 dealt with 2 topics (tax collectors' scavenger sales and tenancy by the entirety), both of which were related to the subject of "property". The Public Act was constitutional.
- *People v. Cervantes*, supra. Public Act 88-680 included 2 topics (changes to the Women, Infants and Children Vendor Management Act and creation of the Secure Residential Youth Care Facilities Licensing Act) that were not related to the subject of "neighborhood safety". The Public Act was unconstitutional.
- *People v. Wooters*, supra. Public Act 89-203 included a topic (mortgage foreclosures) that was not related to the subject of "crime". The Public Act was unconstitutional.
- *Arangold Corp. v. Zehnder*, supra. Public Act 89-21 amended 21 Acts to implement the State budget. All of the Public Act's provisions were related to the subject of "the State budget" and the Public Act was constitutional.
- *People v. Reedy*, supra. Public Act 89-404 included a topic (hospital liens) that was not related to the subject of the criminal justice system. The Public Act was unconstitutional.
- *Johnson v. Edgar*, supra. Public Act 89-428 encompassed topics as diverse as child sex offenders, environmental impact fees imposed on the sale of fuel, and employer eavesdropping. The Act's subject ("public safety") was too vague, and to permit the use of such a subject would essentially eliminate the single-subject rule. The Public Act was unconstitutional.

A bill making appropriations may not contain any substantive provisions. *People ex rel. Director of Finance v. Young Women's Christian Association*, 86 Ill.2d 219 (1981) (See Section 18.1 of P.A. 78-1087). Note, however, that a bill that provides for incurring or guaranteeing State debt (for example, by issuing bonds) must provide for the manner of repayment. Ill. Const., art. IX, sec. 9, subsec. (b). Thus, if a substantive bill provides for the issuance of bonds and requires the General Assembly to appropriate sufficient moneys each fiscal year to pay the principal of and interest on outstanding bonds, the bill may also provide for a continuing appropriation of those moneys in case the General Assembly fails to make a required appropriation. *People ex rel. Ogilvie v. Lewis*, 49 Ill.2d 476 at 488-489 (1971).

Cross reference: Section 10-20 with respect to expressing the subject in the title.

SECTION 5-15. BILLS AND ACTS.

In the legislative process a bill is first introduced in one house of the General Assembly. Amendments, motions to concur or recede, and conference committee reports may be proposed as the bill works its way through the process. Finally, the General Assembly passes the bill. Then, through either the Governor's approval or inaction or a veto procedure, the bill becomes law and is known as an "Act". Either on the date the bill becomes law (and its name is changed from a "bill" to an "Act") or on a later date, the Act takes effect and is enforceable.

CH. 5 BILLS IN GENERAL

A bill is merely a proposal to change the law. An Act is the law. Although a bill is drafted before the legislative process even begins, it assumes it will become law and speaks from that date onward. Thus, in the body of the bill it refers to itself not as "this bill", but as "this Act".

Although "bill" and "Act" refer to the same document, "bill" is the appropriate designation before it becomes law and "Act" after it becomes law.

CHAPTER 10. TITLE AND ENACTING CLAUSE.

- 10-5. TITLE FORMAT.
- 10-10. "A BILL FOR".
- 10-15. "AN ACT".
- 10-20. SUBJECT OF THE BILL.
- 10-30. REFERENCE TO AN EXISTING ACT.
- 10-35. EXAMPLES OF TITLES.
 - (a) SINGLE EXISTING ACT AFFECTED.
 - (b) SEVERAL EXISTING ACTS AFFECTED.
 - (c) ALL NEW LAW.
 - (d) NEW LAW AND EXISTING ACTS AFFECTED.
 - (e) APPROPRIATION BILLS.
 - (f) POPULAR NAME FOR AMENDATORY BILL.
- 10-40. ENACTING CLAUSE.
- 10-45. PREAMBLE.

SECTION 10-5. TITLE FORMAT.

The format for a title is as follows:

A BILL FOR

AN ACT in relation to municipal government.

SECTION 10-10. "A BILL FOR".

A bill is the only legislative document that may become law. It is therefore essential to label the document as a bill. Customary practice is to print "A BILL FOR" at the bottom of the cover page. This phrase is removed when a bill becomes a Public Act.

SECTION 10-15. "AN ACT".

Every bill begins "A BILL FOR AN ACT". This phrase labels the document as a bill and proposes that it become an Act, an enforceable law of the State of Illinois.

SECTION 10-20. SUBJECT OF THE BILL.

The balance of the title should express the subject of the bill. It goes without saying that you must also ensure that the title is consistent with the body of the bill.

The key to devising a comprehensive title is to state a single subject to which all the parts of the bill have some natural or logical connection, but without making the subject so broad that it includes far more than the parts of the bill. For example, "AN ACT to change the law" is probably too broad, but "AN ACT concerning local government" can connect many separate provisions.

A good practice is to use the appropriate ILCS Chapter name in a bill title. Each ILCS Chapter name expresses a single subject. In some cases, an ILCS Chapter name can be replaced with a word or phrase that encompasses 2 or more related Chapters and still expresses a single subject without being too broad. The following

CH. 10 TITLE AND ENACTING CLAUSE

table contains suggested bill titles for bills that amend (i) one or more Acts contained in a single ILCS Chapter or (ii) 2 or more Acts contained in 2 or more ILCS Chapters for which the same bill title is suggested (for example, Chapters 210 (Health Facilities) and 225 (Professions and Occupations)). For a bill that amends Acts contained in ILCS Chapters that do not share the same suggested bill title (for example, Chapters 20 (Executive Branch) and 30 (Finance)), see Section 10-35, subsection (b), of this Manual.

| ILCS CHAPTER | CHAPTER NAME | BILL TITLE |
|--------------------------|-----------------------------|---|
| GOVERNMENT | | |
| CHAPTER 5 | GENERAL PROVISIONS | AN ACT concerning government. |
| CHAPTER 10 | ELECTIONS | AN ACT concerning elections. |
| CHAPTER 15 | EXECUTIVE OFFICERS | AN ACT concerning State government. |
| CHAPTER 20 | EXECUTIVE BRANCH | AN ACT concerning State government. |
| CHAPTER 25 | LEGISLATURE | AN ACT concerning State government. |
| CHAPTER 30 | FINANCE | AN ACT concerning finance. |
| CHAPTER 35 | REVENUE | AN ACT concerning revenue. |
| CHAPTER 40 | PENSIONS | AN ACT concerning public employee benefits. |
| CHAPTER 45 | INTERSTATE COMPACTS | AN ACT concerning State government. |
| CHAPTER 50 | LOCAL GOVERNMENT | AN ACT concerning local government. |
| CHAPTER 55 | COUNTIES | AN ACT concerning local government. |
| CHAPTER 60 | TOWNSHIPS | AN ACT concerning local government. |
| CHAPTER 65 | MUNICIPALITIES | AN ACT concerning local government. |
| CHAPTER 70 | SPECIAL DISTRICTS | AN ACT concerning local government. |
| CHAPTER 75 | LIBRARIES | AN ACT concerning local government. |
| EDUCATION | | |
| CHAPTER 105 | SCHOOLS | AN ACT concerning education. |
| CHAPTER 110 | HIGHER EDUCATION | AN ACT concerning education. |
| CHAPTER 115 | EDUCATIONAL LABOR RELATIONS | AN ACT concerning education. |
| REGULATION | | |
| CHAPTER 205 | FINANCIAL REGULATION | AN ACT concerning regulation. |
| CHAPTER 210 | HEALTH FACILITIES | AN ACT concerning regulation. |
| CHAPTER 215 | INSURANCE | AN ACT concerning regulation. |
| CHAPTER 220 | UTILITIES | AN ACT concerning regulation. |
| CHAPTER 225 | PROFESSIONS AND OCCUPATIONS | AN ACT concerning regulation. |
| CHAPTER 230 | GAMING | AN ACT concerning gaming. |
| CHAPTER 235 | LIQUOR | AN ACT concerning liquor. |
| CHAPTER 240 | WAREHOUSES | AN ACT concerning warehouses. |
| HUMAN NEEDS | | |
| CHAPTER 305 | PUBLIC AID | AN ACT concerning public aid. |
| CHAPTER 310 | HOUSING | AN ACT concerning housing. |
| CHAPTER 315 | URBAN PROBLEMS | AN ACT concerning urban problems. |
| CHAPTER 320 | AGING | AN ACT concerning aging. |
| CHAPTER 325 | CHILDREN | AN ACT concerning children. |
| CHAPTER 330 | VETERANS | AN ACT concerning veterans. |
| HEALTH AND SAFETY | | |
| CHAPTER 405 | MENTAL HEALTH | AN ACT concerning health. |
| CHAPTER 410 | PUBLIC HEALTH | AN ACT concerning health. |
| CHAPTER 415 | ENVIRONMENTAL | AN ACT concerning safety. |

| | | |
|---|--------------------------------|--|
| | SAFETY | |
| CHAPTER 420 | NUCLEAR SAFETY | AN ACT concerning safety. |
| CHAPTER 425 | FIRE SAFETY | AN ACT concerning safety. |
| CHAPTER 430 | PUBLIC SAFETY | AN ACT concerning safety. |
| HUSBANDRY | | |
| CHAPTER 505 | AGRICULTURE | AN ACT concerning agriculture. |
| CHAPTER 510 | ANIMALS | AN ACT concerning animals. |
| CHAPTER 515 | FISH | AN ACT concerning fish. |
| CHAPTER 520 | WILDLIFE | AN ACT concerning wildlife. |
| CHAPTER 525 | CONSERVATION | AN ACT concerning conservation. |
| TRANSPORTATION | | |
| CHAPTER 605 | ROADS AND BRIDGES | AN ACT concerning transportation. |
| CHAPTER 610 | RAILROADS | AN ACT concerning transportation. |
| CHAPTER 615 | WATERWAYS | AN ACT concerning transportation. |
| CHAPTER 620 | AIR TRANSPORTATION | AN ACT concerning transportation. |
| CHAPTER 625 | VEHICLES | AN ACT concerning transportation. |
| RIGHTS AND REMEDIES | | |
| CHAPTER 705 | COURTS | AN ACT concerning courts. |
| CHAPTER 710 | ALTERNATIVE DISPUTE RESOLUTION | AN ACT concerning alternative dispute resolution. |
| CHAPTER 715 | NOTICES | AN ACT concerning notices. |
| CHAPTER 720 | CRIMINAL OFFENSES | AN ACT concerning criminal law. |
| CHAPTER 725 | CRIMINAL PROCEDURE | AN ACT concerning criminal law. |
| CHAPTER 730 | CORRECTIONS | AN ACT concerning criminal law. |
| CHAPTER 735 | CIVIL PROCEDURE | AN ACT concerning civil law. |
| CHAPTER 740 | CIVIL LIABILITIES | AN ACT concerning civil law. |
| CHAPTER 745 | CIVIL IMMUNITIES | AN ACT concerning civil law. |
| CHAPTER 750, except 750 ILCS 60/Act (Domestic Violence Act) | FAMILIES | AN ACT concerning civil law. 750 ILCS 60/Act (Domestic Violence Act): AN ACT concerning domestic violence. |
| CHAPTER 755 | ESTATES | AN ACT concerning civil law. |
| CHAPTER 760 | TRUSTS AND FIDUCIARIES | AN ACT concerning civil law. |
| CHAPTER 765 | PROPERTY | AN ACT concerning civil law. |
| CHAPTER 770 | LIENS | AN ACT concerning civil law. |
| CHAPTER 775 | HUMAN RIGHTS | AN ACT concerning human rights. |
| BUSINESS | | |
| CHAPTER 805 | BUSINESS ORGANIZATIONS | AN ACT concerning business. |
| CHAPTER 810 | COMMERCIAL CODE | AN ACT concerning business. |
| CHAPTER 815 | BUSINESS TRANSACTIONS | AN ACT concerning business. |
| CHAPTER 820 | EMPLOYMENT | AN ACT concerning employment. |

The 1870 Illinois Constitution required each bill to be confined to a single subject and that subject to be expressed in the title. Ill. Const. 1870, art. IV, sec. 13. The 1970 Illinois Constitution also requires bills to be confined to a single subject, with exceptions, but does not explicitly require the subject to be expressed in the title. Ill. Const., art. IV, sec. 8, subsec. (d).

Although it is no longer constitutionally required, it is nevertheless still desirable to state a single comprehensive subject in the bill title. If a Public Act is challenged as violating the Illinois Constitution because it does not have a single subject, the court will look to the title to discern what the General Assembly considered the

single subject of the bill to be and will often define the bill's subject according to that title. See *People v. Foster*, 316 Ill.App.3d 855 (4th Dist. 2000).

On the other hand, a bill's title is not necessarily dispositive of the bill's content or that content's relationship to a single subject. *People v. Boclair*, 202 Ill.2d 89 (2002). In *Boclair*, the defendant challenged the constitutionality of a Public Act, claiming that the Public Act violated the single-subject rule. The Public Act's title was "AN ACT in relation to criminal justice and correctional facilities". The defendant argued that the Public Act addressed 2 separate subjects: "criminal justice" and "correctional facilities". The Supreme Court disagreed, stating that the Public Act in fact addressed a single subject: the criminal justice system.

The lesson is clear: never express more than one subject – or what could be construed as more than one subject – in the bill title. Even though a court might determine, as in *Boclair*, supra, that a bill relates to a single subject despite the fact that the bill's title addresses 2 or more topics, better practice in that case would have been to express a single topic or subject in the title, such as "AN ACT concerning criminal law".

Cross references:

(1) Section 5-10 concerning the single-subject rule.

(2) Section 75-10, subsec. (a); Section 75-15, subsec. (a); and Section 75-20, subsec. (a), concerning bill titles in codification Acts.

SECTION 10-30. REFERENCE TO AN EXISTING ACT.

In a purely amendatory bill that makes changes to only one existing Act, the best practice is to use a descriptive bill title such as "AN ACT concerning criminal law" or another example taken from the table set forth in Section 10-20 of this Manual. If the bill has such a title when it is introduced, the title is less likely to need changing in the case of an amendment to the bill. For example, suppose that a bill as introduced makes a change in Section 12-1 of the Criminal Code of 2012 and is titled "AN ACT to amend the Criminal Code of 2012 by changing Section 12-1". It is foreseeable that an amendment to the bill might make changes in an additional Section of the Criminal Code of 2012 or in a Section of the Code of Criminal Procedure of 1963 or another Act that relates to the subject of criminal law. If an amendment to the bill makes changes in Section 12-2 of the Criminal Code of 2012 or Section 109-1 of the Code of Criminal Procedure of 1963 or both, for example, the amendment must also change the bill's title. If the bill as introduced has a descriptive title, however, the amendment will not have to change the bill's title.

A descriptive title has an additional advantage. When the Secretary of the Senate or the Clerk of the House reads a lengthy list of bill titles into the record (see Senate Rule 5-2 and House Rule 38 (97th G.A.)), descriptive titles save time.

Before September 6, 1990, the effective date of Public Act 86-1324, 1,190 of the approximately 2,000 Acts of Illinois did not have short titles. That Public Act supplied the missing short titles, and since then all new Acts have been given short titles either when enacted or soon thereafter by amendment. Thus, you should seldom have to refer to an Act title in the title of the bill. If you must refer to the Act title, then also state the date approved, certified, or filed or the date a veto or amendatory veto was overridden, as the case may be.

Reference to Act title:

Section 2 of "An Act to amend the State Finance Act by changing Section 13.3", approved September 11, 1992

Reference to short title:

Section 0.01 of the Controlled Substance and Cannabis Nuisance Act

Always enclose the Act title in quotation marks so that it is clear where the title ends. Don't enclose a short title in quotation marks. In a short title the first letter of each word, except some articles, prepositions, and conjunctions, is capitalized, and this will set the short title apart. See Section 15-35 of this Manual.

Under the current Illinois Constitution an Act is typically either approved by the Governor or certified by the Governor after the General Assembly accepts an amendatory veto; the General Assembly may also override a veto or an amendatory veto. (There are other possibilities, but they seldom occur or require citation.) Previous Illinois Constitutions authorized procedures whereby a bill became law upon being filed. Some of those laws are still effective. By stating "approved", "certified", "filed", "veto overridden", or "amendatory veto overridden" and then giving the date of the action when referring to an Act title, you clearly identify the Act. This is not necessary when referring to an Act by its short title.

If the Act had been previously amended, in the past it was customary to add "as amended" to make it clear that the reference was to the Act in its then current state of amendment rather than as originally enacted. This is no longer necessary because of the statutory presumption that a reference to an Act is to that Act as it exists from time to time. See Section 15-30 of this Manual.

SECTION 10-35. EXAMPLES OF TITLES.

The following are common examples of titles. The phrase "A BILL FOR" is omitted in the examples because it is printed on the bottom of the cover page and is separated from the balance of the title.

(a) SUBSTANTIVE BILLS. When possible, a drafter should use a descriptive title as described in Sections 10-20 and 10-30 of this Manual. Examples follow:

AN ACT concerning State government.

AN ACT concerning revenue.

AN ACT concerning transportation.

If the same bill proposes changes to several Acts or areas of law, the drafter should give the bill a descriptive title stating its single subject in terms of either the bill's topic or its function. For example, a change to the Retailers' Occupation Tax Act is often accompanied by changes to the Use Tax Act, Service Use Tax Act, and Service Occupation Tax Act. As suggested in the table set forth in Section 10-20 of this Manual, "AN ACT concerning revenue" is an appropriate title for a bill amending those 4 Acts.

If a bill makes changes concerning income and property taxes, as well as occupation and use taxes, then "AN ACT concerning revenue" still works.

Suppose that you are asked to draft a bill that amends the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois (20 ILCS 2310/Art. 2310) and the Hospital Licensing Act (210 ILCS 85/). The suggested title for a bill amending an Act contained in ILCS Chapter 20 is different than the suggested title for a bill amending an Act contained in ILCS Chapter 210. Therefore, you must devise a title that best describes the bill's subject, based on the bill's provisions. If one of the suggested titles accurately describes the bill's subject, it's appropriate to use that title. For the bill described in this example, possible titles might include the following: "AN ACT concerning hospitals"; "AN ACT concerning health" (*better*); "AN ACT concerning regulation" (*best if the gist of the bill concerns the regulation of hospitals*); or "AN ACT concerning State government" (*best if the gist of the bill concerns the powers and duties of the Department of Public Health*).

If a bill proposes to create entirely new statutory law without affecting any existing statute, then the title should contain a single comprehensive subject based on either the bill's topic or its function. If the bill also includes changes to conform existing law (by amendment or repeal), then the Act title should state a single comprehensive

subject that includes both the new law and the amendments to existing law. Try to use one of the titles suggested in the table set forth in Section 10-20 of this Manual.

NOTE: It once was customary to use a title specifically naming the Act and stating how the various Sections of the Act were affected as in the following examples:

AN ACT to amend the State Finance Act by changing Sections 1 and 2.

AN ACT to amend the Illinois Insurance Code by adding Section 3.2.

AN ACT to amend the Illinois Lottery Law by changing Sections 8 and 8.1, adding Section 11.1, and repealing Section 9.

For reasons explained in Section 10-30 of this Manual, this practice was discontinued.

(b) APPROPRIATION BILLS. Appropriation bills must be limited to the subject of appropriations. Ill. Const., art. IV, sec. 8, subsec. (d). The standard title of an appropriation bill is the following:

AN ACT making appropriations.

Examples of more specific titles of appropriation bills are the following:

AN ACT making appropriations for the ordinary and contingent expenses of the Department of Revenue.

AN ACT making appropriations to the Governor's Purchased Care Review Board.

AN ACT providing for the ordinary and contingent expenses of the Office of the State Fire Marshal.

(c) POPULAR NAME FOR AMENDATORY BILL. Occasionally a requester desires a "short title" or popular name for a bill that contains only amendatory provisions. It would be inappropriate for the bill to contain a short title Section because a new Act is not being created, but a popular name may be included in the bill's title, as in the following example:

AN ACT concerning public aid, which may be referred to as the Illinois Welfare Reform Amendments of 2005.

Another option is to include a popular name as a Section 1 in the bill that will not be codified (the Section would be tagged as an NFS Section in XMetal), as in the following example:

Section 1. This Act may be referred to as the Illinois Welfare Reform Amendments of 2005.

Note that, unlike a short title of an Act, which includes "may be cited as", a drafter should use "may be referred to as" in a popular name.

SECTION 10-40. ENACTING CLAUSE.

Every bill must have an enacting clause. Ill. Const., art. IV, sec. 8, subsec. (a). A document without an enacting clause is not a bill and cannot become law. A document with a defective enacting clause is also probably unconstitutional. 1910 Op.Atty.Gen., p.77.

The Illinois Constitution sets forth the form of the enacting clause. The enacting clause appears in bills in large bold type as follows:

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

In the 1870 Illinois Constitution, the form of the enacting clause was shown in italics. Presumably for that reason, for many years the enacting clause was underlined in bills to indicate italics. The 1970 Illinois Constitution, however, shows the form of the enacting clause in regular type. Moreover, an underlined enacting clause would have the same appearance as underscored new matter being added to existing law (see Section 25-25 of this Manual). The enacting clause now appears in bills in large bold type. This draws attention to its presence but avoids confusing it with underscored new matter.

SECTION 10-45. PREAMBLE.

Occasionally a requester desires a statement of purpose or explanation for a bill that contains only amendatory provisions. If the bill amends more than one Section of existing law, it may not be appropriate to insert a statement of purpose in only one of those Sections and probably would be burdensome to insert such a statement in every Section being amended. As an alternative, make a statement of purpose or explanation in a preamble to the bill inserted between the title and the enacting clause as in the following example:

AN ACT concerning child support.

WHEREAS, It is necessary to take measures to increase the collection of child support; therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

A preamble may also be used to explain technical or formatting matters within the body of the bill. As discussed in Section 70-15 of this Manual, a combining revisory is sometimes necessary to reconcile changes made to a statute by multiple Public Acts. If the revisory has not yet become law and if you must prepare a draft making changes to text that is shown underscored in the revisory, the resulting draft might be misleading if, for example, it simply replaced the "revisory" underscored text with new underscored text. In that case, the new draft would appear to make changes to a statute base that did not include all the Public Acts affecting the statute.

This problem may occur with respect to changes in the total general obligation bond limit specified in the General Obligation Bond Act. In this situation a preamble is useful to explain the changes made by the new draft, as in the following example:

AN ACT in relation to bonds.

WHEREAS, Section 2 of the General Obligation Bond Act has been amended by two different Acts of the 88th General Assembly; and

WHEREAS, Under Section 6 of the Statute on Statutes (5 ILCS 70/6), multiple enactments by the same General Assembly are to be construed together so as to give full effect to each Act (except in the case of an irreconcilable conflict); and

WHEREAS, Public Act 88-472 raised the total general obligation bond limit by \$40 million, from \$6,119,758,392 to \$6,159,758,392, with the

CH. 10 TITLE AND ENACTING CLAUSE

additional amounts to be used for coal and energy development purposes;
and

WHEREAS, Public Act 88-93 raised the total general obligation bond limit by \$812 million, from \$6,119,758,392 to \$6,931,758,392, with the additional amounts to be used for purposes other than coal and energy development; and

WHEREAS, Giving full effect to both Public Acts results in a total increase of \$852 million and thus a total general obligation bond limit of \$6,971,758,392; and

WHEREAS, This Act thus has the effect of increasing the total general obligation bond limit by the amount by which the new limit provided in Section 2 of the General Obligation Bond Act exceeds \$6,971,758,392; therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

(In the body of the bill, the new change would be shown as "\$7,071,758,392 ~~\$6,931,758,392~~ ~~\$6,159,758,392~~"; see House Bill 2558 of the 88th General Assembly.)

For another example of the use of a preamble to explain changes to text that is the subject of a revisory, see House Bill 2721 of the 88th General Assembly concerning changes to the Property Tax Code incorporating changes made to a predecessor Section of the Revenue Act of 1939.

A preamble is not part of an Act, but a court may use it as a tool of statutory construction in ascertaining legislative intent. See *Atkins v. Deere & Co.*, 177 Ill. 2d 222 (1997), concerning the application of a repeal of the Structural Work Act to a cause of action that accrued before the effective date of the repeal. Nevertheless, to obviate litigation concerning legislative intent, the better practice is to state the legislative intent in the body of the bill whenever possible rather than in a preamble.

Cross references:

- (1) Section 20-10 concerning preambles in new Acts.
- (2) Section 75-10, subsection (b), concerning preambles in codification Acts.

CHAPTER 15. BODY OF BILL.

- 15-5. GENERAL CONSIDERATIONS.
 - (a) SPONSOR'S INTENT.
 - (b) NEW, AMENDATORY, OR COMBINED.
 - (c) CONSTITUTIONALITY.
 - (d) CONFLICTING CASE LAW.
- 15-10. SEQUENCE.
- 15-15. SECTION NUMBERS.
- 15-20. OUTLINE FORMAT.
- 15-25. SECTION HEADINGS.
- 15-30. INCORPORATION BY REFERENCE.
- 15-33. OVERLY SPECIFIC REFERENCES.
- 15-35. FORM OF REFERENCE TO OTHER ACTS.
 - (a) ILLINOIS ACTS.
 - (b) FEDERAL ACTS.
- 15-37. FORM OF REFERENCE TO RULES.
 - (a) ILLINOIS RULES.
 - (b) FEDERAL RULES.
- 15-40. STATUTE ON STATUTES.
- 15-45. COPYRIGHT INFRINGEMENT.

SECTION 15-5. GENERAL CONSIDERATIONS.

(a) SPONSOR'S INTENT. Obviously, when drafting a bill you must first clearly establish what it is that the sponsor wants to accomplish.

(b) NEW, AMENDATORY, OR COMBINED. Once you clearly establish the sponsor's intent, you must determine how that intent can be best accomplished. The alternatives are to propose an entirely new Act, a new Act replacing an existing Act, an Act amending or repealing portions of an existing Act, or some combination of these. Usually, the choice is apparent from the nature of the request. When the choice is not apparent, you should give a strong preference to amending an existing Act whenever the subject matter of the request fits within the subject matter of an existing Act.

(c) CONSTITUTIONALITY. Although as a drafter you are typically not concerned with policy considerations, you have an obligation to advise the sponsor when you believe the bill, as requested, would possibly violate the United States or Illinois Constitution. Also advise the sponsor of alternatives that might avoid the constitutional issue. In the end, however, it is the sponsor's prerogative as to how to proceed. Your obligation is only to make the sponsor aware of the constitutional issue.

(d) CONFLICTING CASE LAW. If the drafting request involves resolving a conflict in case law (e.g., where there is a split in authority between Appellate Districts) or the requester is attempting to "overrule" a court decision with legislation, discuss the specific cases with the requester and their impact on how you draft the request. If possible, review the cases yourself and determine what limitations, if any, the case law places on the General Assembly's ability to legislate in that area.

SECTION 15-10. SEQUENCE.

The title and enacting clause of a bill must always come first. The sequence of the parts of the body of a bill are not irrevocably fixed, but the following sequence is suggested for a bill combining both new and amendatory provisions:

New provisions
 Short title
 Purpose or policy
 Applicability
 Definitions
 Main provisions
 Subordinate provisions
 Procedures
 Penalties
 Home rule
 Severability or inseverability
 Expiration
Amendatory provisions and repealers
Transitional applicability
Effective date

Within the amendatory provisions and repealers it is preferable to follow a sequence based on the chapter and section numbers of the Illinois Compiled Statutes. This makes it easier to locate Secs. of existing law that are changed by the bill. Place added or amended Secs. of an existing Act together within a single Section of the bill. Repeal Secs. of the same existing Act in a separate Section of the bill; the repealer Section should follow the Section of the bill adding or amending Secs. of the existing Act even though that placement breaks the strict sequence of the Illinois Compiled Statutes section numbers. An example follows:

Section 5. The Probate Act of 1975 is amended by changing Sections 6-8 and 19-10 as follows:

(755 ILCS 5/6-8) (from Ch. 110 1/2, par. 6-8)

Sec. 6-8. Issuance of letters testamentary. When a will is admitted to probate, letters testamentary shall be issued to the executor named in the will if the named executor ~~he~~ qualifies and accepts the office, unless the issuance of letters is excused.

(Source: P.A. 81-213; 81-788; 81-1509.)

(755 ILCS 5/19-10) (from Ch. 110 1/2, par. 19-10)

Sec. 19-10. Contracts of decedent. By order of court a contract made by a decedent may be performed by the decedent's ~~his~~ representative.

(Source: P.A. 77-328.)

(755 ILCS 5/11a-22 rep.)

Section 10. The Probate Act of 1975 is amended by repealing Section 11a-22.

Section 15. The Illinois Living Will Act is amended by changing Section 4 as follows:

(755 ILCS 35/4) (from Ch. 110 1/2, par. 704)

Sec. 4. Recording of a terminal condition. Upon determining that the declarant has a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record. A physician who records in writing a terminal condition under this Section is presumed to be acting in good faith. Unless it is alleged and proved that the physician's ~~his~~ action violated the standard of reasonable professional care and judgment

under the circumstances, the physician ~~he~~ is immune from civil or criminal liability that otherwise might be incurred.

(Source: P.A. 85-860.)

In this example, the Section of the bill repealing a Section of the Probate Act of 1975 immediately follows the Section of the bill making amendatory changes to that Act. Putting the repealer Section there, rather than after all the amendatory Sections, makes it easier for a person reading the bill to keep track of the various changes made to that Act and maintains the proper sequence of ILCS chapter and Act (though not section) numbers. If the bill contains no amendatory changes to the Probate Act of 1975, it still is appropriate to put the Section of the bill repealing a Section of that Act before the Section of the bill amending the Illinois Living Will Act in order to maintain the proper sequence of ILCS chapter and Act numbers.

There are other times when the sequence of added or changed Secs. of existing law in the bill need not follow the chapter and section sequence of the Illinois Compiled Statutes. For example, one or more Secs. being added or changed may contain the gist of the bill and other Secs. of the same or a different Act may contain only minor, conforming changes. For example, the gist of a bill may concern changes in the duties of local governmental officials. Those changes may in turn require conforming changes in other Acts, such as the addition of a new fund to the list of special funds in the State Finance Act (30 ILCS 105/), the creation of an exemption from the State Mandates Act (30 ILCS 805/), or changed or additional cross references. If the chapter and section sequence is followed, the Secs. containing the gist of the bill will probably be buried in the bill. In such a case a solution is to put the Secs. containing the gist of the bill in the first Section of the bill and the other Secs. making minor changes in separate Sections of the bill, even though only one Act is amended or the ILCS sequence is otherwise broken. By putting the important Secs. in the first Section of the bill they are prominent and easy to find.

SECTION 15-15. SECTION NUMBERS.

Each basic segment of a bill is labeled a "Section", and a sequential number is assigned. The sequence is usually 5, 10, 15, and so on in multiples of 5. The reason for numbering in multiples of 5, both in a bill for a new Act and in an amendatory bill, is to leave room for adding new Sections that can be numbered using whole numbers. If an amendatory bill is initially numbered in multiples of 5, then amendments to the bill adding new Sections may be inserted in ILCS sequence without having to renumber the remaining Sections. Likewise, in a bill for a new Act, Sections may be added in the amendment process without renumbering the remaining Sections, and once the Act becomes law new Sections may be easily added using whole numbers.

There are 4 exceptions to numbering consecutively in multiples of 5. First, in a new Act the first Section should be the short title of the Act and should be numbered Section 1. The reason for this is to try to keep the short title at the very beginning of the Act. Second, in both a new Act and an amendatory Act the effective date Section should go at the end and be numbered Section 99 or Section 999. This will allow expansion without renumbering or running out of space for whole numbers. (Uniform Acts are sometimes an exception to the use of Section 1 for the short title and Section 99 or 999 for the effective date. See Chapter 77 of this Manual.) Third, in a bill for a new Act any amendatory or repealer Sections should be numbered, for example, Sections 905, 910, 915, and so on. This will leave room after the last substantive Section of the new Act for expansion. Thus, a new Act containing amendatory provisions and an effective date might be numbered as follows:

- Section 1. Short title
- Section 5. Definitions
- Section 10. Prohibitions
- Section 15. Penalties
- Section 905. Amendatory
- Section 990. Repealer
- Section 999. Effective date

The fourth exception is the numbering of Sections that are added by amendments. See Section 50-65 of this Manual.

In a new Act, place subordinate provisions (such as a transitional applicability provision, a saving clause, a severability clause, and similar matters) at the end of the Act after all of the main provisions and before the effective date Section. In an existing Act that contains such concluding subordinate provisions, insert new main provisions before the subordinate provisions so that the latter remain at the end of the Act.

When it is necessary to divide a bill into Articles, similar rules apply. In a bill for a new Act, the short title and other general provisions should be Article 1 (always use Arabic numerals, never Roman). Substantive Articles should then be numbered 5, 10, 15, and so on. Amendatory and repealer Articles should be numbered 905, 910, 915, and so on to allow for expansion. Place the effective date provision in Article 999. Number the Sections within an Article using the Article number as a prefix, then a hyphen, and then the regular numbering sequence. For example, Sections 5-5, 5-10, and 5-15 of Article 5. Never repeat Section numbers in 2 different Articles. For example, never number Sections 5, 10, and 15 of Article 5 and then Sections 5, 10, and 15 of Article 10; it would be impossible to refer to a Section accurately without also referring to its Article. Thus, a new Act with an Article structure might properly be numbered as follows:

Article 1. General Provisions.

Section 1-1. Short title.
Section 1-5. Purpose.
Section 1-10. Definitions.

Article 5. Licensing.

Section 5-5. Qualifications.
Section 5-10. Applications.
Section 5-15. Issuance of licenses.

Article 10. Discipline.

Section 10-5. Complaints.
Section 10-10. Hearings.
Section 10-15. Sanctions.

Article 905. Amendments and Repeals.

Section 905-5. Amendatory.
Section 905-90. Repealer.

Article 999. Effective Date.

Section 999-5. Effective date.

If you must divide a new or otherwise undivided Article into other divisions (for example, "Divisions" or "Parts"), designate each division with a number that is a multiple of 5. Designate Sections within, for example, Division 5 of Article 10 as Section 10-505, Section 10-510, and so on so that the number to the left of the hyphen is the same as the Article number and the first digit or digits to the right of the hyphen are the same as the other division number. Do not use a 3-part Section number such as 10-5-5. When preparing a bill to enact a Uniform Act or to amend an Act in which Articles are already divided into other divisions, however, follow the numbering scheme of the Uniform Act as proposed by the NCCUSL (see Section 77-10 of this Manual) or the existing Act (see Section 25-40 of this Manual).

SECTION 15-20. OUTLINE FORMAT.

The various parts within a Section are often segmented and given a letter or number to identify the segment. This is a convenient way to organize the Section and facilitate reference to a single segment. Although an outline format may use any variety of numbers and letters, the following format is recommended because of its current wide use throughout the statutes:

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Section 5. "Section"
  (a) "subsection"
    (1) "paragraph"
    (2) "paragraph"
      (A) "subparagraph"
      (B) "subparagraph"
        (i) "item"
        (ii) "item"
  (b) "subsection"
Section 10. "Section"

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Also shown in the suggested outline format are the words customarily used to describe each segment. Enclose the identifying letter or number within parentheses both to draw visual attention to the segmentation and to maintain consistency.

The preferable way to identify subparagraph (B), for example, is to state "subparagraph (B) of paragraph (2) of subsection (a) of Section 5". Although this format is cumbersome, the segment referred to is unmistakable. A shorter way to identify subparagraph (B) is merely to say "subdivision (a)(2)(B) of Section 5". Don't use "Section 5(a)(2)(B)". Unfortunately, over the years Sections added to existing Acts have been given numbers such as "Section 63a", and subsections have been identified as "a" rather than "(a)". "Section 63a" could then mean either Section 63a or subsection a of Section 63 and thus cause ambiguity. Although a long format is cumbersome, it is preferable because of its clarity.

When a Section has only one major segment, that segment is not identified as "(a)". If there is then a list in outline format within the Section, a common practice has been to identify components as (a), (b), (c), and so on since they make up the first identified breakdown of the Section. Always keep in mind, however, that the Section is likely to be amended in future years. To make that future amendment easier, initially identify the list of components in the illustration as (1), (2), (3), and so on. This allows the one current major segment to be later identified as "(a)" in an amendment and a second major segment added to the Section by the amendment to be identified as "(b)" without also having to change the identification of the components of the list. See Section 20-25, subsection (b), of this Manual for an example.

In a Section of a new Act or in a new Section added to an existing Act, each segment of the Section should contain only one list of itemized components set apart in outline format at the next level of indentation. For example, a "subsection" should contain only one list of "paragraphs". If a Section must contain 2 separate lists of "paragraphs", put each such list in a separate "subsection".

In amendatory provisions, don't add a second list of "paragraphs" to a "subsection" that already contains one such list. Instead, put the new list in a new "subsection". If a segment of an existing Section already contains more than one list of itemized components set apart in outline format at the next level of indentation, consider making changes to identify the components of each list using a different designation scheme. For example, if subsection (a) contains 2 separate lists of paragraphs, identify the components of the first list as (1), (2), (3), and so on, and identify the components of the second list as (i), (ii), (iii), and so on. Better yet, if possible, designate a new subsection (a-5) to contain the second list. This will reduce the likelihood of readers confusing one list with the other.

If you place an itemized list within any segment of a Section and do not set the list apart in outline format, you may designate the items in the list (i), (ii), (iii), and so on. An example follows:

Section 4. Informational reports.

(a) Each company must file an annual informational report with the Director on or before March 15 describing its activities in Illinois during the preceding calendar year.

(b) The report must contain explanations of the company's (i) rates, (ii) marketing methodology, (iii) underwriting standards, and (iv) claim systems.

(c) The report must be made on forms provided by the Department.

When the Section has a Section heading, as in the last example, subsection (a) is indented and begins on the next line. If a Section has no Section heading, then subsection (a) begins on the same line as and immediately after the Section number as in the following example:

Section 4. (a) This Section applies only in counties having a population of less than 5,000.

(b) The Weed and Thistle Commissioner is entitled to the following compensation and expense reimbursements:

(1) An annual salary of \$10,000, payable in 12 equal monthly installments on the last day of each month.

(2) Reimbursement for reasonable and necessary expenses incurred in the performance of official duties.

(c) The Weed and Thistle Commissioner may also hold the office of County Surveyor.

The reason for distinguishing between a Section with a Section heading and one without a Section heading is that starting subsection (a) on a separate line in a Section without a Section heading would leave the Section number isolated on the first line, which looks odd and takes up unnecessary space.

In the last example, paragraphs (1) and (2) of subsection (b) are further indented. In the past, because of word processing limitations, paragraphs (1) and (2) were indented on the same level as subsections, making it difficult to distinguish the segments in the outline format. The practice now is to indent paragraphs and to further indent subparagraphs, unless the segmentation is so extensive that indentation causes extremely short lines. In that case you should probably break down the Section into several Sections. When an existing Section with only one level of indentation is amended, correct the indentation.

Assign subdivision designations using lower case letters (for example, (a), (b), and so on) only to subsections within a Section. If a Section that is not divided into subsections contains a list of items in outline format, designate those items (1), (2), and so on and indent them at the "paragraph" level. While you should follow these rules in drafting new Acts, the statutes contain many examples that do not follow these rules. When drafting an amendment to a nonconforming Section or Act, maintain consistency within that Section or Act. For example, if the existing "subsections" of a Section are designated (1), (2), and so on, or if the existing "paragraphs" are designated (a), (b), and so on, new subsections or paragraphs added to the Section should maintain the same numerical or alphabetical system of designation. Subdivision of an existing unsubdivided Section should be consistent with other Sections in the same Act. If Sections of an existing Act designate the first level of subdivisions as "paragraphs" rather than "subsections", maintain that designation throughout the Act.

Although dividing a Section into labeled segments usually clarifies meaning and makes for easier reading, avoid the confusion of oversegmentation. Several short Sections are better than one overly structured long Section. You often can eliminate some segmentation simply by incorporating short lists of items into a continuous sentence instead of placing them on separate lines.

Do not place a list of lettered or numbered items in outline form in the middle of a sentence as in the following example:

Wrong: A person who has not attained the age of 20 years who:
 (1) consumes alcohol in a public place; or
 (2) operates a school bus without a valid driver's license
 commits a Class 4 felony.

The provision is less confusing when written so that the list is at the end of the sentence as in the following example:

Correct: A person who has not attained the age of 20 years commits a
 Class 4 felony if he or she:
 (1) consumes alcohol in a public place; or
 (2) operates a school bus without a valid driver's license.

If an enumerated series presented in outline format consists of independent sentences or relatively long or complex items, each item in the series should begin with capitalization and end with a period. If the series consists of relatively short items that are fragments of a longer sentence, each item in the series may begin without capitalization and end with a semicolon. (The last item in the series should end with a period.) If you use the latter format you also may need to insert "and" or "or" after the semicolon at the end of the next-to-last item in the series. (Also see Section 95-20 of this Manual concerning lists of items in outline format.)

If in amending a Section of existing law you add a new item to the end of a series punctuated with semicolons, you must strike through the coordinating conjunction following the existing next-to-last item in the series, insert an underscored semicolon and coordinating conjunction and strike through the period following the existing final item, and put an underscored period at the end of the new final item. To make it easier to insert new items at the end of a series you may wish to use capitalization and periods, rather than lower case letters and semicolons, when first drafting a series. For the same reason, when adding an item to a series in existing law you may wish to change the capitalization and punctuation, using underscoring and striking as appropriate. You also should consider using a phrase in the introductory clause of the series that clearly expresses how many of the following items are to be included, such as: "any of the following", "one of the following", or "all of the following".

Be careful when adding to a list of specific items that ends with a catchall item such as "any other information required by the Director" or "under any other provision of law". Don't add a new specific item to the list by inserting it after the catchall item. You may add a new specific item to the list by inserting it before the first specific item, between 2 other specific items, or between the last specific item and the catchall item.

Be especially careful when making or adding to a list that contains both disjunctive and conjunctive parts. Consider the following example, which appears in the statutes:

Sec. 900-5. XYZ. A person commits the offense of XYZ when he or she knowingly:
 (1) does ABC; or
 (2) does DEF; or
 (3) does GHI; and
 (A) does 123; or
 (B) does 456.

In the example, do subparagraphs (A) and (B) modify paragraphs (1), (2), and (3) or do they modify only paragraph (3)? Suppose that a new paragraph (4) is to be added and that it is to be modified by subparagraphs (A) and (B). If the new paragraph (4) is inserted after subparagraph (B), then clearly it will not be modified by subparagraphs (A) and (B) (see *People v. Zaremba*, 158 Ill.2d 36 (1994)). If the new paragraph (4) is inserted after paragraph (3), however, the question of interpretation asked earlier in this paragraph must be asked again: do subparagraphs (A) and (B) now modify paragraphs (1) through (4) or do they modify only paragraph (4)?

When making or adding to a list of this type, better practice is to clearly spell out the intended relationships between the items in the list as in the following example:

Sec. 900-5. XYZ. A person commits the offense of XYZ when he or she knowingly does one of the following and in addition does 123 or 456:

- (1) ABC.
- (2) DEF.
- (3) GHI.

In this example, the provisions "123" and "456" clearly modify paragraphs (1), (2), and (3). If a new paragraph (4) is added to the list, "123" and "456" will clearly modify paragraphs (1) through (4).

Use capitalization and punctuation consistently throughout a series. The statutes contain examples of series that mix semicolons and periods. If you encounter such an example, make the punctuation consistent using underscoring and striking as appropriate.

SECTION 15-25. SECTION HEADINGS.

This ILCS Section has "Public comment." as the Section heading:

(10 ILCS 5/1-10)

Sec. 1-10. Public comment. Notwithstanding any law to the contrary, the State Board of Elections in evaluating the feasibility of any new voting system shall seek and accept public comment from persons of the disabled community, including but not limited to organizations of the blind.

(Source: P.A. 93-574, eff. 8-21-03.)

This ILCS Section does not have a Section heading:

(10 ILCS 5/4-8.02) (from Ch. 46, par. 4-8.02)

Sec. 4-8.02. Upon the issuance of a disabled voter's identification card as provided in Section 19-12.1, the county clerk shall cause the identification number of such card to be clearly noted on all the registration cards of such voter.

(Source: P.A. 78-320.)

In recent years, we have included a Section heading in each Section of a new Act and in each new Section that is added to an existing Act. During most of the State's history, however, most laws were created without Section headings.

Private publishers of the Illinois statutes include a caption above each Section of the statutes. If a Section has a Section heading, that Section heading is usually used by the publisher as the caption. For example, if you look up 10 ILCS 5/1-10 in the State Bar Association Edition of the Illinois Compiled Statutes, you will see "Public

comment" in bold type above the Section. On the other hand, if you look up 10 ILCS 5/4-8.02 in the State Bar Association Edition of the Illinois Compiled Statutes, you will see a caption in bold type above the Section that was supplied by West. That West caption is not part of the statutes.

Section headings should be concise and accurate. Section headings are not complete sentences. If a Section heading needs more than one distinct phrase, separate the phrases by semicolons:

Wrong venue; waiver; motion to transfer.

You will see many Section headings with phrases separated by hyphens. Never follow that style. You will see some Section headings that end with parentheses (for example, the Section heading of 750 ILCS 5/201). Never follow that style.

Section headings ordinarily are in sentence case. However, if you are adding a Section heading in an Act in which the other Sections are in title case, the new Section heading should be in title case. Section headings are never in all caps, except in 730 ILCS 5/5-4.5-5 et seq.

When your draft amends a Section that has a Section heading and the amendment makes a significant change to the Section, you should consider whether the Section heading also needs to be changed. Suppose you receive a request to amend Section 8 of the ABC Act, which deals with licensing and licensing fees and has this Section heading:

Sec. 8. Licensing; fees.

The request is to strike the licensing fee language from Sec. 8 and create a new Section of the Act to deal with those fees. Since Section 8 will no longer deal with fees after the amendment, you need to change the Section heading:

Sec. 8. Licensing; ~~fees.~~

If a predraft includes language that would add Section headings to existing ILCS Sections, please be careful about two things:

- Make sure that the Section headings are concise and accurate. If they are not, modify them.
- Make sure the predraft is not using a private publisher's captions. You can see West's captions in the State Bar Association Edition of the Illinois Compiled Statutes or on Westlaw. You can see the LexisNexis captions in the LexisNexis Illinois Statutes Annotated volumes in the library. If the predraft is using a private publisher's captions, do not include them in your draft. The captions are the property of the publishers.

In general, subsections don't get headings. There are exceptions, such as the headings in criminal statute subsections dealing with sentences for offenses. If you are asked to include subsection headings in a draft, you should follow the same guidelines that you would follow for Section headings.

It has been held that "[a]n unofficial, publisher-generated caption is irrelevant in interpreting the scope of a statutory provision." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493 (2000). In that opinion, the court also noted:

When the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a "short-hand reference to the general subject matter involved" in that statutory section, and "cannot limit the plain meaning of the text." [citation omitted]

and:

Official headings or titles "are of use only when they shed light on some ambiguous word or phrase" within the text of the statute, and "they cannot undo or limit that which the text makes plain." [citations omitted]

SECTION 15-30. INCORPORATION BY REFERENCE.

A common shortcut in drafting statutes is to incorporate all or part of another law by reference. Sometimes this is done by referring to the other law generally, but more often a specific Act or a specific Section of another Act is incorporated.

An example of a reference to the law generally is to say that a particular type of administrative hearing is not governed by any of the "laws of evidence". The "laws of evidence" refers to the various statutory laws, such as the Dead- Man's Act (735 ILCS 5/8-201), as well as, for example, the case law rules concerning hearsay. A general reference of this sort is far easier and less cumbersome than listing all the statutes and specific subjects of evidence covered by case law. The courts have held that reference to the general law concerning a subject means that law as it exists and evolves from time to time; the general reference incorporates changes to the law as those changes occur. *Haas v. Commissioners of Lincoln Park*, 339 Ill. 491, 500 (1930). There is also now a statutory presumption to the same effect. 5 ILCS 70/1.34.

An example of a reference to a specific statute can be found in Section 3 of the Illinois Health and Hazardous Substances Registry Act, 410 ILCS 525/3. A "hazardous substance" is defined as follows: "a hazardous substance as defined in the Environmental Protection Act". Thus, the Registry Act incorporates by reference the definition from the Environmental Protection Act. This is a handy shortcut and promotes uniformity among the statutes dealing with hazardous substances.

Many statutory references to specific Acts include a modifying phrase such as "as amended" or "as now or hereafter amended". Those modifiers are usually unnecessary. Section 1.34 of the Statute on Statutes, 5 ILCS 70/1.34, provides a rule of construction as follows:

Sec. 1.34. This Section applies to citations in one Act to another Act or to the general law on a subject, whether or not the citation also contains a modifying phrase such as "as amended", "as now or hereafter amended", "in effect from time to time", or a similar phrase. A citation to another Act or to the general law on a subject refers to that other Act or general law in effect from time to time. Initially, the citation refers to that other Act or general law in effect at the time the new or amendatory Act containing the citation becomes law. At any time thereafter, the citation refers to that other Act or general law as amended or otherwise modified up to that time.

If you intend to incorporate the referenced statute but no later amendments, then you must explicitly state that intention in order to overcome the statutory rule of construction. You can do this, for example, by naming the Act and then adding "as in effect on" a specified date. Another way is to name the Act and then add "as amended by" or "as enacted by" a specific Public Act.

If you intend to incorporate the referenced statute and all later amendments, you may rely on the statutory rule of construction. If for any reason the intention needs to be made explicit, then the better practice is to name the Act and then add "as now or hereafter amended".

Another problem may arise with a reference to a specific Section or subsection of an Act. The Section or subsection may some day be renumbered, or the Section may be repealed and become part of a successor Act. Never renumber a Section or subsection of an established Act unless it is absolutely necessary. If you do renumber a Section or subsection, always include a provision in the bill that makes a reference to the old renumbered or repealed provision a reference to the new replacement provision. For examples of such a provision in a codification Act, see the following in this Manual: Section 75-10, subsection (i); Section 75-15, subsection (b); and Section 75-20, subsection (b). See also 5 ILCS 70/2. In the case of references to subsections, you can avoid the problem of renumbered subsections if you initially refer merely to the Section, if that is an adequate reference. Likewise, if a reference to an Act is sufficient, you don't need to refer to a specific Section of the Act. For example, a reference to

"hospital" as defined in the Hospital Licensing Act is better than a reference to "hospital" as defined in Section 3 of that Act, and both are better than a reference to "hospital" as defined in subsection (A) of Section 3 of that Act.

Examples of incorporation by reference follow:

in the same manner as taxes are levied and collected for general municipal purposes

as defined in the Environmental Protection Act

as provided in Section 4 of the Cannabis Control Act, as in effect on July 27, 1988

subject to Section 12-1101 of the Code of Civil Procedure, as enacted by P.A. 82-280

as set forth in Section 12-1002 of the Code of Civil Procedure, as amended by P.A. 83-968

as defined in Section 1-1-2 of the Illinois Municipal Code, as now or hereafter amended

as provided in Section 19 of the Conveyances Act, as now or hereafter amended, renumbered, or succeeded

There are 3 special cases in which what appears to be a reference to a body of law generally is actually a reference to a specific Act or a specific Act and rules. A reference to "the general election law" or "the general election law of this State" is a reference to the Election Code. 10 ILCS 5/1-1. A reference to "other civil cases" or "ordinary civil cases", in the context of practice, procedure, or appeal, means cases governed by Article II of the Code of Civil Procedure and by the Supreme Court Rules. 5 ILCS 70/1.22. A reference to "the general revenue law of Illinois" is a reference to the Property Tax Code (which, as provided in P.A. 88-455, replaced the Revenue Act of 1939) and the rules adopted under that Code or its predecessor. 5 ILCS 70/1.23 and 35 ILCS 200/32-1.

Cross reference: Section 25-25 concerning the following:

- (1) Striking through "as amended" in a reference to an Act.
- (2) Avoiding renumbering succeeding subdivisions of a Sec. when striking through all the text of a subdivision.

SECTION 15-33. OVERLY SPECIFIC REFERENCES.

Although the statutes are constantly changing, a specific statute may remain unchanged for over a hundred years. It is a good idea to consider alternatives to specific references that are likely to change. For example, suppose you are requested to include the following in a bill:

The Department of Whatever shall conduct a public information campaign in which it advises the public of its program to encourage gizmo development. The campaign shall advise interested persons to either contact the Department's Office of Gizmo Development at 123 North Main Street, Blackacre, IL 63000 or 217-555-1212 or visit the Office's website at www.whatever.state.il.us/gizmodevelopment.

Nobody knows if or when the Department's Office of Gizmo Development will use different office space in the future or whether its phone number will change. Also, nobody knows whether the Department will change its

domain from www.whatever.state.il.us to whatever.illinois.gov or something else, or whether the Department's webmaster will reorganize its website so that the gizmo development information is in a directory on the Department's website that is called /development/gizmo rather than /gizmodevelopment. You should encourage the requester to consider this instead:

The Department of Whatever shall conduct a public information campaign in which it advises the public of its program to encourage gizmo development. The campaign shall advise interested persons to either contact the Department's Office of Gizmo Development at the Office's address or telephone number or visit the Office's website.

Also keep in mind that State agencies may internally reorganize at any time. The Department could someday decide to continue its gizmo development efforts, but eliminate the Office of Gizmo Development and move the workers in its Office of Gizmo Development to the Department's Division of Development. You should encourage the requester to consider whether a reference to the Department itself would be better than a reference to some administrative subdivision within the Department.

SECTION 15-35. FORM OF REFERENCE TO OTHER ACTS.

(a) ILLINOIS ACTS. A matter collateral to incorporation by reference is the form in which references to other Acts are set forth in the text of a bill. Refer to another Act by its short title unless it has none; only then should you refer to the Act title. (The Act title, sometimes called the long title, appears immediately above the enacting clause.) When you use the Act title, enclose the Act title in quotation marks to clearly indicate where the Act title begins and ends. When you use the short title don't enclose it in quotation marks because each word of the short title, except some articles, prepositions, and conjunctions, begins with a capital letter; this serves to set the short title apart. Moreover, an Act title is customarily followed by a reference to the date the Act was approved, certified, or filed or the date a veto or amendatory veto was overridden, as the case may be, in order to more clearly identify the Act. This convention is not necessary when you use a short title. Examples follow:

Reference to Act title:

Section 2 of "An Act to amend the State Finance Act by changing Section 13.3", approved September 11, 1992

Reference to short title:

Section 0.01 of the Controlled Substance and Cannabis Nuisance Act

Cross references:

- (1) Section 10-30, concerning a reference to an existing Act.
- (2) Section 25-35, concerning ILCS citations.

(b) FEDERAL ACTS. Referring to a federal law may pose a problem because the original Act may have a short title, various Acts that amend the original Act may have short titles, and the various Titles (or Articles or other subdivisions) of the original Act may have short titles. In most cases, the proper citation is to the original Act.

For example, Section 1001 of Public Law 100-690 provides that it may be cited as the Anti-Drug Abuse Act of 1988. Section 8001 of Public Law 100-690 adds a new Title (consisting of Sections 201 through 210) to the Federal Alcohol Administration Act. Section 201 of the new Title provides that the Title may be cited as the Alcoholic Beverage Labeling Act of 1988. Now, suppose you wish to refer to Section 203 of the new Title. The correct citation is to Section 203 of the Federal Alcohol Administration Act (27 U.S.C. 214). A further reference to the United States Code is added so a reader will be able to find the Section in the code or the annotated code. Refer

to U.S.C. rather than U.S.C.A. If a federal law is very well known, such as the Internal Revenue Code of 1986, citing the Section of the Act is sufficient and it is not necessary to include a U.S.C. cite.

Occasionally it is appropriate to cite a federal law by the popular name of a specific Public Law, even if the Public Law is primarily or completely amendatory. If the Public Law consists of a large body of law and a bill needs to refer specifically to that body of law, it is appropriate to cite a popular name included in the Public Law.

Always double-check a federal short title or federal citation.

SECTION 15-37. FORM OF REFERENCE TO RULES.

(a) ILLINOIS RULES. Statutory references to rules adopted by a department of State government or another State administrative agency are occasionally necessary. These rules are published in the *Illinois Register* and codified in the Illinois Administrative Code. See Sections 5-40 and 5-80 of the Illinois Administrative Procedure Act (5 ILCS 100/5-40 and 100/5-80). Examples of references to these rules, as set forth in 1 Ill. Adm. Code 100.370, follow:

- (1) When simply referring to a Title of the Code:
14 Ill. Adm. Code
(Title 14 of the Code)
- (2) When referring to a Part of the Code:
1 Ill. Adm. Code 100
(Part 100 of Title 1 of the Code)
- (3) When referring to a Section of a Part of the Code:
17 Ill. Adm. Code 530.10
(Section 530.10 of Title 17 of the Code)
- (4) When referring to an entire Subtitle of a Title of the Code:
2 Ill. Adm. Code: Subtitle C
(Subtitle C of Title 2 of the Code)
- (5) When referring to an entire Chapter of a Title (which has no Subtitles) of the Code:
1 Ill. Adm. Code: Chapter I
(Chapter I of Title 1 of the Code)
- (6) When referring to an entire Chapter of a Title (which has Subtitles) of the Code:
11 Ill. Adm. Code: Subtitle B, Chapter I
(Chapter I of Subtitle B of Title 11 of the Code)
- (7) When referring to an entire Subchapter of a Chapter of the Code:
50 Ill. Adm. Code: Chapter I, Subchapter t
(Subchapter t of Chapter I of Title 50 of the Code)
- (8) When referring to an entire Subpart of a Part of the Code:
68 Ill. Adm. Code 220. Subpart A
(Subpart A of Part 220 of Title 68 of the Code)
- (9) When referring to a Part's supplementary material:
1 Ill. Adm. Code 100.Appendix A, Illustration A
(Illustration A of Appendix A of Part 100 of Title 1 of the Code)
- (10) The citations may be used in combination such as:
11 Ill. Adm. Code: Subtitle B, Chapter I, Subchapter c
(Subchapter c of Chapter I of Subtitle B of Title 11 of the Code)

Cross reference: Section 90-10, subsection (d), item (6), concerning adoption of rules by agencies.

(b) FEDERAL RULES. Statutory references to rules adopted by a federal agency are occasionally necessary. These rules are published in the *Federal Register* and codified in the Code of Federal Regulations (CFR). References to federal rules are similar to references to Illinois rules. An example follows:

1 CFR 10.2
(title 1, Code of Federal Regulations, part 10, section 2)

Note that even though federal rules are collected in the Code of Federal "Regulations", they may be referred to as "rules". Both the Code of Federal Regulations and the *Federal Register* refer to "rules" or "regulations" adopted by federal agencies, without distinguishing between the 2 terms.

SECTION 15-40. STATUTE ON STATUTES.

Familiarize yourself with the Statute on Statutes, 5 ILCS 70/. The Statute on Statutes contains many definitions, rules concerning tense, gender, number, and time computation, directions for showing new and deleted matter in an amendatory bill, guidelines for resolving conflicts between multiple amendments, and language necessary to limit or deny home rule powers, as well as other rules of construction. The Statute on Statutes, although far from comprehensive, provides some basic information and tools a drafter needs to know. The Statute on Statutes is cited throughout this Manual.

A list of the Sections of the Statute on Statutes follows:

- 5 ILCS 70/0.01 Short title
- 5 ILCS 70/1 Act to be observed in construing statutes
- 5 ILCS 70/1.01 Provisions to be liberally construed
- 5 ILCS 70/1.02 Words in present tense include the future
- 5 ILCS 70/1.03 Words in singular or plural
- 5 ILCS 70/1.04 Gender
- 5 ILCS 70/1.05 "Person" defined
- 5 ILCS 70/1.06 "Person under legal disability" defined
- 5 ILCS 70/1.07 "County board" defined
- 5 ILCS 70/1.08 Words used for certain officers include deputies
- 5 ILCS 70/1.09 Joint authority
- 5 ILCS 70/1.10 "Month" and "year" defined
- 5 ILCS 70/1.11 Computation of time
- 5 ILCS 70/1.12 "Oath" and "sworn" defined
- 5 ILCS 70/1.13 "Wills" defined
- 5 ILCS 70/1.14 "State" and "United States" defined
- 5 ILCS 70/1.15 "Written" and "in writing" defined
- 5 ILCS 70/1.16 "Highway", "road", and "street" defined
- 5 ILCS 70/1.17 "Heretofore" and "hereafter" defined
- 5 ILCS 70/1.18 "Laws now in force" defined
- 5 ILCS 70/1.20 Terms relating to municipal policemen defined
- 5 ILCS 70/1.22 "Other civil cases" and "ordinary civil cases" defined
- 5 ILCS 70/1.23 "General Revenue Law of Illinois" defined
- 5 ILCS 70/1.24 "Decree" synonymous with "judgment"
- 5 ILCS 70/1.25 "Filing with" and "paying to" the State or a political subdivision
- 5 ILCS 70/1.26 "Circuit clerk" defined
- 5 ILCS 70/1.27 "Municipalities" defined
- 5 ILCS 70/1.28 "Units of local government" defined
- 5 ILCS 70/1.29 "Special districts" defined

- 5 ILCS 70/1.30 "Town trustees" defined
- 5 ILCS 70/1.31 Severability
- 5 ILCS 70/1.32 "Surviving spouse" defined
- 5 ILCS 70/1.33 Bond Act references include the General Obligation Bond Act
- 5 ILCS 70/1.34 Amendatory legislation
- 5 ILCS 70/1.35 "Paralegal" defined
- 5 ILCS 70/1.36 Born alive infant
- 5 ILCS 70/1.37 Intellectual disability
- 5 ILCS 70/1.38 Physical disability
- 5 ILCS 70/1.39 Criminal Code of 2012
- 5 ILCS 70/2 Construction of statute as continuation of prior provision
- 5 ILCS 70/3 Repeal of repealing Act does not revive repealed statute
- 5 ILCS 70/4 Saving of rights or claims under former law
- 5 ILCS 70/5 Construction of amendatory Acts as printed in the session laws
- 5 ILCS 70/6 Multiple amendments of the same subject matter
- 5 ILCS 70/7 Limitation of home rule powers
- 5 ILCS 70/8 Omnibus Bond Acts

SECTION 15-45. COPYRIGHT INFRINGEMENT.

Be aware of 17 U.S.C. 511, which provides in part as follows:

(a) In general.--Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 122....

You must check material that is to be the basis of a draft to determine whether someone claims copyright protection in that material.

CHAPTER 20. NEW PROVISIONS.

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- 20-90. AGENCY RULES.
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- 20-110. UNLAWFUL PRACTICE UNDER THE CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT.
- 20-115. EMINENT DOMAIN.

SECTION 20-5. SHORT TITLE.

The first Section of a new Act usually provides a short title for convenience. Also, a short title is sometimes added to an existing Act. For example, "An Act to impose a tax upon the privilege of using, in this State, property acquired as an incident to the purchase of service from a serviceman" has the short title Service Use Tax Act. Some existing Acts have a short title Section at the end of the Act or elsewhere rather than first. When the short title is not the first Section, however, it is harder to find and causes numbering problems as Sections are added to the Act in later years.

The short title should obviously be short and should also be accurate and unique. For example, Illinois Health and Hazardous Substances Registry Act is too much for a short title; better would be Hazardous Substances Registry Act.

Other questionable short titles are the Illinois Local Library Act and the Illinois Library System Act; better would be Local Library Act and Library System Act. "The" should not be capitalized and made part of the short title. "Illinois" is usually unnecessary; avoid using it in a short title unless it is absolutely necessary. Even if an Illinois Act and a federal Act have the same short title, there is seldom a problem. For example, Environmental Protection Act is the short title of both an Illinois Act and a federal Act.

Within the Illinois statutes, a reference to the Environmental Protection Act is a reference to the Illinois Act unless the context clearly indicates otherwise. When the 2 Acts need to be distinguished, "Illinois" or "federal" can be used as an adjective by referring to the Illinois Environmental Protection Act or the federal Environmental Protection Act. Better practice, however, is to avoid assigning to an Illinois Act a short title that is the same as the short title of a federal Act. If a new Illinois Act has the same subject as a federal Act, vary the short title of the Illinois Act in some way other than beginning with "Illinois".

Don't use "Uniform" as the first word in an Act's short title or otherwise state that an Act may be cited as a "Uniform" Act unless the Act is one recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). (Uniform Acts are covered in Chapter 77.) Similarly, never use "Model" as the first word in an Act's short title or otherwise state that an Act may be cited as a "Model" Act, even if an organization has recommended the Act as "model legislation".

Examples of good short titles are Counties Code, Witness Protection Act, Soybean Marketing Act, Open Meetings Act, Agricultural Fair Act, and Hospital Licensing Act.

Sometimes a successor Act will have the same short title as the previous Act but with the year of adoption added. For instance, the Business Corporation Act was replaced by the Business Corporation Act of 1983. This

practice promotes continuity. In cases other than a successor Act, however, do not include a year in the short title; the year adds nothing to identify the Act.

Some Acts have multiple Articles, and each Article is distinct and independent. Each Article is sometimes given its own short title. For example, P.A. 91-239 renumbered and rearranged the provisions of the Civil Administrative Code of Illinois. Each Article of the Code was given a short title, as in the following examples: Departments of State Government Law (Article 5); State Budget Law (Article 50); and Department on Aging Law (Article 110). When an Article is given a short title, it is best to call it a "Law", as in the examples, rather than an "Act" because the Article does not encompass the entire Act.

In a few instances various Articles or other divisions of an Act have been given short titles even when the Articles or other divisions are not clearly distinct and independent. For example, in the Illinois Vehicle Code, more than a dozen Chapters are given short titles, such as the Illinois Drivers Licensing Law, the Illinois Safety Responsibility Law, and the Illinois Rules of the Road. Aside from the superfluous "Illinois", there is another problem: it is too easy to make an inaccurate reference. For example, in another Act you may wish to incorporate the safety responsibility rules and merely refer to the Illinois Safety Responsibility Law. Unfortunately, there is a lot of interplay between the safety responsibility rules and other Chapters of the Illinois Vehicle Code, such as licensing and the rules of the road, that would be omitted by a reference only to the Illinois Safety Responsibility Law. Better practice is not to assign short titles to Articles or other divisions that are not clearly distinct and independent.

Examples of Sections adopting short titles follow:

Section 1. Short title. This Act may be cited as the Child Passenger Protection Act.

Section 1. Short title. This Act may be cited as the Business Corporation Act of 1994. Any citation to the Business Corporation Act of 1983 or the Business Corporation Act is a citation to the similar provision of this Act.

Although the phrase "shall be known and may be cited" has often been used in short title provisions, "shall be known" adds nothing significant and you should omit it.

Cross references:

- (1) Section 10-35, subsection (a), concerning bill titles.
- (2) Section 25-10, concerning references to a short title.
- (3) Section 50-70 concerning short title Sections in an amendment containing 2 or more new Acts.

SECTION 20-7. "SHELL" BILLS.

You may be asked to draft a bill creating a new Act whose substantive provisions the requester has not yet determined. In that case, you can prepare a "shell" bill that contains only the short title of the new Act. If such a bill is filed, it can later be amended to add the substantive provisions necessary to accomplish the requester's purpose once those provisions are determined.

SECTION 20-10. PURPOSE OR POLICY.

A purpose or policy statement is not necessary. At times, however, the requester will want the general purpose or policy stated as part of the bill. The best way to do this is in a separate numbered Section following the short title Section.

A purpose or policy Section can be helpful in setting the general tone and intention of the General Assembly and will be construed as part of the Act in determining the meaning of uncertain substantive provisions. *Radford v. Cosmopolitan Nat'l Bank*, 52 Ill.App.2d 240 (1964). It should be short and to the point. Discourage a requester from using a long and rambling statement of purpose or policy; it is more likely to muddle intention than to clarify it.

It is common in federal legislation to include a provision setting forth the purpose of the bill in order to establish the constitutional authority of Congress to legislate on the subject of the bill. Federal power to legislate must be derived from the authority of the United States Constitution and is in derogation of state sovereignty. This sort of provision is unnecessary in Illinois legislation because of the sovereignty of the State.

If the substantive provisions of a bill are drafted properly, then a statement of purpose or policy should be unnecessary. The substantive provisions will concretely make the purpose or policy known better than any general statement.

Use a purpose Section when a bill codifies or compiles several Acts. Use the Section to clarify the restricted intent of the bill. See Chapter 75 of this Manual.

Also use a purpose Section when the Act implements a provision of the Illinois Constitution.

Examples follow:

Section 5. Purpose. The purpose of this Act is to codify the law concerning the regulation of vehicles. Provisions of this Act that are the same or substantially the same as prior statutes are a continuation of the prior statutes and are not new or different laws.

Section 5. Purpose. This Act implements Section 2 of Article VIII of the Illinois Constitution.

Section 5. Policy. It is the policy of the State of Illinois to encourage adequate housing for low-income families.

Section 5. Purposes. The purposes of this Act are to protect the public from the AIDS epidemic and, at the same time, to promote confidentiality and human dignity for AIDS victims.

Preambles are generally discouraged, but as an alternative to these examples you might include a statement of purpose in a preamble. Using a preamble allows a legislator to make a statement of purpose yet avoids the codification of that statement. DO NOT, however, use a preamble to try to state substantive provisions. A preamble is not part of an Act, and a statement of substantive provisions in a preamble rather than in the body of a bill may well lead to litigation. For example, see *Atkins v. Deere & Co.*, 177 Ill.2d 222 (1997) concerning Public Act 89-2, which repealed the Structural Work Act (740 ILCS 150/) but used a preamble (rather than the body of the bill) to set forth the General Assembly's intent concerning applicability of the repeal to causes of action accruing before the effective date of the repeal.

If you use a preamble, place it after the title and before the enacting clause. Never place a preamble below the enacting clause; if you do, the preamble becomes an unnumbered part of the Act and difficult to refer to for purposes of citation or amendment. See Section 10-45 of this Manual for an example.

Cross reference: Section 75-10, subsec. (b), concerning preambles in codification Acts.

SECTION 20-15. APPLICABILITY BASED ON POPULATION OR TERRITORY.

It is common in Illinois for bills to have limited applicability. The usual distinction is based on population or territorial differences, and the usual distinction is to separate Chicago, Cook County, or the collar counties from the rest of the State. As long as there is a rational and fair basis for making the distinction, whether based on population, territory, or some other ground, the distinction will not violate the equal protection clause or the prohibition against special legislation. Ill. Const., art. I, sec. 2 and Ill. Const., art. IV, sec. 13. *Nevitt v. Langfelder*, 157 Ill.2d 116 (1993). But see *In re Belmont Fire Protection District*, 111 Ill.2d 350 (1986), and *In re Petition of the Village of Vernon Hills*, 168 Ill.2d 117 (1995), each holding an arbitrary distinction based on population to be unconstitutional. Some examples follow:

Section 10. Applicability. This Act applies only in counties having a population of more than 3,000,000.

Section 10. Applicability. This Act applies only to counties with a population of more than 250,000 and less than 3,000,000 that are contiguous to a county with a population of more than 3,000,000.

Section 10. Applicability. This Act applies only in civil actions based on tort or contract for money damages of not more than \$15,000, exclusive of interest and costs.

Sometimes only a specific Section within an Act will have limited applicability. Language similar to the language in the examples should be used.

There has been a tendency to include or exclude a specific area of the State by defining its population. For example, the applicability of an Act might be limited to a county with a population of less than 300,000 that is contiguous to a county with a population of more than 3,000,000. The example defines McHenry County and no other. This is fine if population provides a rational and fair basis for distinguishing McHenry County. An Illinois Supreme Court opinion, however, suggests that it might be better just to name McHenry County and forget about trying to define its population, particularly when population may not be a rational and fair basis for making the distinction. *Cutinello v. Whitley*, 161 Ill.2d 409 (1994). In *Cutinello*, the Illinois Supreme Court upheld the County Motor Fuel Tax Law (55 ILCS 5/5-1035.1). That law authorized a tax in "the counties of DuPage, Kane and McHenry"--specifically naming the counties. The court relied on 2 important propositions from the point of view of drafting legislation: (i) the legislature does not have to support or even state what its rational basis might be and (ii) any set of facts that can be reasonably conceived to justify the distinction is enough to uphold it. Thus, unless population is clearly the only reasonable basis, the legislature may have a better chance of the distinction being upheld by specifically naming the area and otherwise remaining silent. Then, in litigation, any reasonable basis (not just population) could be used to justify the distinction.

A recent Illinois Supreme Court decision provides additional support for the practice of remaining silent as to the legislature's "rational basis" for limiting the applicability of a statute to a particular territory or group of persons. In *Crusius v. Illinois Gaming Board*, 216 Ill.2d 315 (2005), the Illinois Supreme Court held that a provision of the Riverboat Gambling Act was not unconstitutional special legislation in spite of the fact that it was "clear" that the provision discriminated in favor of a select group that consisted of a single riverboat gambling licensee. The bottom line was that the provision's limited applicability was rationally related to a legitimate State interest (promotion of economic goals such as assisting development and promoting tourism). An Act such as the Riverboat Gambling Act might have multiple objectives (for example, relating to both the State's economic interests and its regulatory interests). Some of those objectives may potentially conflict with others, and a provision of such an Act does not have to promote all of the State's possible interests in order to pass the rational-basis test.

Also see *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill.2d 62 (2008), in which the Illinois Supreme Court reiterated that the General Assembly is not required to provide its justification for a classification within the statute itself.

Cross reference: Section 35-50 concerning retroactive and prospective applicability.

SECTION 20-20. DEFINITIONS.

(a) **GENERALLY.** Set forth definitions near the beginning of a bill so that someone reading the bill knows the meanings of the terms used before encountering the substantive provisions. (If a definition is used in only a single Section or Article, however, it is better to set forth the definition in that Section or Article. Set forth the definition near the beginning of the Section or Article.) You may set forth definitions either in a single Section or in a series of continuous Sections.

If only a few definitions are given, a single Section is appropriate as in the following example:

```
Section 15. Definitions. In this Act:
"Automobile" means a passenger car and does not include a truck or bus.
"Buyer" includes a lessee.
"Secretary" means the Illinois Secretary of State.
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If the definitions are given in a single Section, it is better not to identify each definition as a separate subsection labeled (a), (b), and so on. Adding or deleting definitions is then easier.

Sometimes a bill gives many definitions. It is then better to set forth the definitions in a series of consecutive Sections rather than in one long Section. This makes amending the definitions or adding new definitions easier in years to come. Examples follow:

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Section 15. Definitions. In this Act words and phrases have the
meanings set forth in the following Sections.
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Section 15.5. Authority. "Authority" means the Illinois Toll Highway
Authority.
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Section 15.10. Secretary. "Secretary" means the Illinois Secretary of
Transportation.
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Section 15.15. Toll. "Toll" means compensation paid to the Authority
for the privilege of using a portion of a toll highway as vehicular or
other traffic.
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Definitions are obviously easier to find if they are maintained in alphabetical order. There are times, however, when it is best not to worry about maintaining alphabetical order--for example, when doing so would require renumbering several Sections or subsections.

Use definitions sparingly and only when their use clarifies the text of the substantive provisions. Then take care to use a defined term only within the context of the given definition. For example, do not define "person" to include a corporation and then talk about a person driving an automobile.

Do not define a term unless you use the term in the bill.

A definition should not drastically change the normal meaning of a word. "Mauve" could be defined to mean red in the rules of the road and used consistently with that meaning, but imagine the confusion if the statute compelled all vehicles to stop at a mauve traffic light.

Be careful to keep the parts of speech consistent between a defined term and its corresponding definition. That is, if the defined term is a noun (or a verb, adjective, or adverb), make sure that the definition is expressed as a noun (or a verb, adjective, or adverb). For example, don't define "corrosive" (an adjective) as "a substance that ... " (a noun); instead, define "corrosive *substance*" as "a substance that ...".

A definition should not contain substantive provisions. For example, the Illinois Vehicle Code defines "revocation of driver's license" and then goes on to state substantively in the same Section that a new license cannot be granted until at least one year after the date of revocation. 625 ILCS 5/1-176. This is bad form. Substantive law within a definition is hidden in an unexpected place and easy to overlook.

When defining "Director" to mean the head officer of a department of State government (or when referring to a Director in the text of a Section) use the title of that officer specified in Section 5-20 of the Departments of State Government Law of the Civil Administrative Code of Illinois (20 ILCS 5/5-20). For example, the head officer of the Department of Agriculture is the Director of Agriculture, *not* the Director of the Department of Agriculture.

(b) SPACE SAVING. A definition can save space and eliminate the recurrence of tedious phrases throughout the bill. Examples follow:

Section 15.5. Director. "Director" means the Director of Nuclear Safety.

Section 15.10. Termination. "Termination" means that either party, under a power created by agreement or law, puts an end to the contract otherwise than for its breach.

(c) FAMILIAR SYNONYM. Sometimes it is helpful when synonyms are used interchangeably in a bill to define one synonym to mean the other so that the use of different words does not imply a distinction that is not intended. It would be better, of course, to use only one of the synonyms throughout the bill, but in certain contexts the use of both synonyms is hard to avoid. An example follows:

Section 4.1. Borrower. "Borrower" includes without limitation a debtor.

(d) LISTING COMPONENTS.

(1) EXHAUSTIVE. A term may be defined by listing its component parts. An example follows:

Section 15.5. Person. "Person" means an individual, a public or private corporation, a government, a partnership, a limited liability company, or an unincorporated association.

A list of components is construed to be exhaustive unless a clear contrary intention is expressed. *Rock v. Thompson*, 85 Ill.2d 410 (1981). Thus, in the last example an estate or trust would not be a "person".

If the list is intended to be exhaustive, it is better to state the intention explicitly than to rely on the rule. An example follows:

Section 15.5. Person. "Person" means an individual, a partnership, or a private corporation. It does not include any other entity.

(2) PARTIAL. If the list of components is intended to be partial, then this should be clearly indicated. An example follows:

Section 15.5. Person. "Person" includes, without limitation, an individual, a public or private corporation, a government, a partnership, a limited liability company, an unincorporated association, and any other legal entity.

Using "includes, without limitation," rather than "means", as well as the catch-all "any other legal entity", clearly indicates the list is not intended to be exhaustive. A trust or estate is a "person" in the last example.

Another point to keep in mind regarding a definition that lists partial components is that the scope of the unnamed things that are included may not be as broad as intended. The maxim "ejusdem generis" (of the same kind or class) limits the general component to those things of the same kind as the specific components on the list. For example, in the list "gravel, sand, earth or other material", "other material" has been held not to include timber because timber is found above the ground in contrast to the specific components on the list. *Sierra Club v. Kenney*, 88 Ill.2d 110 (1981).

(e) CATEGORY DISTINCTION. The classical way to define a term, though not always the best, is to analyze it by stating the general category within which it falls and then describing the features that distinguish it from the other members of the class. An example follows:

Section 15.5. Delivery. "Delivery" means a voluntary transfer of possession.

In the last example the general category is "transfer"; the distinguishing features are that it is a voluntary transfer and that it is a transfer of possession.

Another example follows:

Section 15.10. Corrosive substance. "Corrosive substance" means any substance that, when in contact with living tissue, causes destruction of tissue by chemical action.

In the last example the general category is "substance"; the distinguishing features are that it causes destruction of living tissue, the destruction is on contact, and the destruction is by chemical action.

(f) RELATIONAL. A term may be defined by indicating its relation to other known things. An example follows.

Section 15.5. Final cut. "Final cut" means the last pit created in a surface-mined area.

The relationship of a "final cut" to other pits is that a "final cut" is always the last pit created.

(g) COMBINED. Sometimes, for the sake of clarity, it is useful to define a term by combining 2 or more methods. An example follows:

Section 15.5. Collateral. "Collateral" means the property subject to a security interest and includes, without limitation, accounts and chattel paper that have been sold.

The example combines the methods of category distinction and listing components.

SECTION 20-25. MAIN PROVISIONS.

(a) ORGANIZATION. One useful way to analyze a bill and organize its presentation is to conceptually reduce the intention of what is to be accomplished to one or more simple directions. Giving directions with the force of law is, after all, what statutes really do. Determining and understanding those basic directions first, before the actual drafting begins, allows the subordinate provisions to fall into place in their proper perspective. The job is easier and the product is better.

A direction gives someone, the subject, an instruction. The instruction may be a mandatory command (you must take or may not take a certain action) or a permissive enabler (you may take a certain action if you like). Sometimes the instruction applies only in a certain context (a situation the subject does not control) or only upon meeting a certain condition (something the subject makes happen).

An example is the Uniform Anatomical Gift Act. 755 ILCS 50/. This Act gives several directions. It tells all individuals (the subjects) that they may (an enabler instruction) make an anatomical gift (an action) if they are 18 years old or more and of sound mind (contexts) and if they execute a document in a certain manner (a condition). The balance of the Act can be analyzed in terms of several additional directions.

Also helpful is thinking through the step-by-step chronology of what is to happen if the bill lends itself to that sort of analysis. Other logical arrangements are also possible.

The point is that you should think through what the bill is intended to do and then organize its presentation in a logical and coherent manner. Understanding the basic directions that are to be given and establishing a chronology or some other logical arrangement helps.

(b) PRESENTATION. Set forth the main provisions, as well as all others, in a series of short, clear, and logical Sections. An example based on what is now one long Section, and the only Section, of Part 23 of Article 8 of the Code of Civil Procedure (735 ILCS 5/8-2301) follows:

PART 23. PERPETUATING TESTIMONY.

Section 8-2305. Deposition. Any person may take the deposition of a witness for the purpose of perpetuating the testimony of that witness as provided in this Part 23.

Section 8-2310. Subject of testimony. The testimony of the witness may relate to any of the following subjects:

- (1) the boundaries or improvements of land;
- (2) the name or former name of a water course;
- (3) the name or former name of any part of the county;
- (4) the ancient customs, laws, or usages of the inhabitants of any part of the county as they relate to a disputed land claim or the marriage or ancestry of any person; or
- (5) any other matter necessary to the security of any estate or private right.

Section 8-2315. Filing petition. A proceeding for authority to take the deposition of a witness to perpetuate testimony must be commenced by filing a verified petition in the circuit court.

Section 8-2320. Contents of petition. The petition must briefly and substantially set forth each of the following:

- (1) petitioner's claim or interest in the

subject of the testimony;

(2) the fact intended to be established;

(3) the names of all other persons known to the petitioner who have or may claim an interest in the subject;

(4) if applicable, that there are or may be other persons, to be designated as "unknown owners", whose names are unknown to the petitioner and who have or may claim an interest in the subject; and

(5) the name of the witness.

Section 8-2325. Supreme Court rules. Notice to interested persons, including unknown owners, the manner of taking the deposition, and all other matters are governed by the rules of the Supreme Court in effect from time to time concerning depositions in pending civil suits to the extent the rules do not conflict with this Part 23.

Section 8-2330. Use as evidence. A deposition to perpetuate testimony is admissible in evidence in any case (i) to the same extent as a deposition taken in that case and (ii) against all interested persons, including unknown owners, who were given notice as required by this Part 23.

Although this example is by no means perfect, it is far better than the single, entangled Section that is now the law. Sections 8-2305 and 8-2310 first tell a person what that person may do (take a deposition for certain purposes). Sections 8-2315 through 8-2325 then set forth the procedures for taking a deposition. Finally, Section 8-2330 provides for the use of the deposition as evidence.

Cross reference: Section 70-20, subsection (e), concerning resectioning a Section of existing law.

SECTION 20-30. SUBORDINATE PROVISIONS.

There can be any variety of subordinate provisions. Among the more common are provisions for procedures, penalties, home rule, severability, inseverability, and expiration.

SECTION 20-35. PROCEDURES.

The main provisions of a bill state its central purpose, which can usually be thought of in terms of requiring, forbidding, or allowing some action. The procedural provisions then deal with the means of accomplishing that purpose. In the example from Section 20-25 of this Manual the main provisions allow a deposition to be taken while the procedural provisions set forth the methods of initiating and conducting the deposition.

Another example is when the General Assembly authorizes a community to construct a civic center by using tax, bond, or grant money. The bill will establish the Civic Center Authority and then go on in procedural Sections to establish how the board is elected or appointed, the terms of members, the officers, and so on. In other Sections it may set forth the procedures for the levy of taxes and the issuance of bonds.

In constructing procedural provisions the best policy is to try to state the procedures in sufficient detail so that they are clear and generally workable, but without getting bogged down in minute details. Give structure to the extent necessary, but allow some flexibility for those who have to carry out the law in specific situations.

SECTION 20-40. PENALTIES.

Penalties may be divided into those that may be extracted by the public generally and those that may be extracted by private individuals.

(a) **PUBLIC.** Public penalties often impose criminal sanctions. Examples follow:

Section 10. Penalty. A person who violates Section 5 is guilty of a Class B misdemeanor.

Section 10. Penalty. A person who knowingly sells tobacco to a minor is guilty of a business offense. The penalty is a fine of not less than \$1,001 and not more than \$1,500.

Section 10. Penalty. Champerty is a Class A misdemeanor. A second or subsequent offense is a Class 3 felony.

In Illinois felonies and misdemeanors are classified offenses. 730 ILCS 5/Ch. V, Art. 5. A "felony" is an offense punishable by death or imprisonment in a penitentiary for one year or more. A "misdemeanor" is an offense punishable by imprisonment other than in a penitentiary for less than one year. There may be other possible dispositions, including probation, periodic imprisonment, conditional discharge, clean up and repair of damage, a fine, or restitution. The classes of felonies and misdemeanors together with their basic terms of imprisonment (which are increased in certain situations) and basic maximum fines are as follows:

| | | |
|--|------------------------|----------|
| First degree murder | 20-60 years | \$25,000 |
| Second degree murder | 4-20 years | \$25,000 |
| Class X felony | 6-30 years | \$25,000 |
| Class 1 felony (other than second degree murder) | 4-15 years | \$25,000 |
| Class 2 felony | 3-7 years | \$25,000 |
| Class 3 felony | 2-5 years | \$25,000 |
| Class 4 felony | 1-3 years | \$25,000 |
| Class A misdemeanor | less than 1 year | \$2,500 |
| Class B misdemeanor | not more than 6 months | \$1,500 |
| Class C misdemeanor | not more than 30 days | \$1,500 |

The basic maximum fine for a corporation convicted of a felony is \$50,000. The fine for any particular felony or Class A misdemeanor may be greater than the basic amount if the statute creating the offense specifies a greater amount.

For a discussion of the relationship between a criminal penalty and an offender's mental state, see subsection (b) of Section 20-80 of this Manual.

See Section 45-25 of this Manual concerning Correctional Budget and Impact Notes in connection with the creation or reclassification of classified offenses.

Petty offenses and business offenses are not divided into classes. A "petty offense" or "business offense" is punishable by fine only. The basic fine for a petty offense may not exceed \$1,000, but the statute creating the offense may specify a lower maximum fine. A "business offense" has a fine of more than \$1,000; the statute creating the offense must specify the maximum fine that may be imposed, otherwise it is arguable that no fine is imposed.

Set forth a criminal penalty as a classified offense or as a petty offense or business offense. For example, use "Class 3 felony" instead of "imprisonment for 2 to 5 years and a fine of up to \$25,000".

The classification and disposition of offenses is complicated, and you should consult the statute. 730 ILCS 5/Ch. V, Art. 5.

Other public penalties may include loss of a privilege or payment of a monetary penalty. Examples follow:

Section 10. Violation. The Secretary must suspend the driver's license of a person who violates Section 5. The suspension must be for a period of 3 months.

Section 10. Penalty. A person who fails to file a tax return by the due date must pay to the Director of Revenue, in addition to the total tax, a penalty equal to 5% of the total tax.

When you create a civil penalty, do all of the following:

- (1) Specify the type and amount of penalty and the conditions under which it may be imposed.
- (2) Specify the executive officer or agency that may impose the penalty.
- (3) Provide for an administrative proceeding in which the penalty may be imposed.
- (4) Authorize the Attorney General to bring an action in the circuit court to enforce the collection of any monetary penalty imposed.

Refer to these penalties as "civil penalties" rather than "fines" in order to prevent confusion with criminal penalties. For an example see Section 42 of the Environmental Protection Act, 415 ILCS 5/42.

Punishment for contempt is another public penalty. Civil contempt is a failure to do something ordered by the court for the benefit of another litigant; punishment for civil contempt is designed to compel compliance with the court's order. Criminal contempt, on the other hand, is an act that obstructs justice; punishment for criminal contempt is designed to be punitive rather than coercive. The statutes authorize punishment for contempt in a variety of ways. For example, see the following:

(1) Section 1 of the Attorney Act (705 ILCS 205/1): a person engaging in certain conduct "is guilty of contempt of court and shall be punished accordingly".

(2) Section 6-9 of the Juvenile Court Act of 1987 (705 ILCS 405/6-9): a person "may be punished as for contempt of court".

(3) Section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505): certain conduct "shall be punishable as in other cases of contempt".

The Illinois Supreme Court has held, however, that the power to punish for contempt is inherent in the judiciary and does not depend on constitutional or legislative grant. See *Murneigh v. Gainer*, 177 Ill.2d 287 (1997), in which the court held a provision in Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3) unconstitutional because it provided that certain conduct "shall be punishable as contempt of court". The legislature may not encroach on a fundamentally judicial prerogative by requiring judges to exercise their discretionary authority to punish for contempt. Therefore, don't draft legislation that declares particular conduct to be contempt of court or imposes a mandate on the court to punish certain conduct as contempt. If a requester insists on a reference to punishment for contempt, the draft should state only that the court "may" punish the conduct in question as in cases of contempt.

(b) PRIVATE. Statutes often give a private individual a remedy for a wrong done to the individual. Examples follow:

Section 10. Enforcement. An interested person may apply to the circuit court for issuance of an injunction to enforce compliance with Section 5.

Section 10. Presumed damages. The parent or guardian of the estate of a minor may maintain an action in the circuit court on behalf of the minor to recover presumed damages of \$10,000 from any person who knowingly sells tobacco to the minor.

Section 10. Damages. A buyer may recover actual damages, reasonable attorney's fees, costs, and reasonable expenses of litigation from a seller who fails to give the buyer the notice required by Section 5.

SECTION 20-45. HOME RULE.

(a) GENERALLY. The traditional rule, known as Dillon's Rule, is that a unit of local government is a mere creature of the State and has no powers other than those granted by statute. This rule still prevails in Illinois for all units of local government except home rule units. The 1970 Illinois Constitution, however, granted to home rule units broad powers that may be exercised without enabling statutes. Ill. Const., art. VII, sec. 6. The Illinois Constitution also provides, however, that the General Assembly may limit or deny home rule powers in certain situations. These legislative limitations or denials of home rule powers must be set forth explicitly when drafting a bill. (Even if a State law does not limit or deny home rule powers, however, a home rule unit must follow State law if it has not adopted an ordinance providing otherwise. See *Weisenritter v. Board of Fire and Police Commissioners*, 67 Ill.App.3d 799 (1st Dist. 1979).) Also see Section 45-40 of this Manual concerning Home Rule Notes.

(b) TERMINOLOGY. The Illinois Constitution uses some precise terminology in Article VII dealing with local government. An understanding of this terminology helps put home rule units in context. You must also keep the terminology of the Constitution in mind whenever you refer to a unit of local government in a bill. 5 ILCS 70/1.27 through 70/1.29. Terms defined in Article VII of the Illinois Constitution follow:

(1) "Municipalities" means cities, villages, and incorporated towns.

(2) "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

(3) "Home rule units" means counties which have a chief executive officer elected by the electors of the county, municipalities with a population of more than 25,000, and other municipalities which have elected by referendum to become home rule units. A home rule unit may elect by referendum not to be a home rule unit.

NOTE: As of December 2012, Cook County is the only home rule county; while Will County meets the criteria to be a home rule county, the voters elected by referendum in 1988 to adopt the county executive form without home rule powers.

(c) STATUTORY REQUIREMENT. Section 7 of the Statute on Statutes sets requirements for limiting or denying home rule powers. 5 ILCS 70/7. Section 7 follows:

Sec. 7. No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit, pursuant to paragraphs (g), (h), (i), (j), or (k) of Section 6 of Article VII of the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.

(d) POWERS THAT MAY NOT BE LIMITED OR DENIED. Subsection (l) of Section 6 of Article VII of the Illinois Constitution sets forth certain home rule powers that may not be denied or limited by the General Assembly:

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(e) POWER TO TAX AND OTHER POWERS NOT EXERCISED OR PERFORMED BY THE STATE. Subsection (g) of Section 6 of Article VII of the Illinois Constitution provides as follows:

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this Section.

An example of a Section of a bill denying and limiting home rule powers under subsection (g) follows:

Section 30. Home rule. A home rule unit may not regulate or license the occupation of canine pedicurist. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

The example assumes that the State does not regulate or license canine pedicurists.

Sometimes a power or function will be denied to both home rule units and other units of local government. This is probably overkill with respect to units other than home rule units; under Dillon's Rule the other units have only powers affirmatively granted by statute anyway. Nevertheless, caution is sometimes a virtue. An example follows:

Section 30. Home rule. A municipality, including a home rule municipality, may not prohibit the possession of chopsticks. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

In the last example the prohibition applies to "home rule municipalities" rather than to "home rule units". Thus, it is not a prohibition against a home rule county. This is a significant difference and shows the importance of understanding the terminology used in Article VII of the Illinois Constitution.

(f) EXCLUSIVE EXERCISE BY THE STATE. Subsection (h) of Section 6 of Article VII of the Illinois Constitution provides as follows:

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

An example follows:

Section 30. Home rule. The regulation and licensing of motorcycles and motorcycle drivers are exclusive powers and functions of the State. A

home rule unit may not regulate or license motorcycles or motorcycle drivers. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(g) CONCURRENT EXERCISE. Subsection (i) of Section 6 of Article VII of the Illinois Constitution provides as follows:

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

An example follows:

Section 30. Home rule. A home rule unit may not regulate the possession of chopsticks in a manner more restrictive than the regulation by the State of the possession of chopsticks under this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

In the last example the phrase "in a manner more restrictive than" could be replaced with "in a manner inconsistent with" or "in a manner less restrictive than".

(h) DEBT. Subsections (j) and (k) of Section 6 of Article VII of the Illinois Constitution allow the General Assembly to impose certain debt limitations on home rule units.

Under subsection (j), the General Assembly may limit (1) the amount of debt that home rule counties may incur and (2) the amount of debt (other than debt payable from ad valorem property tax receipts) that home rule municipalities may incur. Such a limitation on home rule municipalities' debt requires a three-fifths vote in each house.

Under subsection (k), the General Assembly may limit the amount of debt, payable from ad valorem property tax receipts, that home rule municipalities may incur and may require referendum approval of the debt to be incurred. The General Assembly may take such action only with respect to debt in excess of stated percentages of the assessed value of the taxable property in the municipality. Those percentages are based on the municipality's population.

The Illinois statutes do not currently contain any examples of express preemption of home rule powers under subsection (j) or (k). If you are asked to draft a limitation on the amount of debt that a county or municipality may incur, you must ask whether the requester intends that the limitation apply to home rule units. If that is the requester's intent and if the limitation is one of the types described in subsection (j) or (k), the draft must expressly preempt the exercise of home rule powers.

Suppose that a requested statutory change provides in Section 5 of an Act that (i) a municipality may issue bonds to finance the construction of a community center, (ii) the indebtedness represented by the bonds may not exceed \$1,000,000, (iii) the bonds are to be payable from revenues derived from operation of the community center and not from ad valorem property tax receipts, and (iv) these provisions apply to home rule municipalities. An example of a provision preempting home rule powers follows:

Section 30. Home rule. A home rule municipality may not incur debt for the construction of a community center in an amount exceeding the amount specified in Section 5. This Section is a limitation of home rule powers

and functions under subsection (j) of Section 6 of Article VII of the Illinois Constitution.

(i) COMBINED. There may be times when in the same bill the same or different home rule powers are denied or limited on the basis of more than one subsection of Section 6 of Article VII. When this occurs, set forth the home rule provisions in separate subsections of the same Section of the bill, limiting each subsection to one basis for denying or limiting home rule powers or functions or to one power or function being denied or limited. Doing it this way has the virtue of forcing you to think through completely what power or function is being denied or limited and what the basis is for that denial or limitation.

Do not lump together preemption under 2 subsections of Section 6 of Article VII merely for the purpose of overkill without thinking things through clearly. For example, a single power or function may be limited or denied on the basis of subsection (g) if not exercised by the State, on the basis of subsection (h) if exercised exclusively by the State, or on the basis of subsection (i) if exercised concurrently by the State and home rule units. A combination is logically impossible, however. The State's exercise of the single power or function may be not at all, exclusive, or concurrent, but if it is one, it cannot be either of the others.

(j) FEWER THAN ALL HOME RULE UNITS. A statute may selectively preempt the authority of fewer than all home rule units. *Nevitt v. Langfelder*, 157 Ill.2d 116 (1993). As discussed in Section 20-15 of this Manual, however, a selective preemption of home rule powers must have a rational basis to avoid violating the constitutional guarantee of equal protection and prohibition against special legislation.

(k) SYNOPSIS. If a bill contains a provision that limits or denies home rule powers, the bill's synopsis must include a statement to that effect. "Preempts home rule *powers*" is better than "Preempts home rule". The following examples are better yet because they are more descriptive:

Denies home rule powers.

Limits the concurrent exercise of home rule powers.

SECTION 20-50. SEVERABILITY OR INSEVERABILITY.

(a) SEVERABILITY. The general rule developed and applied by the courts is that if a portion of a statute is invalid or unconstitutional, then the remaining portions of the statute are valid and enforceable if they stand on their own. *City of Carbondale v. Van Natta*, 61 Ill.2d 483 (1975). If the remaining portions are completely dependent on the stricken portions, however, the remaining portions are also invalid. *Sperling v. County Officers Electoral Board*, 57 Ill.2d 81 (1975).

Section 1.31 of the Statute on Statutes, 5 ILCS 70/1.31, provides as follows:

Sec. 1.31. If any provision of an Act enacted after the effective date of this amendatory Act or application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid application or provision, and to this end the provisions of each Act enacted after the effective date of this amendatory Act are severable, unless otherwise provided by the Act.

"The effective date of this amendatory Act" (Public Act 79-1178) adding Section 1.31 was July 1, 1976. Thus, Section 1.31 applies to Acts enacted after July 1, 1976.

This statute is merely declaratory of the rule of decision and will not operate to save an otherwise valid portion of a law that is so dependent on an invalid portion that the otherwise valid portion cannot be given effect. *Grennan v. Sheldon*, 401 Ill. 351 (1948).

Thus, both the decisions of the courts and the statute apply a rule of severability to all Acts enacted after July 1, 1976. There should never be any need for a bill to contain its own severability clause; it already has one both by court decisions and statute. In *People ex rel. Chicago Bar Association v. Illinois State Board of Elections*, 136 Ill.2d 513, 532 (1990), however, the Illinois Supreme Court indicated that it would give more weight to a specific severability clause than a general severability statute, such as Section 1.31 of the Statute on Statutes. Therefore, if severability is at all a question, you may add the following specific Section to the bill:

Section 35. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

If a fuller severability clause is requested, you may use the following:

Section 35. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

(b) INSEVERABILITY. There are times when the sponsor wants to ensure that a rule of severability is not applied. In other words, the sponsor intends that the Act should stand or fall in its entirety. If one provision is invalid, then all provisions, regardless of whether they could stand on their own, fall together.

The following is an example of an inseverability clause that applies to the whole Act:

Section 35. Inseverability. The provisions of this Act are mutually dependent and inseverable. If any provision is held invalid other than as applied to a particular person or circumstance, then this entire Act is invalid.

The following is an inseverability clause that applies only to certain amendments to an existing Act:

Section 35. Inseverability. The changes made to existing statutory law by this amendatory Act of the 98th General Assembly are mutually dependent and inseverable. If any change made to existing statutory law by this amendatory Act of the 98th General Assembly is held invalid other than as applied to a particular person or circumstance, then all changes made to existing statutory law by this amendatory Act of the 98th General Assembly are invalid in their entirety.

As noted in subsection (c) of Section 20-50 of this Manual, a court may find a statute unconstitutional for any of several reasons. The statute may violate the single-subject rule, it may violate the guarantee of due process, or it may be applied unconstitutionally to a particular person, entity, or set of circumstances. You must determine whether the sponsor intends that the entire Act should fall regardless of the reason for the finding of unconstitutionality. For example, the sponsor may not intend that result if a part of the Act is found unconstitutional only as applied to a particular person, entity, or set of circumstances. If the sponsor does intend that the Act be inseverable if a part of it is found unconstitutional only as applied to a particular person, entity, or set of circumstances, then modify the language in the second sentence of the previous examples as follows:

If any provision or its application to any person or circumstance is held invalid, then

If any change made to existing statutory law by this amendatory Act of the 98th General Assembly or its application to any person or circumstance is held invalid, then

(c) COMBINED. In some situations one particular provision of a bill is considered critical. This same provision may also be of suspect constitutional validity. In that situation it might be advisable to make the critical provision inseverable and the other provisions severable. If the critical provision falls, the whole Act falls, but if any other provision falls, the critical provision is saved. An example follows:

Section 35. Severability and inseverability. If any provision of this Act, other than Section 5, or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application. Section 5 is inseverable. If all or any part of Section 5 or its application to any person or circumstance is held invalid, then this entire Act is invalid.

SECTION 20-55. EXPIRATION.

Sometimes an Act will provide by its own terms that it expires on a future date.

Examples follow:

Section 40. Expiration. This Act is repealed on January 1, 2010.

Section 40. Expiration. This Act is repealed 5 years after its effective date.

If the Act deals with a regulatory agency, set forth the actual expiration date of the regulatory Act in an amendment to the Regulatory Sunset Act (5 ILCS 80/). In the regulatory Act itself, set forth the expiration provision as follows:

Section 40. Expiration. This Act is repealed as provided in the Regulatory Sunset Act.

If done in this manner rather than naming the specific expiration date in both Acts, there is less likelihood that a later amendatory Act changing the expiration date could result in the Act itself and the Regulatory Sunset Act having inconsistent expiration dates.

Public Act 88-660 added a sunset provision to 18 tax Acts. Under that provision in each Act, if a statute creates an exemption, credit, or deduction against a tax imposed by the tax Act and that provision becomes law after September 16, 1994, the application of that exemption, credit, or deduction must be limited by a reasonable and appropriate sunset date. The exemption, credit, or deduction automatically sunsets after 5 years if a sunset date is not specified. The following Acts contain this automatic sunset provision:

- (1) The Illinois Income Tax Act. 35 ILCS 5/250.
- (2) The Use Tax Act. 35 ILCS 105/3-90.
- (3) The Service Use Tax Act. 35 ILCS 110/3-75.
- (4) The Service Occupation Tax Act. 35 ILCS 115/3-55.
- (5) The Retailers' Occupation Tax Act. 35 ILCS 120/2-70.
- (6) The Cigarette Tax Act. 35 ILCS 130/3-5.

- (7) The Cigarette Use Tax Act. 35 ILCS 135/3-5.
- (8) The Hotel Operators' Occupation Tax Act. 35 ILCS 145/3-5.
- (9) The Automobile Renting Occupation and Use Tax Act. 35 ILCS 155/5.
- (10) The Motor Fuel Tax Law. 35 ILCS 505/2c.
- (11) The Coin-Operated Amusement Device and Redemption Machine Tax Act. 35 ILCS 510/2a.
- (12) The Mobile Home Local Services Tax Act. 35 ILCS 515/3.5.
- (13) The Cannabis and Controlled Substances Tax Act. 35 ILCS 520/9.5.
- (14) The Messages Tax Act. 35 ILCS 610/2a.3.
- (15) The Gas Revenue Tax Act. 35 ILCS 615/2a.3.
- (16) The Water Company Invested Capital Tax Act. 35 ILCS 625/4.5.
- (17) The Telecommunications Excise Tax Act. 35 ILCS 630/4.5.
- (18) The Electricity Excise Tax Law. 35 ILCS 640/2-6.

Because of this automatic sunset provision, when you take a request to add an exemption, credit, or deduction against a tax imposed by one of these Acts, be sure to ask the requester whether the automatic 5-year sunset is to apply or whether a different sunset date is to be specified. Note that Public Act 88-660 did not add the automatic sunset provision to, among other Acts, the Property Tax Code.

Following is a suggested form for expressing a sunset period of, for example, 5 years for an item to be listed in Section 203 of the Illinois Income Tax Act as an amount to be deducted from a taxpayer's modified adjusted gross income:

(w) For taxable years ending on or after December 31, 2004 and on or before December 30, 2009, an amount equal to...

In this example, a taxpayer whose taxable year is a calendar year will have the deduction for a period of 5 taxable years: 2004, 2005, 2006, 2007, and 2008. A taxpayer whose taxable year is other than a calendar year will have the deduction for the taxable years ending in calendar years 2005 through 2009. (See Section 401 and subdivision (a) (23) of Section 1501 of the Illinois Income Tax Act, 35 ILCS 5/401 and 5/1501, in connection with "taxable years" under that Act.)

A new statutory provision may require a State agency to conduct a pilot or demonstration program or project or to study a particular matter. In either case, the provision is likely to require the agency to report its findings and recommendations to the Governor and the General Assembly by a particular date. Ask the requester about including an internal repealer to take effect on a particular date after the expiration of the pilot or demonstration or after the agency has made its final report and recommendations.

Cross reference: Chapter 30 concerning repealers.

SECTION 20-60. REFERENDUM.

Sometimes an Act requires that a particular question be submitted at an election to the electors of the State, a unit of local government, or a school district for their approval. For example, the question might concern the establishment or dissolution of a special district, the levy of a tax, or some other matter. A referendum may be either a "front-door" or a "back-door" referendum. A measure subject to a front-door referendum requirement may be initiated by an ordinance or a resolution of a governing body of a political subdivision or by a petition of the electors and does not take effect unless approved by the electors. A front-door referendum provision is often requested to accompany an authorization for a political subdivision to levy a tax. An example of such a provision follows:

The tax may not be levied until the question of levying the tax has been submitted to the electors of the (political subdivision) at a regular election and approved by a majority of the electors voting on the

question. The (board) must certify the question to the proper election authority, which must submit the question at an election in accordance with the Election Code.

The election authority must submit the question in substantially the following form:

Shall the (board of trustees of the XYZ district) be authorized to levy a tax at the rate of (rate)% for (purpose)?

The election authority must record the votes as "Yes" or "No".

If a majority of the electors voting on the question vote in the affirmative, the (political subdivision) may thereafter levy the tax.

A front-door referendum provision also may be used to require elector approval of new State debt pursuant to subsection (b) of Section 9 of Article IX of the Illinois Constitution.

A measure subject to a back-door referendum requirement may be initiated by an ordinance or resolution of a governing body of a political subdivision and takes effect unless, within a stated period of time, a petition is filed requesting that the question be submitted to the electors for their approval. In that case the measure does not take effect unless approved by the electors in the referendum. An example of a back-door referendum provision to accompany an authorization to levy a tax follows:

The publication or posting of the resolution or ordinance levying the tax must include a notice of (i) the specific number of electors required to sign a petition requesting that the question of the adoption of the resolution or ordinance be submitted to the electors of the (political subdivision), (ii) the time in which the petition must be filed, and (iii) the date of the prospective referendum.

The (clerk or secretary of the political subdivision) must provide a petition form to any individual requesting one.

If, within 30 days after publication or posting of the ordinance, a petition is filed with the (board), signed by electors of the (political subdivision) equal in number to (XX)% or more of the total number of registered voters in the (political subdivision), asking that the question of levying the tax be submitted to the electors of the (political subdivision), the (board) must certify the question to the proper election authority, which must submit the question at an election in accordance with the Election Code.

The election authority must submit the question in substantially the following form:

Shall the (board of trustees of XYZ district) be authorized to levy a tax at the rate of (rate)% for (purpose)?

The election authority must record the votes as "Yes" or "No".

If a majority of the electors voting on the question vote in the affirmative or if no sufficient petition is filed with the (board) within 30 days after publication or posting of the ordinance, the (political subdivision) may thereafter levy the tax.

Follow the form of the question in both of the preceding examples ("Shall ... (purpose)? The election authority ... "No".") in drafting all new referendum provisions. The statutes contain many examples of referendum provisions in which the form of the question appears as a ballot form with space to mark "Yes" or "No". (For example, see 70 ILCS 1205/Art. 5.) This form is cumbersome; don't use it in drafting new referendum provisions. The form of the question in the preceding examples provides the election authority with sufficient direction to conduct the election.

When drafting language concerning an advisory question of public policy to be submitted to the electors at a referendum, consider the provisions of Article 28 of the Election Code (10 ILCS 5/Art. 28).

SECTION 20-65. APPOINTMENTS TO STATUTORY COMMITTEES, TASK FORCES, AND BOARDS.

Some committees, task forces, and boards created by statute are part of the executive branch. The Illinois Constitution gives the Governor the power to make appointments to the executive branch and specifically provides that the General Assembly shall have no power to elect or appoint officers to the executive branch. Ill. Const., art. V, sec. 9, subsec. (a); *Walker v. State Board of Elections*, 65 Ill.2d 543 (1976). If legislation creates a board or other body that performs an executive branch function (for example, by implementing a power or duty of a department of State government), a constitutional question may be raised if either the General Assembly as a whole or the 4 legislative leaders (the President and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives) may appoint members of that board. If the board or other body is merely advisory and has no power to make governmental decisions, however, then the manner of appointment of members is probably not questionable.

A similar problem is raised if the legislation delegates power to appoint members of a board or other body to a private individual or an association. See *Lasher v. People*, 183 Ill. 226 (1899). Whether a decision-making committee or board is considered part of the executive, legislative, or judicial branch, delegation of the power of appointment to a private individual or association or imposition of a requirement that appointments be made from among individuals nominated by a private individual or association may raise a constitutional question under Section 13 of Article IV of the Illinois Constitution, which provides that the General Assembly shall pass no special or local law when a general law is or can be made applicable, and Section 2 of Article I, which guarantees equal protection of the laws. If a power of appointment or nomination is granted to certain individuals or associations, it may be denied to others similarly situated.

Rather than providing for the appointment of individuals by or from a specific organization (for example, the Illinois State Medical Society or the Illinois Sheriff's Association), better practice is to provide for a government official to make the appointment from individuals who, for example, are physicians or nurses or individuals who, for example, are knowledgeable and experienced in the area of law enforcement or from an organization representing a certain type of individual (for example, a statewide organization representing physicians or a statewide organization representing sheriffs).

As in the matter of legislative appointments, however, if the board or other body is merely advisory and has no power to make governmental decisions, then the manner of appointment of members is probably not questionable.

SECTION 20-70. DESCRIPTIONS OF PROPERTY AND OTHER LOCATIONS.

Occasionally a bill contains a property description or refers to a particular municipality or other unit of local government. For example, a bill may authorize a unit of local government to acquire certain property by "quick-take" under Section 7-103 of the Code of Civil Procedure (735 ILCS 5/7-103) or may authorize a State agency or unit of local government to acquire or convey certain property. (For example, see Public Act 91-459

(conveyance of property) or 91-848 (acquisition of property.) The bill may include a legal description of the property or it may describe the property generally. The bill may refer to a particular municipality as, for example, the Village of Chatham.

If a bill is to include a legal description provided by the person requesting the bill, ensure that the property description in the draft bill exactly matches the description provided by the requester. If something in the description appears wrong, don't change it. Instead, call the requester for further instructions or have the draft bill marked "DRAFT" and send the requester a note asking for further instructions.

If a bill is to include a reference to only a general description of property provided by the person requesting the bill, double-check any apparent problems to the extent possible. (For example, the provided language may contain an apparent misspelling of a place name or street name, an incorrect description of a geographic relationship, or a misdesignation of a unit of local government.) Resources include the following:

- (1) "Illinois Counties and Incorporated Municipalities", published by the Secretary of State.
- (2) The Rand McNally "Commercial Atlas & Marketing Guide".
- (3) The "Illinois Atlas and Gazetteer", published by DeLorme Mapping.
- (4) The "Chicagoland Six County Atlas", published by American Map Corporation.
- (5) The reference desk at Lincoln Library in Springfield.
- (6) The State Library map room.

As in the case of a legal description, if something in a general property description or reference to a particular municipality or other unit of local government appears wrong, don't change it. Instead, call the requester for further instructions or have the draft bill marked "DRAFT" and send the requester a note asking for further instructions.

Cross reference: Section 90-20, subsection (d), concerning style and language in property descriptions.

SECTION 20-75. BLANKS IN A FORM.

Occasionally you must prepare a draft that contains a form to be used by a public official or other person. The form may include blanks to be filled in by the official or other person. State information that is to be inserted in a blank as in the following examples:

the corporate authorities of (insert name of municipality)
 in the amount of (insert amount)
 the following described territory: (insert description of territory)
 after (insert date)

Note that these examples use a parenthetical statement of the information to be inserted rather than a series of periods to indicate the blank. Whenever possible, use this parenthetical format rather than a series of periods. The statutes contain many examples of forms that indicate a blank line or space by a series of periods (for example, "..... County" or "Dated"). Don't use a series of periods unless it is appropriate to maintain consistency in an existing statute or for some other good reason. If a series of periods is used in a sentence, make sure that (i) there is a space between the series of periods and any word preceding the series of periods and (ii) there is also a space between the series of periods and any word following the series of periods.

Don't use a line ("_____") to indicate a blank because the line is apt to be confused with underscoring in a new provision and cannot be shown as underscored in an amendatory provision.

SECTION 20-80. MENTAL STATES.

(a) ELEMENTS OF A CRIME. As a general rule, a criminal offense must include 2 elements: a voluntary act (720 ILCS 5/4-1) and a mental state (720 ILCS 5/4-3). *People v. Gray*, 36 Ill.App.3d 720 (1st Dist. 1976).

Some offenses, however, impose criminal liability without requiring the offender to have a particular mental state. These offenses are known as absolute liability offenses. An offense may be an absolute liability offense if the statute clearly indicates a legislative purpose to impose absolute liability. An offense may also be an absolute liability offense if it (i) is a misdemeanor, (ii) is not punishable by imprisonment, and (iii) is not punishable by a fine exceeding \$500. 720 ILCS 5/4-9.

The courts disfavor criminal offenses that require no mental state. *Liparota v. United States*, 471 U.S. 419 (1985). Absence of a specified mental state is not by itself conclusive as to whether the legislature intended to prescribe an absolute liability offense. *People v. Gassman*, 251 Ill.App.3d 681 (2nd Dist. 1993). In fact, absent a clear indication that the legislature intended to impose absolute liability, or an important public policy favoring absolute liability, the Illinois Supreme Court has stated that it has been unwilling to interpret a statute as creating an absolute liability offense. *People v. Molnar*, 222 Ill.2d 495 (2006), citing *People v. Gean*, 143 Ill.2d 281 (1991) and *People v. Sevilla*, 132 Ill.2d 113 (1989). Courts may imply a mental state element in an offense unless a clear legislative intent to impose absolute criminal liability is present. *People v. Anderson*, 148 Ill.2d 15 (1992)) (misdemeanor offense); *People v. Cully*, 286 Ill.App.3d 155 (2nd Dist. 1997) (felony offense). In some cases, however, the courts have refused to imply a mental state and have held the statute to be unconstitutional. *People v. Zaremba*, 158 Ill.2d 36 (1994). Thus, the prudent course of action is to explicitly require a mental state or explicitly impose absolute liability.

(b) MENTAL STATES DESCRIBED IN THE CRIMINAL CODE OF 2012. Sections 4-4 through 4-7 of the Criminal Code of 2012, 720 ILCS 5/4-4 through 5/4-7, describe the following mental states:

(1) **Intent.** A person "intends" to do an act, or acts "intentionally" or "with intent", when the person's conscious objective is to accomplish a result or engage in conduct described by the statute defining the offense. 720 ILCS 5/4-4.

(2) **Knowledge.** A person "knows" the nature, circumstances, or result of an act, or acts "knowingly" or "with knowledge", when:

(A) the person is consciously aware that his or her conduct is of a nature or accompanied by circumstances described by the statute defining the offense; or

(B) the person is consciously aware that his or her conduct is practically certain to cause the result described by the statute defining the offense.

An act done "knowingly" or "with knowledge" is done "willfully" within the meaning of a statute using "willfully", unless the statute clearly requires another meaning. 720 ILCS 5/4-5.

(3) **Recklessness.** A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow and the circumstances or result are described by the statute defining the offense. The disregard of the risk must be a gross deviation from the standard of care that a reasonable person would exercise in the situation. An act done "recklessly" is done "wantonly" within the meaning of a statute using "wantonly", unless the statute clearly requires another meaning. 720 ILCS 5/4-6.

(4) **Negligence.** A person acts "negligently" when the person fails to be aware of a substantial and unjustifiable risk that circumstances exist or that a result will follow and the circumstances or result are described by the statute defining the offense. The failure must be a substantial deviation from the standard of care that a reasonable person would exercise in the situation. 720 ILCS 5/4-7.

A criminal offense may contain more than one element and may specify a different mental state that applies to each element. For example, the offense of residential burglary requires the offender to "knowingly" and without authority enter the dwelling place of another with the "intent" to commit a felony or theft. 720 ILCS 5/19-3.

If a criminal offense contains more than one element and specifies a particular mental state that applies to the offense as a whole without distinguishing between the offense's elements, the specified mental state applies to each element. If a criminal offense is not an absolute liability offense and does not specify a particular mental state that applies to an element of the offense, then the applicable mental state is intent, knowledge, or recklessness. 720 ILCS 5/4-3.

The Criminal Code of 2012 describes the 4 mental states in order of decreasing culpability. Because the Illinois Constitution requires that criminal penalties be proportionate (Ill. Const., art. I, sec. 11), a statute that imposed a more severe penalty for an act done "negligently" than for the same act done "intentionally" would likely be held unconstitutional. The statutes sometimes provide different penalties for the same conduct committed with different mental states. For example, see Section 7-105 of the Illinois Notary Public Act (5 ILCS 312/7-105), which provides that misconduct committed "knowingly and willfully" is a Class A misdemeanor, while misconduct committed "recklessly or negligently" is a Class B misdemeanor. Frequently, however, a criminal act carries the same penalty whether it is done "intentionally or knowingly" (for example, 720 ILCS 5/12-3 -- battery), "knowingly" with a particular intent (for example, 720 ILCS 5/16-1.3 -- financial exploitation of an elderly person or a person with a disability), "intentionally, knowingly, or recklessly" (for example, 720 ILCS 5/16-7 -- unlawful use of recorded sounds or images), or "intentionally, knowingly, recklessly, or negligently" (for example, 720 ILCS 5/16-8 -- unlawful use of unidentified sound or audio visual recordings). In the examples other than the last one, of course, conduct that is merely negligent does not carry a criminal penalty at all.

(c) **TERMS TO AVOID.** When specifying a mental state that applies to a criminal offense, use one of the mental states described in Sections 4-4 through 4-7 of the Criminal Code of 2012. Because these mental states are described in the Code, they are the preferred terms and users of the Code recognize them. If you use a different term to specify a mental state, a user of the statute must determine which of the 4 Code-described mental states is meant.

The following are examples of terms you should **AVOID** using to specify a mental state that applies to a criminal offense:

(1) **Unlawfully.** "Unlawfully" is not a mental state. It merely means that an act was contrary to law. *People v. Edge*, 406 Ill. 490 (1950).

(2) **Maliciously.** "Maliciously" means "willfully". *Glover v. The People*, 204 Ill. 170 (1903).

(3) **Corruptly.** Acting "corruptly" includes acting "willfully" and for the purpose of concealing the truth. *Chicago City Railway Company v. Olis*, 192 Ill. 514 (1901).

(4) **Falsely.** Section 32-2 of the Criminal Code of 2012, 720 ILCS 5/32-2, which defines the offense of perjury, prohibits the making of a "false" statement that the maker does not believe to be true. The statute thus implies that "knowledge" of the falsity of the perjured statement at the time of the utterance is an essential element of the offense. *People v. Penn*, 177 Ill.App.3d 179 (5th Dist. 1988).

As stated in subsection (b) of this Section, the Criminal Code of 2012 accommodates the use of "**willfully**" (720 ILCS 5/4-5) and "**wantonly**" (720 ILCS 5/4-6). Nevertheless, try to avoid using these terms to specify a mental state that applies to a criminal offense and instead use one of the 4 mental states described in Sections 4-4 through 4-7 of the Code. For the draft to specify the appropriate mental state, you must take care to ascertain the intent of the person making the drafting request.

SECTION 20-82. PRESUMPTIONS.

A presumption is a legal device that either permits or requires a trier of fact or other decision-maker to assume the existence of an ultimate fact, after establishing certain predicate facts. A presumption may be permissive or mandatory. A mandatory presumption, in turn, may be either conclusive or rebuttable. The Illinois statutes contain many examples of presumptions, in both civil-law and criminal-law contexts, that apply to determinations concerning a person's conduct or mental state. Consider the following examples:

(1) Civil law. For the purpose of emergency housing eviction proceedings under the Forcible Entry and Detainer Article of the Code of Civil Procedure, if cannabis or certain other substances are found or used anywhere in the premises, there is a rebuttable presumption either (i) that the cannabis or other substances were used or possessed by a tenant or occupant or (ii) that a tenant or occupant permitted the premises to be used for that use or possession. 735 ILCS 5/9-118.

(2) Criminal law. For the purpose of the offense of endangering the life or health of a child, there is a rebuttable presumption that a person committed the offense if he or she left a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes. 720 ILCS 5/12-21.6.

(3) Criminal law. For purposes of the offense of child abduction, the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child shall be prima facie evidence of other than a lawful purpose. 720 ILCS 5/10-5.

In the criminal-law context, the Illinois Supreme Court has held that, under Illinois law, all mandatory presumptions are per se unconstitutional. *People v. Pomykala*, 203 Ill.2d 198 (2003). The Court has also held that the language "shall be prima facie evidence" creates a mandatory presumption. *People v. Pomykala*, supra; *People v. Woodrum*, 223 Ill.2d 286 (2006). (Thus, in *Woodrum*, the Court held that the "prima facie evidence" mandatory presumption in 720 ILCS 5/10-5, described in the preceding example (3), is unconstitutional.)

The lesson for the drafter is clear. In a statute describing a criminal offense, do not create a mandatory presumption under which a defendant's guilt is presumed – whether by means of an express "presumption" (either conclusive or rebuttable) or by means of "prima facie evidence". Instead, if it's necessary to include language concerning a trier of fact's ability to assume the existence of an ultimate fact, create a permissive inference, as in the following example based on 720 ILCS 5/10-5:

The trier of fact may infer that the luring or attempted luring of a child under the age of 16 into a motor vehicle, building, housetrailer, or dwelling place without the consent of the parent or lawful custodian of the child was for other than a lawful purpose.

Note, however, that under the principles applicable to circumstantial evidence generally, a trier of fact already may make inferences based on evidence admitted at trial without additional statutory authority to make a particular inference based on particular evidence. Arguably, setting forth a particular inference in a statute may confuse jurors and lead them to believe that they cannot make other inferences or that they should focus on or give greater weight to the evidence set forth in the statute and less weight to other evidence. Thus, better practice may be to state neither a mandatory presumption nor a particular permissive inference.

SECTION 20-85. VALIDATION OF ACTIONS.

(a) ACTIONS TAKEN IN RELIANCE ON STATUTE. Suppose that a statute is repealed by operation of law, even though the General Assembly intends that the statute remain in effect. This may occur when a bill extending a statute's repeal date does not become law until after the original repeal date has passed (see Section 25-100 of this Manual). It may also occur when a statute's repeal date is simply overlooked and the statute must be re-enacted (see Public Act 88-1, re-enacting the Emergency Medical Services (EMS) Systems Act).

Also suppose that an individual or entity takes an action after the statute's original repeal date and relies on the statute for the grant of authority to take that action. In this case, the General Assembly may want to validate the action so that the individual or entity does not incur liability for acting without statutory authority. The General Assembly may validate the action as in the following example:

All actions taken in reliance on or under [description of statute] by [description of individual or entity] or any other person or entity are validated.

For other examples of legislative validation of actions taken in reliance on a statute, see the following:

(1) Section 14-134 of the Illinois Pension Code (40 ILCS 5/14-134), concerning actions by a pension board in connection with a statutory change in the number of affirmative votes required for board action.

(2) Section 385 of the Environmental Impact Fee Law (415 ILCS 125/385), concerning actions by the Department of Revenue and others in connection with the Act as enacted by Public Act 89-428, which was held unconstitutional.

(b) ACTIONS TAKEN IN RELIANCE ON SET OF FACTS. Occasionally the General Assembly wants to validate actions taken in reliance on a set of facts (whether actual or perceived) rather than on a statute. For examples, see the following:

(1) Section 3.1-20-30 of the Illinois Municipal Code (65 ILCS 5/3.1-20-30), concerning the division of a city into a greater number of wards and the election of a greater number of aldermen than the city is entitled to according to an official census.

(2) Section 11-74.4-6 of the Illinois Municipal Code (65 ILCS 5/11-74.4-6), concerning municipal actions in relation to designation of a tax increment financing redevelopment project area notwithstanding noncompliance with all applicable notice requirements.

(3) Section 1 of the Village Library Conversion Act (75 ILCS 45/1), concerning the conversion of a village public library to a library district notwithstanding that a copy of the notice of the intent to convert was not served on a township supervisor.

(c) APPROPRIATION AND TAX LEVY ORDINANCES. Occasionally the General Assembly wants to validate actions of a unit of local government in connection with making appropriations or levying taxes despite the unit's noncompliance with certain legal requirements. The Illinois Supreme Court has held that the General Assembly may enact legislation to be applied retroactively to validate a tax levy imposed by a unit of local government if the General Assembly could have authorized that action in advance and if the retroactive application does not infringe on constitutionally protected rights of the parties involved. *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318 (2006), and other cases cited therein. For examples, see the following:

(1) Section 5-2007 of the Counties Code (55 ILCS 5/5-2007), concerning a referendum on a proposition to levy a tax for the payment of bonds in excess of the statutory limit.

(2) Section 6-25001 of the Counties Code (55 ILCS 5/6-25001), concerning appropriation and tax levy ordinances in which amounts were not specifically itemized in detail as required by law.

(3) Section 1 of the DuPage County Forest Preserve District Tax Levy Validation (1988) Act (70 ILCS 855/1), concerning appropriation and tax levy ordinances that did not comply with certain notice requirements.

(d) APPLICABILITY. For a discussion of applicability clauses in connection with validation Acts, see Section 35-50, subsection (e), of this Manual.

SECTION 20-90. AGENCY RULES.

Occasionally you must consult the rules adopted by an executive branch agency. Those rules are collected in the Illinois Administrative Code (not to be confused with the Civil Administrative Code of Illinois, an Act relating primarily to the various departments of State government).

A person may request a bill or amendment to change or nullify an executive branch agency's function, and that function may have been created not by statute but by a rule adopted by the agency. A person may even request a bill or amendment that expressly changes or repeals an agency's rule. Of course, the General Assembly may not expressly amend or repeal a rule adopted by an executive branch agency because the rule is not a statute. Changing or repealing an agency's rule is an executive power and not a legislative one.

The General Assembly, however, may pass a bill that changes the statutes to impose the desired function on the agency or to prohibit the agency from exercising that function. The General Assembly may also pass legislation that is contrary to the agency's rule. That statutory change will supersede the agency's rule and thus have the effect of changing or nullifying the rule.

There are some restrictions on the General Assembly's ability to pass a bill that changes the statutes to impose a function on an executive branch agency:

(1) The General Assembly may not delegate legislative powers to an executive branch agency in violation of the separation of powers doctrine under Section 1 of Article II of the Illinois Constitution. For example, the General Assembly may not authorize an agency to reallocate appropriated moneys between the agency's programs. *County of Cook v. Ogilvie*, 50 Ill.2d 379 (1972).

(2) Similarly, the General Assembly may not encroach on executive branch powers. For example, a statute creating a legislative commission to exercise control over the spending of moneys after they were appropriated to an executive branch agency would violate the separation of powers doctrine. 1978 Op.Atty.Gen., p. 140.

(3) The General Assembly may not impose a function on an agency if federal law has preempted that function. For example, a federal law granting moneys to the State for various purposes may impose conditions on the State's use of those moneys, and those conditions may preempt State legislation on the subject.

When granting rulemaking authority to a State agency, provide for the agency's adoption of "rules" because that is the term used in the Illinois Administrative Procedure Act, which governs agency rulemaking generally. See, for example, 5 ILCS 100/5-5. Don't use "regulations" as a substitute for "rules" unless you are amending a statute that already uses "regulations". (You may refer to "regulations" in the case of a federal agency, however. See Section 15-37, subsection (b), of this Manual.)

Provide that a State agency may or shall "adopt" rules because "adopt" is the term used in the Illinois Administrative Procedure Act. Again, see 5 ILCS 100/5-5. Don't use another word such as "promulgate", "issue", "publish", "establish", or "enact" as a substitute for "adopt". Also, don't use any other words in addition to "adopt"; that term is sufficient by itself. (For a particularly bad example of drafting, see Section 13 of the Swimming Facility Act, 210 ILCS 125/13, which directs an agency to "promulgate, publish, adopt and amend" rules.)

SECTION 20-95. SUPREME COURT RULES; JUDICIARY'S INHERENT POWERS.

Section 16 of Article VI of the Illinois Constitution grants the Supreme Court "[g]eneral administrative and supervisory authority over all courts". Ill. Const., art. VI, sec. 16. Section 16 also provides for the exercise of that authority "in accordance with [the Court's] rules". The Illinois Supreme Court Rules cover various aspects of courts' functions, including the following:

- (1) Article II: Rules on Civil Proceedings in the Trial Court.
- (2) Article III: Civil Appeals Rules.
- (3) Article IV: Rules on Criminal Proceedings in the Trial Court.
- (4) Article V: Rules on Trial Court Proceedings in Traffic and Conservation Offenses, Ordinance Offenses, Petty Offenses, and Certain Misdemeanors; Bail Schedules.
- (5) Article VI: Appeals in Criminal Cases, Post-Conviction Cases, and Juvenile Court Proceedings.

The Supreme Court Rules thus address many of the subjects covered by the Code of Civil Procedure, the Code of Criminal Procedure of 1963, and other Acts. The General Assembly may not amend the Supreme Court Rules. The General Assembly arguably may enact a law so as to preclude an inconsistent rule, but it may not enact a law that unduly infringes on the judiciary's inherent powers. Even if there is no Supreme Court Rule that conflicts with a proposed statutory provision, the statute still may be held unconstitutional if it unduly infringes on the judiciary's inherent powers. *People v. Flores*, 104 Ill. 2d 40 (1984). If the Supreme Court has adopted a rule on a matter within the Court's authority, and a statute on the same subject conflicts with the rule, the rule will prevail. *People v. Cox*, 82 Ill. 2d 268 (1980).

The point is, you should be aware of the matters covered by the Supreme Court Rules so that you can avoid drafting a statutory provision that conflicts with the Rules – or at least warn the requester of such a conflict. You must also be careful not to draft a statutory provision that unduly infringes on the judiciary's inherent powers.

For examples of statutes that have been held (i) unconstitutional because they unduly infringed on the judiciary's inherent powers or conflicted with a Supreme Court Rule or (ii) constitutional because they did not unduly infringe on the judiciary's inherent powers, see the analysis of the Code of Civil Procedure in the LRB Act Analyses.

SECTION 20-100. APPROPRIATION BILLS.

The State's budget for a fiscal year is expressed in one or more appropriation bills that authorize the expenditure of public moneys during that year. The Illinois Constitution provides that an appropriation bill must be limited to the subject of appropriations but need not be confined to one subject. Ill. Const., art. IV, sec. 8, subsec. (d). That is, a substantive bill may not contain an appropriation and an appropriation bill may not contain any substantive provisions. An appropriation bill, however, may make appropriations to many different entities for many different purposes.

In the past few years, it has been customary for the General Assembly to pass a few very lengthy appropriation bills that contain the State's budget for a fiscal year. Each bill appropriates moneys to several State agencies or officers. These bills are often prepared outside the Legislative Reference Bureau. It is common, however, for an LRB attorney to draft a bill appropriating moneys to a single State agency for a particular purpose, as in the following example:

Section 5. The amount of \$12,000,000, or so much of that amount as may be necessary, is appropriated to the Capital Development Board from the Capital Development Fund for the construction of 80 additional beds at the LaSalle County Veteran's Home.

The above example contains all of the elements necessary for any appropriation bill:

- (1) A statement of the amount appropriated.

- (2) Insertion of the phrase "or so much of that amount as may be necessary", recognizing that the amount actually spent may turn out to be less than the amount originally budgeted.
- (3) Designation of the agency to which the money is appropriated.
- (4) Designation of the fund from which the money is appropriated.
- (5) A statement of the purpose for which the money is appropriated.

An appropriation bill generally provides that it will take effect on the first day of the State fiscal year to which it applies, that is, July 1, 2xxx. (An exception is a supplemental appropriation bill, which usually has an immediate effective date. See Section 25-80 of this Manual, subsection (e).)

It may be that, for one reason or another, before the end of the fiscal year an agency does not spend all of the money appropriated to it for a particular purpose. That purpose may remain not fully accomplished, and the agency may want to complete it during the succeeding fiscal year. In that case, the agency may want the unspent portion of the original appropriation reappropriated to it for the succeeding year. An example of such a reappropriation provision follows:

Section 80. The sum of \$477,225, or so much of that amount as may be necessary and remains unexpended at the close of business on June 30, 2003, from an appropriation previously made for that purpose in Article 13, Section 70 of Public Act 92-538, is reappropriated from the Capital Development Fund to the University of Illinois for digitalization infrastructure for WILL-TV (Urbana-Champaign).

Note that the example contains the elements necessary to any appropriation bill and adds the following elements necessary for the reappropriation:

- (1) Insertion of the phrase "and remains unexpended at the close of business on" the last day of the fiscal year for which the original appropriation was made.
- (2) A statement that the amount was previously appropriated for the same purpose.
- (3) Designation of the Public Act (and the Article and Section numbers, if applicable) in which the previous appropriation was made.
- (4) A statement that the amount is reappropriated rather than appropriated.

Remember that an appropriation of State moneys for a particular purpose not already authorized by law needs a separate substantive bill that provides a basis for the appropriation, because an appropriation bill may not contain any substantive provisions. For example, an appropriation to the Department of Public Aid for providing coverage of a new health care service under the Medicaid program requires a separate substantive bill that amends the Illinois Public Aid Code to authorize or require the coverage of that service.

Cross reference: Section 25-80 concerning supplemental appropriation bills.

SECTION 20-105. POVERTY GUIDELINES.

The statutes often provide that a person's eligibility to receive benefits funded by public moneys, or to participate in a program funded by public moneys, is conditioned on the amount of the person's income. The income limitation may be expressed as a specific dollar amount, or it may refer to an amount established by a State agency or another entity. Probably the most frequently occurring reference to an income limitation based on amounts established by a particular entity is to the poverty guidelines published by the federal government, for example in a reference to "persons whose household income is not greater than 400% of the federal poverty level".

The statutes are not consistent in their references to those federal guidelines, however. The most frequent reference in the statutes is to the "poverty level" (34 Sections in ILCS), usually expressed as the "federal poverty level", but sometimes expressed as the "national poverty level" or just the "poverty level". The statutes also contain

references to the "poverty guidelines" (9 Sections), the "poverty income guidelines" (6 Sections), the "poverty line" (4 Sections), the "poverty standard" (2 Sections), and the "poverty limit" (one Section).

There is no excuse for this inconsistency, however, because the federal government itself has prescribed the correct reference to the guidelines (Federal Register, Vol. 77, No. 17, January 26, 2012, page 4035):

the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

Note that the correct reference is to the "poverty guidelines" updated "periodically" (not annually, as sometimes appears in the statutes) by the U.S. Department of Health and Human Services (not the federal Office of Management and Budget, as sometimes appears in the statutes).

When you prepare a draft that includes a new reference to an income limitation based on these guidelines, make sure that you use the correct reference as stated above. Do not use pre-drafted language submitted by a requester unless it is the same as the correct reference. Do not just copy text from another statute that appears to refer to the guidelines and paste it into your draft, because it probably will be incorrect. (There is only one instance of the correct reference in the statutes; see 105 ILCS 5/2-3.71.) If your draft includes more than one new reference to the guidelines, you may refer simply to the "poverty guidelines" in the substantive text of the draft, but only if you define that term and the definition includes the correct reference as follows:

"Poverty guidelines" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

SECTION 20-110. UNLAWFUL PRACTICE UNDER THE CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT.

You may be asked to draft a provision (either as a provision in a new Act or as a provision added to an existing Act) stating that a violation of that provision is also an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/). In that case, your draft must also amend the Consumer Fraud and Deceptive Business Practices Act to provide that a person who violates the ABC Act (or who violates, for example, Section 5 of the XYZ Act) commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act. (See Section 25-20 of this Manual concerning amendments by reference.)

The correct way to amend the Consumer Fraud and Deceptive Business Practices Act in such a case is to amend Section 2Z of that Act (815 ILCS 505/2Z), which contains a list of provisions in other Acts, the violation of any of which constitutes an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act. Simply add the new Act or new provision in an existing Act to the list in Section 2Z. This serves to keep all of the cross-references to other Acts in a single place where they can easily be found by a reader. Do not add a new Section to the Consumer Fraud and Deceptive Business Practices Act that covers only the new provision in your draft, as was done in the case of 815 ILCS 505/2JJJ.

SECTION 20-115. EMINENT DOMAIN.

You may be asked to draft a provision (either as a provision in a new Act or as a provision added to an existing Act) that includes an express grant of the power to acquire property by condemnation or eminent domain. In that case, your draft must also amend Part 5 of Article 15 of the Eminent Domain Act (735 ILCS 30/Art.15, Pt. 5) to add that provision to the list of Sections that include such grants of power. (See Section 25-20 of this Manual concerning amendments by reference.) The list of Sections in the Eminent Domain Act is organized in ILCS order.

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If the eminent domain provision is added to an existing Act, then the correct way to amend the Eminent Domain Act is to change the appropriate Section by inserting the new provision in ILCS order.

If the eminent domain provision is in a new Act, then the correct way to amend the Eminent Domain Act is to add a new Section to the Act as follows:

Sec. 15-5-XX. Eminent domain powers in new Acts. The following provisions of law may include express grants of the power to acquire property by condemnation or eminent domain:

Ottawa Port District Act; Ottawa Port District; for general purposes.

If the new Act is enacted into law, the reference will be added to the appropriate Section of the Eminent Domain Act based on the ILCS citation of the new Act in a revisory bill (and the new Section will eventually be repealed in a revisory bill).

CHAPTER 25. AMENDATORY PROVISIONS.

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- 25-15. SET FORTH COMPLETELY.
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SECTION 25-5. AMENDATORY BILL; AMENDMENT.

There is a difference between an "amendatory bill" and an "amendment" to a bill.

An amendatory bill, which becomes an amendatory Act when it becomes law, proposes changes to existing statutory law. The counterpart of an amendatory bill is a bill that proposes to create an entirely new statute.

An amendment, on the other hand, proposes changes to a bill of any type, amendatory or new, while that bill is being considered by the General Assembly and before it becomes law. If an amendment is adopted, it is incorporated into the bill in the engrossing or enrolling process and, in a sense, loses its distinct identity.

Thus, an amendment is dependent on the bill it amends, whereas an amendatory bill stands on its own in the legislative process.

Confusion may arise because an amendatory bill and an amendment are both said to "amend" something. An amendatory bill, on the one hand, amends an existing statute. An amendment, on the other hand, amends a bill.

SECTION 25-10. INTRODUCTORY CLAUSE.

Each Section of the amendatory provisions of a bill first sets forth in the introductory clause the existing Act that is being amended together with the specific Secs. being changed, added, or repealed. (See Section 25-30 of this Manual concerning "Sec." and "Section".) The format for the introductory clause follows:

Section 5. The Illinois Lottery Law is amended by changing Section 8.1 and adding Section 9 as follows:

As discussed in subsection (f) of Section 70-15 of this Manual, sometimes multiple amendatory Acts will each add a new Section to an existing Act under the same Section number. For example, Section 605-430 as added to the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois by Public Act 94-970 requires the Department to conduct a study concerning academic training capacity in relation to the nursing profession. Section 605-430 as added by Public Act 94-1006 authorizes the Department to establish a pilot program in relation to lifelong learning accounts for healthcare workers. In an amendatory bill to change one of those Sections before one or the other of them is renumbered in a revisory bill, the introductory clause should specify which Section is being changed, as in the following example:

Section 5. The Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois is amended by changing Section 605-430 (as added by Public Act 94-1006) as follows:

See Section 30-5, subsection (b), of this Manual for examples of introductory clauses used in connection with the repeal of a Sec., Article, or Act.

As stated in Section 20-5 of this Manual, in some Acts individual Articles or other divisions have been given short titles. As a general rule the introductory clause should state the short title of the entire Act being amended rather than the short title of an individual Article or other division. Examples follow:

Section 5. The Illinois Vehicle Code is amended by changing Section 6-105 as follows: (Not: The Illinois Driver Licensing Law is amended by ...)

Section 5. The Code of Civil Procedure is amended by adding Section 3-103.5 as follows: (Not: The Administrative Review Law is amended by ...)

Exception: When amending the Civil Administrative Code of Illinois (other than Article 1 of the Code, which does not have an individual short title) or the Civic Center Code (other than Article 1 or 2), state the short titles of both the particular Article and the entire Code as in the following examples:

Section 5. The Department of Agriculture Law of the Civil Administrative Code of Illinois is amended by ...

Section 5. The Aurora Civic Center Law of 1997 of the Civic Center Code is amended by ...

In these examples the reference to the Article's short title helps the reader identify (i) the affected department of State government or other topic relating to departments of State government or (ii) the affected civic center authority.

Cross reference: Section 10-30 concerning references to an existing Act.

SECTION 25-15. SET FORTH COMPLETELY.

Subsection (d) of Section 8 of Article IV of the Illinois Constitution provides, in part, as follows:

A bill expressly amending a law shall set forth completely the sections amended.

Thus, a bill expressly amending an existing Section of an Act must set forth in the bill the full text of the Section being amended. It is not sufficient merely to identify the Section and state in what way it is being changed. *Fuehrmeyer v. City of Chicago*, 57 Ill.2d 193 (1974).

The requirement of setting forth the text of a Section in full is a strong argument for drafting short Sections. Even a minor change requires the text of the entire Section to be shown in the bill.

Cross-reference: Section 25-50 concerning the statute base and source references.

SECTION 25-20. AMENDMENT BY REFERENCE; AMENDMENT BY IMPLICATION.

Amendment by reference has always been a problem in Illinois. It will continue to be a problem.

The 1870 Illinois Constitution provided that "no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act". Ill. Const. 1870, art. IV, sec. 13. The Supreme Court took the view that if the purpose of a bill was to amend an existing Act, either expressly or impliedly, then insertion at length was required. In determining the purpose of a bill, the analysis usually turned on whether the bill was "complete in itself". If the bill was "complete in itself", then implied amendment of another Act did not defeat the bill. On the other hand, if the bill was not "complete in itself", then implied amendment of another Act did defeat the bill. The analysis sounded good, but its practical application was unpredictable. It was nearly impossible to know how the courts would treat the facts of any particular bill. Braden & Cohn, *The Illinois Constitution* pp. 165-7 (1969).

The 1970 Illinois Constitution was supposed to remedy the confusion. The text of an existing Section needs to be set forth completely only when the bill *expressly* amends the Section. Ill. Const., art. IV, sec. 8, subsec. (d); also see Section 25-15 of this Manual. Amendment by implication, the source of confusion before, is no longer a constitutional problem.

The Supreme Court has consistently held that express amendment of another Act without setting forth the amended text is invalid. *People ex rel. Peoria Civic Center Authority v. Vonachen*, 62 Ill.2d 179 (1976); *Fuehrmeyer v. City of Chicago*, 57 Ill.2d 193 (1974).

The Supreme Court has also consistently held that amendment by implication does not invalidate a bill. *People ex rel. City of Canton v. Crouch*, 79 Ill.2d 356 (1980); *United Private Detective and Security Association*,

Inc. v. City of Chicago, 62 Ill.2d 506 (1976). The *United Private Detective* case is interesting because it illustrates the literal interpretation the Supreme Court has given to the constitutional provision. The bill in question amended the Private Detective Act to preempt home rule powers and declare regulation by the State to be exclusive. This repealed by implication an express provision of the Illinois Municipal Code that allowed concurrent regulation by municipalities. The court found no constitutional problem even in this extreme case.

On the other hand, a court may decline to find an amendment by implication if it determines that the legislature was aware of the bill's conflict with an existing statute but chose not to amend or repeal the statute. See *Granberg v. Didrickson*, 279 Ill.App.3d 886 (1st Dist. 1996), which involved an appropriation from the Road Fund to the Department of State Police in excess of the statutory maximum provided in the State Finance Act without a companion substantive bill amending that Act to increase or repeal the maximum. The court enjoined the expenditure of the amount by which the appropriation exceeded the statutory maximum. (The court also noted that even if it found an amendment of the State Finance Act by implication, that amendment would be unconstitutional because the appropriation bill could not amend substantive law.)

The conclusions to be drawn from the point of view of a bill drafter are as follows:

(1) An amendment by reference (involving an express reference to another Act or Sec. that is purportedly amended by the bill but not set forth as part of the bill) will be held unconstitutional if challenged in litigation.

(2) An amendment by implication (involving an inadvertent failure to make an express reference to another Act or Sec. that is purportedly amended by the bill, let alone set forth the text that is being amended) will probably be upheld if challenged in litigation. If a bill makes a reference to the other Act or Sec., however, it is unlikely that a court would find the amendment to be inadvertent.

These conclusions do not give you license to freely ignore amendment by implication, however. In fact, you ought to constantly seek to avoid amendment by implication. A bill should expressly conform all existing law so that the law is uniform throughout and, most importantly, so that the General Assembly and the public are fully aware of the consequences of the bill while it is being considered as well as after it becomes law.

Moreover, there is no guarantee that the Supreme Court will continue its quite literal interpretation of the constitutional provision. The purpose of the constitutional provision requiring amended text to be set forth completely is to make sure everyone, members of the General Assembly and the public, knows what is going on. Therefore, it seems somewhat illogical to hold that if a bill expressly tells everyone what it is doing, but without setting forth the amended text completely, it is defective, yet if the bill does not tell anyone what it is doing, even when done intentionally as a subterfuge, it is valid. There seems to be nothing in the constitutional language, particularly considering the Supreme Court's interpretation of the previous constitutional provision, to prevent limiting amendment by implication to those situations where the effect is subsidiary or where failure to expressly amend is clearly inadvertent, while striking down egregious amendment by implication.

Thus there are abundant reasons why you should attempt to expressly amend all existing Acts that are substantially affected by the provisions of a bill. Amendment by implication hides the full effect of a bill and creates inconsistencies in the law that require interpretation by the courts that could be avoided by good drafting.

Cross reference: Section 30-15, concerning implied repeal.

SECTION 25-25. STRIKE THROUGH AND UNDERScore.

(a) GENERAL REQUIREMENTS. The Illinois Constitution requires the full text of an amended Section to be set forth completely. Ill. Const., art. IV, sec. 8, subsec. (d). The particular changes made to the Section are then shown by underscoring all new matter and by striking through all matter that is to be omitted from the law. Senate Rule 5-1(e) and House Rule 37(e) (97th G.A.); 25 ILCS 10/10 (f).

All additional language, including both new language added to an existing Section and the entire text of a Section newly added to an existing Act, must be underscored.

If matter is to be both added and omitted at the same point in the text, the uniform convention is to show the underscored matter first and the stricken-through matter second.

An example follows:

Section 5. The Illinois Municipal Code is amended by changing Section 9-3-47 and adding Section 9-3-47.1 as follows:

(65 ILCS 5/9-3-47) (from Ch. 24, par. 9-3-47)

Sec. 9-3-47. Payment of taxes and assessments. The purchaser or his or her assignee, including without limitation an assignee for the benefit of creditors, shall pay all taxes and assessments on real estate sold under the provisions of this Division 3. Notation of the payment ~~such payments~~ shall be made on the docket of the court. The payment ~~and the same~~ shall be refunded ~~repaid~~ if the real estate is redeemed, together with interest at the rate of the greater of 9% per annum or 70% of the prime commercial rate in effect on the date the special assessment ordinance is adopted.

(Source: P.A. 82-686.)

(65 ILCS 5/9-3-47.1 new)

Sec. 9-3-47.1. Separate account. The municipal treasurer must hold all moneys received as payment under Section 9-3-47 in a separate bank account. Other moneys may not be commingled with the funds in the separate account. Except for refunds and interest required by Section 9-3-47, the municipal treasurer may not make any payment out of the separate account without the prior written authority of the mayor.

In the preceding example, Sec. 9-3-47 illustrates the preferred practice when amending the text of a Section. .

(b) CAPITALIZATION AND PARAGRAPHING. There is a situation in which, technically, changes are made to the text of existing law, but the changes need not necessarily be shown by underscoring and striking through. These changes involve paragraphing.

If paragraphing is changed without changing the substance of the existing law, then the changes need not be indicated by underscoring and striking through. No new matter is really being added and no existing matter is being omitted from the law. Previously, if capitalization of a word was changed without changing the substance of the existing law, it was customary to make that change without indicating it by underscoring and striking through. Better practice now, however, is to show any change in capitalization by underscoring and striking through.

Section 9-1-3 of the Illinois Municipal Code, 65 ILCS 5/9-1-3, reads as follows:

Section 9-1-3. No ordinance ordering a local improvement shall be repealed except on a written recommendation of the board of local improvements, or committee on local improvements, as the case may be, stating the reasons therefor. This section shall not apply to municipalities having a population of less than 100,000.

You may change capitalization and paragraphing as follows:

(65 ILCS 5/9-1-3) (from Ch. 24, par. 9-1-3)

Sec. 9-1-3. No ordinance ordering a local improvement shall be repealed except on a written recommendation of the Board of Local Improvements, or Committee on Local Improvements, ~~board of local improvements, or committee on local improvements~~, as the case may be, stating the reasons therefor.

This Section ~~section~~ shall not apply to municipalities having a population of less than 100,000.

(Source: Laws 1961, p. 576.)

(c) "**AS AMENDED**". Since the enactment of Section 1.34 of the Statute on Statutes (see Section 15-30 of this Manual) the phrase "as amended" appearing in a Section of existing law in a reference to another Act generally can be stricken. Don't strike the phrase, however, if it is part of a phrase specifically limiting the application of the reference as in the following example:

... Act, as amended by Public Act 86-6503.

(d) **STRIKING THROUGH SUBDIVISION**. If a bill strikes all of the substantive text of a lettered or numbered subsection, paragraph, or other subdivision of a Section of existing law and there are other subdivisions following the stricken one, a common drafting practice has been to also strike the letter or number designation of the stricken subdivision and reletter or renumber the succeeding subdivisions as in the following example:

(a) horses.

~~(b) Grant amounts shall be determined each month.~~

(b) ~~(c)~~ cows.

A problem with this method is that there may be references to the redesignated subdivisions that then need to be changed also. You can locate and change references in the statutes, but rules adopted by administrative agencies also may contain references to the redesignated subdivisions and you cannot change these. Better practice is to avoid redesignations as in the following example:

(a) horses.

(b) (Blank). ~~Grant amounts ... month.~~

(c) cows.

Follow this drafting practice even if the stricken subdivision is the last in a series. One who reads a reference to the stricken subdivision in a rule or another statute and looks up the reference will then see that the subdivision in fact once existed and will not be confused by the lack of evidence of its existence. In addition, a subsequent subdivision added later will not repeat the designation of the stricken subdivision, which might lead to confusion if references to the stricken subdivision still exist.

When inserting "(blank)" in a draft, be sure to follow the capitalization, punctuation, and logical structure of the series in which it is inserted. Compare the following example with the preceding example:

(1) ... horses;

(2) (blank) ... pigs; or

(3) ... cows.

If a proposed change strikes *all* of the components of an itemized list set apart in outline format, however, strike the letter or numeral designation of each component as well as the substantive text of each component and do not insert "(blank)".

If a proposed change strikes one or more components of an itemized list that is *not* set apart in outline format, strike the letter or numeral designation of each such component as well as the substantive text of the component and do not insert "(blank)". Reletter or renumber the remaining components as necessary.

Cross references:

- (1) Section 15-20 concerning outline format.
- (2) Section 30-40 concerning adding language to make a subdivision inoperative after a certain date.

(e) SHELL BILLS. You may be asked to prepare a shell bill that makes no substantive change in the law. In this case the requester usually intends to make substantive changes concerning some particular subject matter but has not yet determined the specific changes to be made. If a bill making nonsubstantive changes is filed, it can later be amended to make the substantive changes necessary to accomplish the requester's purpose once those changes are determined.

In the past, drafters have created shell bills by adding a Section heading to a Section of an Act or by correcting grammatical errors in a Section within an Act so that the text of the Section complies with the guidelines set forth in this Manual (for example, by changing "which" to "that ~~which~~" in appropriate places). Requesters and others sometimes questioned whether such a bill was in fact a "shell" that made no substantive change in the law, however. Better practice is to use striking and underscoring to replace a word with the same word – for example, "the ~~the~~" or "and ~~and~~". In this case, it is unquestionable that the bill makes no substantive change in the law. To facilitate the drafting of amendatory "shell" bills, the Legislative Reference Bureau has prepared a list of standard "shell" bills that replace a word with the same word as in the preceding examples. Use one of these standard "shell" bills if possible. If there is no standard "shell" bill amending the Act or Section within an Act that you need, create a "shell" bill by using striking and underscoring to replace "the" or "and" with the same word as in the above examples. Remember that using a shorter Section within an Act for the "shell" bill will make it easier for a reader to see the non-substantive change made by the bill.

A requester may ask for a "shell" bill amending a specific Act or Section within an Act or a bill concerning some general subject matter. If the same requester asks for more than one "shell" bill amending the same Act, you may want to use a different Section of the Act for each bill. This will allow easier tracking of the bills.

Sometimes a requester asks for a "non-obvious shell" bill. In this case, you must find out what the requester wants. One person's "non-obvious shell" bill may be different from another's.

SECTION 25-30. SEC. AND SECTION.

Bills and the Acts they amend are both segmented into Sections. Throughout the bill the Sections of both the bill and the Acts being amended are referred to or designated as "Sections" with one exception. When the text of a Section of an Act being amended is set forth completely, it is designated as a "Sec.". This distinction helps to visually distinguish a Section of the bill from a Section of the Act being amended. The example in Section 25-25, subsection (a), of this Manual illustrates the uses of "Section" and "Sec.".

Cross references:

- (1) Section 25-80, subsections (b), (c), and (d), concerning supplemental appropriation bills.
- (2) Section 50-20, subsection (c), concerning the use of "Sec." in an amendment to a bill, as amended.

SECTION 25-35. ILLINOIS COMPILED STATUTES (ILCS) NUMBERS.

In Illinois the statutes have a dual numbering system.

The primary official system is to designate the Act and the Section of the Act. An example follows:

Section 101 of the Illinois Income Tax Act

Before January 1, 1993, the primary system was the only system used in the text of a bill and throughout the statutes. The secondary system of citation before January 1, 1993, was to the chapter and paragraph numbering system of the Illinois Revised Statutes and Smith-Hurd Illinois Annotated Statutes, an unofficial system of citation used by West Publishing Co.

Once a bill becomes a law the only official publication of the entire text of the law by the State is in the Session Laws of Illinois printed by the Secretary of State. The Session Laws merely print the Public Acts in numerical order.

If the Session Laws were the only research tool available, then to reconstruct any Act as currently amended it would be necessary to find the Act in the Session Laws as it was first enacted and then check each later volume of the Session Laws to find each amendment to the Act. Then it would be necessary to merge together all the Sections of the Act, each as last amended. The process would be extremely inefficient. The need for a periodically updated compiled version of the statutes in their current state of amendment is therefore obvious.

Beginning January 1, 1993, the official compilation of the statutes is the Illinois Compiled Statutes, also referred to as ILCS. ILCS is an additional official system of citation.

The manner of citing a section of ILCS is specified in Section 5.04 of the Legislative Reference Bureau Act, 25 ILCS 135/5.04(b):

Citation to a section of ILCS shall be in the form "X ILCS Y/Z(A)", where X is the chapter number, Y is the Act prefix number, Z is the Section number of the Act, Y/Z is the section number in the chapter of ILCS, and A is the year of publication, if applicable.

Note that Acts have "Sections" and "Section numbers" (upper case), while ILCS has "sections" and "section numbers" (lower case). The ILCS section number includes the Act prefix as well as the Section number. Thus Section 5.04 of the Legislative Reference Bureau Act has the ILCS section number 135/5.04.

Citations to a Section within an Act should always be in the form "Section 5.04 of the Legislative Reference Bureau Act". Now that ILCS is an official system of citation, it is permissible to also include the ILCS cite: "Section 5.04 of the Legislative Reference Bureau Act, 25 ILCS 135/5.04". ILCS citations of another Act should be in the form "X ILCS Y/". (The word "Act" appears after the "/" only in the parenthetical ILCS citations indicating that an Act title is being amended or that an Act is being repealed; see the examples included in this Section of this Manual.) ILCS citations of an Article within an Act should be in the form "X ILCS Y/Art. Z". ILCS citations of a Part within an Article should be in the form "X ILCS Y/Art. B, Part C". ILCS citations of an Article within a Chapter within an Act should be in the form "X ILCS Y/Ch. B, Art. C". Including the ILCS cite will make it easier to find the referenced statute.

At the beginning of the text of each Section or heading of an existing Act being amended or added, there is a parenthetical citation to ILCS. Moreover, above the Section of an Act repealing Sections of existing law, the ILCS citation to the repealed Sections is given. The parenthetical citation to ILCS should be in one of the following forms:

For an amended Section:
(505 ILCS 20/1) (from Ch. 5, par. 351)

For an amended Article heading:

(505 ILCS 20/Art. 2 heading)

For an amended Act title:

(505 ILCS 20/Act title)

For a Section added to an existing Act:

(505 ILCS 20/1.1 new)

For an Article heading added to an existing Act:

(505 ILCS 20/Art.2 heading new)

For a single repealed Section:

(505 ILCS 20/1 rep.)

For multiple repealed Sections:

(505 ILCS 20/1 rep. through 20/15 rep.)

or

(505 ILCS 20/1 rep., 20/15 rep., and 20/17 rep.)

or

(505 ILCS 20/1 rep.)

(505 ILCS 20/15 rep.)

(505 ILCS 20/17 rep.)

Follow the example using "through" only if all the Sections between the stated limits of the series, as well as the limits themselves, are being repealed. Do not, in the same parenthetical citation, use "through" and also list other Sections outside the inclusive series. If a Section before or after an inclusive series, in addition to the series, is being repealed, individually list every Section being repealed. Listing the repealed Sections individually on separate lines, as in the last example above, is advantageous in that no editing will be necessary when those citations are played out in the synopsis. See Section 30-5, subsection (b), and Section 40-10 of this Manual.

For a repealed Article:

(505 ILCS 20/Art. 2 rep.)

For repeal of the heading only:

(505 ILCS 20/Art. 2 heading rep.)

For a repealed Act:

(505 ILCS 20/Act rep.)

Note that when you repeal an entire Act or an entire Article or other division within an Act, you need not individually list each heading and Section included within the repealed Act, Article, or other division.

In a bill creating a new Act, the Sections of the new Act do not have ILCS citations. They are assigned after the Act becomes law.

If a bill creating a new Act includes a Section containing amendatory provisions, that Section will be assigned an ILCS citation in the new Act. A reference to the Section and its citation will appear in the compiled statutes as a "placeholder" so that the same Section number will not be assigned to a different Section that may be added to the Act later. An example follows:

(20 ILCS 301/90-5)

Sec. 90-5. (Amendatory provisions; text omitted).

(Source: P.A. 88-80, eff. 1-23-94; text omitted.)

If a bill creating a new Act includes a Section repealing an existing Act, that repealer Section will be assigned an ILCS citation in the new Act. The full text of the Section (not merely a "placeholder" reference) will appear in the compiled statutes so that the same Section number will not be assigned to a different Section that may be added to the new Act later. An example follows:

(750 ILCS 70/90)
Sec. 90. The Illinois Abortion Parental Consent Act of 1977 is repealed.
(Source: P.A. 89-18, eff. 6-1-95.)

For a repealed Section of an Act, a reference to the repealed Section and its ILCS citation will be retained in the compiled statutes as a "placeholder" so that the same Section number will not be assigned to a different Section that may be added to the Act later. An example follows:

(30 ILCS 105/5.392)
Sec. 5.392. (Repealed).
(Source: P.A. 89-235, eff. 8-4-95. Repealed by P.A. 89-282, eff. 8-10-95.)

Note that the use of such "placeholders" is relatively recent. The source pages for a legislative document may not reveal a "placeholder" if the Section in question was enacted before the 90th General Assembly.

The old citation to the chapter and paragraph of the Illinois Revised Statutes is included only with amended Sections. This is a temporary measure until people become familiar with ILCS. Don't include the old chapter and paragraph citation with headings, titles, additions, or repealers.

In an Act that has a division structure beyond the Article level, specify both the Article and the other division if necessary to avoid ambiguity. Some examples follow:

(65 ILCS 5/Art. 4 Div. 10 heading)
DIVISION 10. ABANDONMENT OF COMMISSION FORM OF GOVERNMENT

(625 ILCS 5/Ch. 6 Art. 2 rep.)
Section 5. The Illinois Vehicle Code is amended by repealing Article 2 of Chapter 6.

Only Public Acts of general application are incorporated into ILCS and assigned chapter and section numbers. Some Acts of limited life or special applicability do not become part of ILCS. Notable examples of limited or special Acts are appropriation Acts that are limited to a specific fiscal year and Acts authorizing the conveyance of specific parcels of State land to designated grantees. Acts making annual appropriations or authorizing specific State conveyances are not included in ILCS.

SECTION 25-40. NUMBERING ADDITIONAL SECTIONS.

When you add a new Section between Sections of an existing Act, try to insert the new Section at a logical place within the Act and assign a new Section number within the Arabic decimal system to the extent possible. Sometimes the availability of new Section numbers will play a part in determining where to insert the new Section.

As a general rule, give a new Section inserted between existing Sections a strictly numerical designation that is as close as possible to halfway between the numbers of the existing Sections. For example, a new Section inserted between Sections 10 and 15 should be designated Section 12 or 13. Don't designate the new Section

Section 12.5; avoid decimalization of Section numbers when possible. Of course, decimalization is sometimes unavoidable. For example, a new Section inserted between Sections 8 and 9 should be designated Section 8.5.

On the other hand, if the new Section is logically the next item in a series that ends with, for example, Section 8 or Section 25 and it is unlikely that at a future time a different new provision might need to be inserted between Section 8 or Section 25 and the new Section, designate the new Section "8.1" (rather than "8.5") or "26" (rather than "27" or "28").

Notwithstanding the general rule, try to maintain a consistent Section numbering scheme within an Act. For example, if consecutive existing Sections of an Act are numbered ... 4, 4.1, 5 ..., a new Section inserted between Sections 4.1 and 5 should be designated Section 4.2. If consecutive existing Sections of an Act are designated ... 7, 7a, 8 ..., a new Section inserted between Sections 7a and 8 should be designated Section 7b. An Act may contain, for example, both a Section 2a and a Section 5.1. A new Section added to that Act and inserted between Sections 3 and 4 should be designated Section 3.5; a new Section inserted following Section 2a or Section 5.1 should be designated Section 2b or Section 5.2, respectively.

In assigning new Section numbers, ignore other pending bills. For example, assume that a pending House Bill proposes to add a new Section 2-9 at the end of Article 2 of an existing Act. This House Bill may eventually become law or it may not. There is no way of knowing for sure what will happen to the House Bill at the time you are requested to draft, for example, a Senate Bill with substantive provisions different from those of the new Section 2-9 proposed by the House Bill. If the new Section to be added by the Senate Bill fits logically and structurally after Section 2-8, then it should be numbered 2-9 regardless of the pending House Bill. Do not anticipate that the House Bill will become law and, therefore, assign the number 2-10 to the new Section in the Senate Bill. Use Section number 2-9 in both pending bills. If neither bill becomes law, no harm is done. If only one of the bills becomes law, the new Section 2-9 is numbered correctly. If both bills become law, there are 2 Sections numbered 2-9, but this can be corrected in a revisory bill. (See Section 70-15, subsection (f), of this Manual.) The point is that it is best not to try to anticipate what bills will become law. The safest bet, statistically, is that any given bill will not become law. Although a vast number of bills are introduced, few make it all the way through to become law. Thus, assigning the same new Section number in all pending bills will cause far fewer problems than trying to anticipate which bills will become law and which will not.

A Section added to an existing Act should not be assigned a number previously used in that Act. For example, assume that a bill proposes to add a new Section to the Illinois Public Aid Code (305 ILCS 5/) and that the most logical place to insert the new Section is between Sections 11-10 and 11-12. A note published in ILCS indicates that Section 11-11 has been repealed, and you might be tempted to use that number for the new Section. Better practice, however, is to assign the new Section the number 11-10.9 or 11-11.1. Then the Code will not have had 2 Sections numbered 11-11 and the annotations for more than one statute will not be mixed under a single Section number. At least with respect to Sections other than those containing repealer or effective date provisions, the only reliable way to determine whether a particular Section number has been used before is to check the current ILCS "State Bar Association Edition" or annotated statutes volume published by West. The initial publication of the Act in the Session Laws of Illinois will reveal a repealer or effective date provision included in the initial enactment (see the following paragraph) but will not reveal a new Section added later and subsequently repealed.

Publishers of ILCS typically indicate whether a Section of an existing Act has been repealed but may not indicate the existence of a Section (which is not published in full) giving the Act an effective date or repealing the Act. For example, the bill creating the Protection and Advocacy for Mentally Ill Persons Act (405 ILCS 45/) included Section 5, giving the Act an immediate effective date, but the existence of that Section is not noted by a publisher of ILCS. If you are aware of an effective date or repealer Section in an existing Act, don't use the number assigned to that Section when adding a new Section to that Act. (See Section 25-35 of this Manual for a discussion of "placeholders" in the Illinois Compiled Statutes. The use of such "placeholders" is relatively recent, however. The source pages for a legislative document may not reveal a "placeholder" if the effective date or repealer Section was enacted before the 90th General Assembly.) If no effective date or repealer Section is published or noted in ILCS or revealed in the legislative document's source pages, exercise care and do not add a new Section at the end of the Act without checking the initial publication of the Act in the Session Laws of Illinois to determine the

presence of such a Section. (If a publisher of ILCS indicates in a note accompanying the Act title of an existing Act that the Act's effective date is a date other than January 1, June 1, or July 1, the bill creating the Act probably contained an effective date Section.)

You must occasionally add to an existing Act a new Section stating a definition or stating a power or duty of an individual or entity. If the new Section is added as the last in a series of Sections stating definitions, powers, or duties, check whether the series is prefaced by a Section stating that the definitions, powers, or duties are enumerated in "Sections X through X + 10". If new Section X + 11 is being added, the prefatory Section must be amended to include the new Section. Rather than amending the prefatory Section to read "X + 11 X + 10", better practice is to avoid specifying the final Section number in the series as in the following example:

Sec. 15. Powers and duties. The Department has the powers and duties enumerated in the following Sections preceding Section 16 ~~15.1 through 15.10~~.

Once the prefatory Section is amended as in the example, it will not need to be continually amended to include additional Sections added to the series preceding Section 16.

Cross references:

- (1) Section 15-15 concerning Section numbers.
- (2) Section 25-25, subsection (d), concerning avoiding redesignating subsequent subdivisions of a Section.

SECTION 25-45. RENUMBERING SECTIONS.

Don't renumber Sections of an existing Act unless it is absolutely necessary. The history of the substance of a Section is easier to trace if the Section number has always been the same. Also, if a Section of one Act is cited in another Act and then the Section number is changed, the citation is no longer accurate. Thus, renumbering a Section of an existing Act is likely to cause problems and should be avoided.

There are times, however, when it is advisable to renumber an existing Section. For example, you might renumber a short title Section at the end of an Act and move it to the beginning of the Act. An example follows:

Section 5. The Cigarette Tax Act is amended by renumbering and changing Section 30 as follows:

(35 ILCS 130/0.01) (was 35 ILCS 130/30)

Sec. 0.01. ~~30~~. This Act may be cited ~~shall be known~~ as the "Cigarette Tax Act," ~~and may be referred to by that designation.~~

(Source: Laws 1945, p. 1220.)

The new Section number, 0.01, places it before the existing Section 1 of the Act within the Arabic decimal system.

Note that the introductory clause of Section 5 in the example states that "Section 30" (the "old" number) is being renumbered. Internal references to the renumbered Section in other statutes should refer to "Section 0.01" (the "new" number).

Cross references:

- (1) Section 15-30 concerning renumbering Sections and incorporation by reference.
- (2) Section 70-15, subsection (f), concerning renumbering Sections in a revisory bill.
- (3) Chapter 75, concerning codification Acts.
- (4) Chapter 77, concerning Uniform Acts.

SECTION 25-48. "THIS AMENDATORY ACT".

Often it is necessary to include the phrase "this amendatory Act" in a draft. (For examples, see Section 25-55 and subsection (b) of Section 20-50.) In the past, drafters have customarily used the phrase "this amendatory Act of 19XX". Preferred practice, however, is to say, for example, "this amendatory Act of the 98th General Assembly". Citing a General Assembly rather than a year has at least 2 advantages. First, you will not have to change the reference in the case of a bill introduced in the first year of a legislative biennium and then rerun for introduction in the second year of the biennium. Second, you will not have to be concerned about the accuracy of the reference in the case of a bill (for example, a bill considered in the fall veto session) that may not become law until the year after the draft is prepared. Of course, when rerunning a draft from a previous General Assembly, you will have to update the reference, but this would also be necessary if the reference was to a year rather than to a General Assembly.

Assume that an existing statute contains the statement, "The changes made by this amendatory Act of 1995 apply only to causes of action accruing on or after the effective date of this amendatory Act.". Further assume that you want to add a new provision to the statute and that you want the new provision to apply only to causes of action accruing on or after the effective date of the amendatory Act you are drafting. To state the applicability of the new provision, do not simply change the existing reference from "this amendatory Act of 1995" to "this amendatory Act of the 98th General Assembly 1995". This could have the unintended effect of applying the 1995 amendments to all causes of action. Instead, preserve the existing reference to the prior amendatory Act and add a new applicability provision stating, "The changes made by this amendatory Act of the 98th General Assembly apply only to causes of action accruing on or after the effective date of this amendatory Act.".

Cross reference: Section 70-20, subsection (f), concerning references to amendatory Acts.

SECTION 25-50. STATUTE BASE; SOURCE REFERENCES.

(a) GENERALLY. Sections of existing Acts are constantly being amended by amendatory Acts. Some Sections seem to be amended at least once and sometimes several times during each session of the General Assembly. For example, Section 7-103 of the Code of Civil Procedure was amended 7 times during the 84th General Assembly, twice in the first session and 5 times in the second session. With this much turnover it is obvious that you need to take great pains to determine the most recent amended version of a Section and then use that version as the statute base in drafting an amendatory bill.

The unannotated Illinois Compiled Statutes are published every 2 years. Supplements to the unannotated ILCS, as well as advance sheets of Public Acts, are published between editions of the unannotated ILCS. The ILCS database published on the General Assembly's Web site (<http://www.ilga.gov>) is updated from time to time. These published versions of the statutes are not current for very long, however. Any published version of a statute is always subject to later amendatory action by the General Assembly and Governor. This later amendatory action is reflected in the Public Acts, but not in any published ILCS for some time. The most current and accessible information as to the most recent amended version of the statutes is maintained by the Legislative Reference Bureau in its multiple ILCS databases. Use this most recent amended version of a statute to ensure that a bill, amendment, or other document reflects the current law to which changes are being made.

Once an annual session of the General Assembly begins it is customary to use the correct statute base as it exists at the beginning of the session throughout the entire session. If there are multiple reconcilable amendments to the same Section during the session, these amendments are combined in the next annual session in a revisory bill prepared by the Legislative Reference Bureau. Until the revisory bill becomes law, however, there is a period during which 2 or more versions of the Section exist at the same time. In that case the Section of the Act as it will appear in the revisory bill is the correct statute base to use for drafting bills.

The legislative process is ongoing, and changes to Sections of existing Acts are constantly being proposed and becoming law. For this reason it is always critical to determine the correct statute base, especially when rerunning a bill from a prior session.

In order to assist you in determining that the correct version of a Section of existing law is being used, the Public Act or Laws reference that is the most recent source of that Section is printed in parentheses at the left margin of the line below the end of the text of the Section; for example, "(Source: P.A. 81-919; 81-1079.)" or "(Source: Laws 1961, p. 1212.)". Printing the source reference also provides historical information for anyone researching the bill. In some cases there are 2 or more source references; if so, they are printed in ascending numerical order and separated by semicolons. Beginning with the 89th G.A. the effective date of the Public Act is typically also shown in the source reference; for example "(Source: P.A. 89-404, eff. 8-20-95.)". Sections of existing law that have not been amended in recent years may have as a source the Laws of a particular year and the page number, rather than a Public Act. The source reference shown in parentheses at the end of an existing Section is not part of the law; it is shown merely for reference.

(b) MULTIPLE TEXT VERSION OF STATUTE. You must occasionally amend a Section that is subject to a delayed effective date and thus appears in a multiple text form. (See subsection (c) of Section 35-25 of this Manual.) The first version of the Section is preceded by a parenthetical note (inserted between the ILCS citation and the text of the Section) stating, for example, "Text of Section before amendment by P.A. 97-9000 in effect until July 1, 2013". The other version of the Section is preceded by a parenthetical note stating, for example, "Text of Section after amendment by P.A. 97-9000 taking effect July 1, 2013". (The phrases "in effect until XXX" and "taking effect XXX" are suppressed. That is, they are coded so that they do not show in a printed bill or other legislative document but do show in the diagnostics report that accompanies a draft of the bill or other document.)

Always check the note preceding each version of a statute in multiple text form. Using the examples in the preceding paragraph, if the change being drafted is to take effect earlier than July 1, 2013, both versions of the Section must be amended. If the change being drafted is to take effect on or after July 1, 2013, only the version of the Section taking effect July 1, 2013 needs to be amended. If you include only that version of the Section in the bill, however, and if the bill is later amended to provide that the change to that Section is to take effect earlier than July 1, 2013, the "current" version of the Section will then also have to be amended. To avoid the possibility of neglecting to add the "current" version of the Section to the bill, initially include both versions of the Section in the bill and make the requested change in only the version with the delayed effective date. Initially including both versions of the Section (with changes made in only one version) should not be confusing to readers of the bill. Each version of the Section will be preceded by a statement concerning the source of that version, and readers can find the effective date by checking the source references at the end of the Section.

Whenever multiple versions of a Section are included in a bill, the bill must also contain a provision concerning the bill's effect on statute text that is not yet or no longer in effect. The bill must provide that it does not accelerate or delay the taking effect of changes made by the bill or derived from any Public Act. An example of such a provision follows:

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Cross references:

- (1) Section 35-25, subsection (c), concerning delayed effective dates.
- (2) Section 35-70 concerning "no acceleration or delay" provisions.
- (3) Chapter 70 concerning multiple Acts and revisory bills.

(c) **STATUTE HELD UNCONSTITUTIONAL.** A court may hold that a statute is unconstitutional for reasons that include the following:

- (1) The statute violates the Constitution because of the way in which it was enacted (for example, a bill adding or changing the statute violated the single-subject rule).
- (2) The statute's language constitutes special legislation or violates a provision of the Constitution such as the guarantee of due process.
- (3) The statute violates the Constitution because of the way it was applied to a particular person, entity, or set of circumstances.

The annotated Illinois Compiled Statutes should reveal court decisions that have held a statute unconstitutional. The unannotated statutes sometimes note that a statute has been held unconstitutional, but these notes may not identify every statute that is subject to a holding of unconstitutionality. The annual Case Report published by the Legislative Reference Bureau includes cumulative lists of statutes that have been held unconstitutional. The Legislative Reference Bureau sometimes prefaces a statute with a parenthetical caption indicating that the statute has been held unconstitutional--for example, "This Section [or Act] was added [or amended or repealed] by P.A. 90-XXX, which has been held unconstitutional". In the case of a statute amended by a Public Act later held to be unconstitutional, the statute may appear in dual text form. One version will include the changes made by the unconstitutional Public Act, and the source references for that version will list that Public Act. The other version will not include those changes, and its source references will not list that Public Act. If you are aware of a constitutionality problem with a statute to which you have been asked to make changes, you must ensure that the person making the drafting request is aware of the constitutionality problem and must determine the requester's intent in requesting the draft.

Suppose that you are asked to draft a bill amending a Section of an Act. Also suppose that the Section or a part of the Section has been held unconstitutional because the Section was included in a bill that violated the Constitution's single-subject rule. You must ensure that the person requesting the draft is aware of the constitutionality problem, and you must determine whether the person intends to cure or validate the unconstitutional provision. Consider *People v. Reedy*, 186 Ill.2d 1 (1999). That case concerned "truth-in-sentencing" provisions added to Section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3) by Public Act 89-404, which was held unconstitutional because it violated the single-subject rule. Public Act 89-462 (passed before Public Act 89-404 was held unconstitutional) enacted additional changes to Section 3-6-3, using the version enacted by Public Act 89-404 as the drafting base. Public Act 89-462 satisfied the single-subject rule, but it did not cure or validate the "truth-in-sentencing" provisions added by Public Act 89-404. The Supreme Court held that any such curative legislation must exhibit on its face that it is intended to cure or validate defective legislation. Otherwise, it will not serve to cure or validate legislation previously held unconstitutional. (The General Assembly may indicate its intent to cure or validate defective legislation by, for example, expressly validating all actions taken in reliance on the defective statute. See *Johnson v. Edgar*, 176 Ill.2d 499 (1997).) Again, if you are aware of a constitutionality problem, you must ensure that the person requesting the draft is aware of the problem, and you must determine whether the person intends to cure or validate the unconstitutional provision.

For an example of the confusion caused by the legislature's enactment of additional changes to a version of a statute containing provisions previously held to be unconstitutional, see *O'Casek v. Children's Home and Aid Society of Illinois*, 229 Ill.2d 421 (2008). Public Act 89-7 made changes to various statutes, including Section 2-622 of the Code of Civil Procedure, 735 ILCS 5/2-622. The Illinois Supreme Court held P.A. 89-7 unconstitutional in its entirety. Seven weeks after the Court's decision, the General Assembly passed a bill that became Public Act 90-579. P.A. 90-579 made changes to Section 2-622 that were unrelated to the changes made by P.A. 89-7, using a version of Section 2-622 that included the changes made by P.A. 89-7 but without any striking or underscoring to show that it intended to re-enact the changes made by P.A. 89-7. The Court presumed that the legislature was aware of the Court's decision finding P.A. 89-7 unconstitutional and concluded that the legislature did not intend to re-enact those changes and that its use of a version of the statute that included those changes was a legislative oversight.

For another example, suppose that the Section or a part of the Section has been held unconstitutional because its language constitutes special legislation or violates a provision of the constitution such as the guarantee of due process. Drafting on the version of the Section held unconstitutional will not cure the constitutional violation and may embarrass the legislation's sponsor. Again, if you are aware of a constitutionality problem, you must ensure that the person requesting the draft is aware of the problem, and you must determine whether the person intends to reenact the unconstitutional provision.

Finally, suppose that the Section or a part of the Section has been held unconstitutional because of the way it was applied to a particular person, entity, or set of circumstances. As in the case of the example in the preceding paragraph, reenacting the unconstitutional provision (by drafting on the version of the Section held unconstitutional) will not cure the constitutional violation based on the provision's language and may embarrass the legislation's sponsor. The reenactment may be especially embarrassing if it involves a statutory change that is based on the application that was held unconstitutional. Again, if you are aware of a constitutionality problem, you must ensure that the person requesting the draft is aware of the problem, and you must determine whether the person intends to reenact the unconstitutional provision.

Cross reference: Section 25-75 concerning invalidity of an amendatory Act.

SECTION 25-55. STATE MANDATES.

A common amendatory provision proposes to add a Section to the State Mandates Act to exempt the provisions of the bill from creating a reimbursable mandate. This provision is often placed near the end of the bill, just before the effective date. The State Mandates Act creates an obligation of the State to reimburse local governments when legislation imposes certain additional financial burdens on the local governments. In some situations, in many cases merely to clarify the record that no reimbursement is required if a mandate is created by a bill, the General Assembly will amend the State Mandates Act to exempt the provisions of the bill. An example follows:

Section 90. The State Mandates Act is amended by adding Section 8.37 as follows:

(30 ILCS 805/8.37 new)

Sec. 8.37. Exempt mandate. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of the 98th General Assembly.

The synopsis of a bill containing such a provision should include a statement as in the following example:

Amends the State Mandates Act to require implementation without reimbursement by the State.

In the same session of the General Assembly several Sections like the example may be added to the Act. In the next revisory bill the added Sections are usually combined by deleting the language "this amendatory Act of the 98th General Assembly" and inserting instead a list of the Public Act numbers of the amendatory Acts. See 30 ILCS 805/8.14 for an example.

Cross reference: Section 45-15 concerning mandate stamps.

SECTION 25-60. SPECIAL FUNDS; OTHER FUNDS; SPECIAL ACCOUNTS.

Another common amendatory provision proposes to add a new Section to the State Finance Act to create a new special fund in the State treasury.

Unless there is a statutory provision to the contrary, all money received by the State must be deposited into the General Revenue Fund. The money is then available for any appropriated use.

Certain designated amounts received by the State are sometimes earmarked for a special use. The typical way to do this is to first identify the receipts to be set aside specially, then state the way the amounts may be expended, and finally create a special fund in the State treasury, to be administered by the State Treasurer, to hold the receipts, as in the following example:

Section 10. The Secretary of State may charge reasonable fees for the use of the Hall of Flags in the Howlett Building in Springfield. The fees must be deposited into the Hall of Flags Fund, a special fund created in the State treasury, and, subject to appropriation and as directed by the Secretary of State, may be expended for the maintenance of the Hall of Flags and for no other purpose.

Section 95. The State Finance Act is amended by adding Section 5.1001 as follows:

(30 ILCS 105/5.1001 new)
Sec. 5.1001. The Hall of Flags Fund.

Creating a special fund in the State treasury, either by adding it to the State Finance Act, as in the example, or merely by designating the fund as a special fund in the State treasury, carries some restrictions with it. For example, subsection (b) of Section 5 of the State Finance Act (30 ILCS 105/5) provides that if a special fund in the State treasury is discontinued by an Act of the General Assembly, any balance remaining in the fund is transferred to the General Revenue Fund or to another fund as the Act provides. Subsection (c) of that Section provides that if the fund is inactive for 18 months, it terminates and the balance is transferred to the General Revenue Fund. For this reason, some statutes designate a fund as a special fund to be held outside the State treasury. This practice is discouraged. Better practice is to create the special fund in the State treasury and simply state that the restrictions on special funds provided in Section 5 of the State Finance Act do not apply to the fund. In the preceding example, the following sentence could be added at the end of Section 10:

Subsections (b) and (c) of Section 5 of the State Finance Act do not apply to the Hall of Flags Fund.

The bill also must amend Section 5 of the State Finance Act to provide that subsections (b) and (c) do not apply to the special fund.

Create special funds outside the State treasury only for money held by the State Treasurer acting as trustee (for example, escrow money or money received from the sale of bonds). If you create a special fund outside the State treasury, do not add that fund to the list of special funds in the 5.xxx series between Sections 5 and 6 of the State Finance Act; as provided in subsection (a) of Section 5 of that Act, the list comprises only special funds in the State treasury. For an example of a special fund outside the State treasury, see Section 20 of the Technology Development Act, 30 ILCS 265/20, which creates the Technology Development Fund.

Create a trust fund, not subject to appropriation, for money that (i) is not public money over which the State has discretionary control and (ii) is held by the State Treasurer for someone else. For example, if the federal government gives money to the State for use by units of local government for public housing purposes, that money might appropriately be held in a trust fund. As in the case of a provision creating a special fund, identify the source of the moneys to be deposited into the trust fund and state the purposes for which the moneys in the fund may be expended. The provision creating the trust fund should also clearly state that the State does not have discretionary

control over the money. If possible, place the trust fund provision in the Act that establishes the source or the use of the money; otherwise, place the provision in the State Finance Act. Even though the State Treasurer may be the custodian of the trust fund, the fund will be held outside the State treasury, so don't add the fund to the list of special funds in the 5.xxx series between Sections 5 and 6 of the State Finance Act. Include the words "trust fund" in the name of the fund. Note that merely naming a fund the "ABC Trust Fund" does not make it a trust fund. For an example of a so-called "trust fund" that is not in fact a trust fund, see Section 4.10 of State's Attorneys Appellate Prosecutor's Act, 725 ILCS 210/4.10, which creates the Continuing Legal Education Trust Fund. For an example of a trust fund that is correctly named a "trust fund" and that has the attributes appropriate for a trust fund, see Section 4 of the Natural Heritage Fund Act, 30 ILCS 150/4, which creates the Natural Heritage Endowment Trust Fund.

Create a revolving fund to receive moneys that are paid to the State for providing certain services and from which payments are made for expenses incurred in providing those services. For an example of a non-appropriated revolving fund held by a State agency (rather than the State Treasurer) outside the State treasury, see Section 20 of the Early Intervention Services System Act, 325 ILCS 20/20, which creates the Early Intervention Services Revolving Fund. For an example of an appropriated revolving fund in the State treasury, see Section 50-40 of the Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS 301/50-40, which creates the Group Home Loan Revolving Fund.

A requester may ask for the creation of a special account rather than a special fund. Such an account may be created, for example, within an established fund (see Section 10 of the Illinois Egg and Egg Products Act, 410 ILCS 615/10), in the treasury of a unit of local government (see Section 7 of the Senior Citizens Real Estate Tax Deferral Act, 320 ILCS 30/7), or elsewhere.

Don't create a new fund without considering the purposes and legal effects of the various types of funds and determining which type is most appropriate for the requested draft.

SECTION 25-65. ACT TITLES; ARTICLE HEADINGS.

When existing law is amended, the changes are sometimes so fundamental that the title of the Act must also be changed to accurately reflect the substance of the amended Act. The same situation also occurs with respect to Article headings. Show the changes to an Act title or Article heading by underscoring and striking through as in any other change to existing law. See Senate Rule 5-1(e) and House Rule 37(e) (97th G.A.). An example follows:

Section 5. The Wildlife Code is amended by changing the title of the Act and the heading of Article II as follows:

(520 ILCS 5/Act title)

An Act to revise the law of Illinois in relation to the conserving of wild birds, wild butterflies, and wild mammals.

(520 ILCS 5/Art. II heading)

ARTICLE II. ~~GAME~~ PROTECTIVE REGULATIONS

When amending an Article heading, do not depend on Article heading capitalization and punctuation as they appear in the statutes printed by publishers of ILCS. Sometimes publishers alter the capitalization and punctuation of Article headings. Follow Article heading capitalization and punctuation as they appear in the LRB statute database.

Note that in the examples there is not a source reference following the text of the Act title or the Article heading. Source references appear only in connection with a Section of an existing Act and Article headings that have been more recently added or amended.

If you add a new Article to an existing Act that is divided into Articles, number the new Article according to its placement in the Act. If the new Article is inserted between 2 existing Articles, number it in the fashion described in Section 25-40 of this Manual for a new Section added to an existing Act. If the existing Articles of the Act are designated by Roman numerals (and only in this case), use a Roman numeral to designate the new Article. Because Roman numerals cannot express decimals, a new Article inserted between, for example, Article II and Article III should be designated Article IIE. The designation "IIE" (rather than, for example, "IIA") follows the general rule presented in Section 25-40 and allows the future insertion of additional Articles between Article II and Article IIE. Give the new Article a heading whose capitalization and punctuation are consistent with the existing Articles, and make sure the ILCS citation for the new Article is in the same format as the existing Articles.

SECTION 25-70. CONDITIONAL AMENDATORY BILLS (TRAILER BILLS).

(a) GENERALLY. Occasionally you may be asked to prepare an amendatory bill with respect to matter contained in a previous bill that has not yet become law. This type of amendatory bill is sometimes referred to as a "trailer bill" or is referred to by one of the defining phrases of this type of bill "if and only if". If the amendatory bill proposes to add or change an effective date or some other provision in the previous bill, or to change text added by the previous bill, the amendatory bill's provisions will make sense if and only if the previous bill becomes law. You must state this condition in the amendatory bill. The condition generally is stated in the introductory clause.

You may be asked to prepare an amendatory bill to implement changes to the Illinois Constitution contained in a constitutional amendment joint resolution before the changes to the Constitution proposed by the resolution have been approved by the electors of the State. The General Assembly intends that the amendatory bill's provisions take effect if and only if the changes to the Constitution are approved by the electors. You must state this condition in the amendatory bill. The condition generally is stated in the introductory clause as in the following example:

Section 5. If and only if the constitutional amendment proposed by House Joint Resolution (Constitutional Amendment) No. 35 of the 88th General Assembly is adopted and takes effect, the Effective Date of Laws Act is amended by changing Sections 1 and 2 and adding Section 2.1 as follows:

Cross reference: Section 35-25, subsection (g), concerning conditional effective dates.

(b) ADDING OR AMENDING EFFECTIVE DATE. Assume that Senate Bill 5801 of the 97th G.A. has passed both houses and is awaiting the Governor's action. Assume further that S.B. 5801 did not contain an effective date Section and that an amendatory bill proposes to add an immediate effective date to S.B. 5801.

The amendatory bill provision should follow this example:

Section 5. If and only if Senate Bill 5801 of the 97th General Assembly becomes law, then "An Act concerning regulation" (Senate Bill 5801 of the 97th General Assembly) is amended by adding Section 99 as follows:

(S.B. 5801, 97th G.A., Sec. 99 new)

Sec. 99. This Act (Senate Bill 5801 of the 97th General Assembly) takes effect on the effective date of this amendatory Act of the 97th General Assembly (the bill of the 97th General Assembly adding this Section 99).

In the example the added effective date Section does not have a parenthetical ILCS citation (because it is being added to an amendatory Act), but the parenthetical reference to "S.B. 5801, 97th G.A., Sec. 99 new" indicates its "location" in the statutory scheme with reference to the bill of which it will become a part. The text of the new

Section is underscored because it assumes that the bill to which it is being added has become law. If "the bill of the 97th General Assembly adding this Sec. 99" can be identified (for example, if the provision adding the new Section to S.B. 5801 is added as an amendment to a pending bill), specify the bill. If you are adding an immediate effective date to the previous bill, give the bill adding the effective date an immediate effective date also.

Assume that Senate Bill 5802 of the 97th G.A. has passed both houses and is awaiting the Governor's action. Assume further that S.B. 5802 contained an effective date Section that provided: "This Act takes effect upon becoming law" and that an amendatory bill proposes to change that date to July 1, 2013.

The amendatory bill provision should follow this example:

Section 5. If and only if Senate Bill 5802 of the 97th General Assembly becomes law, then "An Act concerning regulation" (Senate Bill 5802 of the 97th General Assembly) is amended by changing Section 99 as follows:

(S.B. 5802, 97th G.A., Sec. 99)

Sec. 99. Effective date. This Act takes effect on July 1, 2013 ~~upon becoming law.~~

(Source: 09700SB5802enr.)

If the effective date of the previous bill is before the effective date of the bill changing the effective date, then you need to ensure that the bill changing the effective date takes effect simultaneously or prior to the original bill.

Cross reference: Section 35-60 concerning adding an effective date to a previous bill that has become law.

(c) ADDING SUBSTANTIVE PROVISIONS. If the amendatory bill changes text added by the previous bill, you must use the statute base as added or changed by the previous bill and must include the previous bill in the source references for the Section being amended. (In effect, assume that the previous bill has become law.) The following example assumes that the example in Section 25-25, subsection (a), is part of S.B. 5801, the previous bill:

Section 5. If and only if the provisions of Senate Bill 5801 of the 98th General Assembly that are changed by this amendatory Act of the 98th General Assembly become law, then the Illinois Municipal Code is amended by changing Section 9-3-47.1 as follows:

(65 ILCS 5/9-3-47.1)

Sec. 9-3-47.1. Separate account. The municipal treasurer shall hold all funds received as payment under Section 9-3-47 in a separate ~~bank~~ account in a financial institution. No other * * * the mayor.

(Source: 98SB5801 enrolled.)

SECTION 25-75. INVALIDITY OF AMENDATORY ACT.

If the changes made to a Section of existing law by an amendatory Act are held to be unconstitutional, the law remains in force as it was before the adoption of the invalid amendment. *Dee-El Garage, Inc. v. Korzen*, 53 Ill.2d 1 (1972); *People ex rel. Rudman v. Rini*, 64 Ill.2d 321 (1976). The decision holding the changes unconstitutional does not necessarily repeal those changes or otherwise make them nonexistent; it simply makes them unenforceable.

The affected Section can be amended in a revisory bill to conform to the court's decision. This should not be done, however, until all appeal procedures have been exhausted. In the revisory bill the changes to the Section should be shown by striking and underscoring and not by a total substitution of the Section's text.

In the last example, "94-9015" indicates a prior supplemental appropriation bill that has become law.

Examples of introductory clauses to be used when making changes to Sections of an appropriation Public Act follow:

Section 5. "An Act making appropriations", Public Act 94-9030, approved July 4, 2006, is amended by changing Sections 20 and 25 of Article 30 as follows:

Section 5. "An Act making appropriations", Public Act 94-9002, approved July 7, 2006, as amended by Public Act 94-9123, is amended by changing Section 12 of Article 22 as follows:

(c) ADDING SECTION TO APPROPRIATION PUBLIC ACT. If you add a Section to an appropriation Public Act, give the Section a number to place it in an appropriate location in the Public Act. The Section must be designated "Sec." XX, and its text must be underscored. The added Section is preceded by a parenthetical reference in the form "(P.A. XX-XXXX, Article XX, Section XX new)"; list the parenthetical reference in the bill's synopsis. The added Section does not have a source line below the Section.

An example of an introductory clause to be used when adding a Section to an appropriation Public Act follows:

Section 5. "An Act making appropriations", Public Act 94-9010, approved July 1, 2006, is amended by adding Section 15 to Article 2 as follows:

As in the case of a bill changing a Section of an appropriation Public Act, list the parenthetical reference in the bill's synopsis as in the following example:

(P.A. 94-9005, Article 2, Section 15 new)

Cross reference: Section 40-10, concerning ILCS citations in a synopsis.

(d) REPEALING SECTION OF APPROPRIATION PUBLIC ACT. Repeal a Section of an appropriation Public Act as in the following example:

(P.A. 94-9005, Article 10, Section 3 rep.)

Section 32. Section 3 of Article 10 of Public Act 94-9005, approved July 10, 2006, is repealed.

As in the case of a bill changing a Section of an appropriation Public Act, list the parenthetical reference in the bill's synopsis.

Cross reference: Section 40-10, concerning ILCS citations in a synopsis.

(e) EFFECTIVE DATE. A supplemental appropriation bill usually has an immediate effective date.

Cross reference: Section 45-45 concerning balanced budget notes.

SECTION 25-85. SUCCESSOR AGENCY.

(a) GENERALLY. A bill may provide that a department of State government or other State agency is to cease operations. The bill may terminate the agency's functions or may transfer them to another existing agency or a newly created agency. In any event, the closed agency's records and other property must be disposed of and its affairs must be wound up. Ordinarily, the bill closing the agency will address these matters. See, for example, Public Act 89-507, which created the Department of Human Services to replace the Departments of Alcoholism and Substance Abuse, Mental Health and Developmental Disabilities, and Rehabilitation Services and to succeed to certain functions of the Departments of Public Aid, Public Health, and Children and Family Services. If the bill does not designate a successor agency or provide for disposal of the closed agency's property and winding up of its affairs, the Successor Agency Act (5 ILCS 705/) provides for these matters. In addition, Section 9b of the State Finance Act (30 ILCS 105/9b) provides that whenever an appropriation is made to or for the use of a State agency and the agency's functions are transferred to a successor agency, the appropriation or any unobligated part of it shall be deemed to have been made to the successor agency. Best practice, of course, is to explicitly designate the successor agency as in the following example from Section 3A-1 of the Legislative Commission Reorganization Act of 1984 (25 ILCS 130/3A-1):

(f) For purposes of the Successor Agency Act and Section 9b of the State Finance Act, the Commission on Government Forecasting and Accountability is the successor to the Pension Laws Commission. The Commission on Government Forecasting and Accountability succeeds to and assumes all powers, duties, rights, responsibilities, personnel, assets, liabilities, and indebtedness of the Pension Laws Commission. Any reference in any law, rule, form, or other document to the Pension Laws Commission is deemed to be a reference to the Commission on Government Forecasting and Accountability.

(b) USING SUCCESSOR AGENCY NAME IN DRAFTS. Suppose that a Public Act transfers some or all of the functions of a State agency to another existing State agency or to a newly created State agency. Further suppose that the Public Act also makes amendatory changes throughout the statutes as necessary so that statutory references are to the successor agency or its head instead of to the predecessor agency or its head. In that case, it goes without saying that new or amendatory text in subsequent legislative documents should refer to the successor agency or its head rather than to the predecessor agency or its head.

On the other hand, suppose that an executive order of the Governor has reorganized executive agencies by making such a transfer of functions but legislation has not been passed to change the statutory references. Further suppose that you are asked to draft a legislative document concerning one or more of those transferred functions. If you make amendatory changes to a Sec. that contains references to the predecessor agency or its head, you need not change those references to refer to the successor agency or its head unless the drafting request includes those references. The executive order has changed those references by implication even if legislation has not expressly changed them. At the same time, any underscored text added to the Sec. should refer to the successor agency or its head and not to the predecessor agency or its head. That is, don't add a provision that assigns a function to an agency or office that no longer exists or that otherwise denies the effect of the executive order. Similarly, in a new Sec. added to an existing Act or in a new Act, refer to the successor agency or its head and not to the predecessor agency or its head.

Cross references:

- (1) Section 25-95 concerning executive agency reorganization.
- (2) Section 70-40 concerning executive agency reorganization.

SECTION 25-90. TERMINATION OF ELECTIVE OFFICE.

A bill may provide that a particular elective office is to become an appointive office. The bill may not terminate an elected officer's term of office before the conclusion of that term because that action would in effect void the votes cast by citizens in a valid election. *Tully v. Edgar*, 171 Ill.2d 297 (1996). The bill should provide

instead for the appointment of successor officers at the conclusion of the terms of office of the sitting elected officers.

SECTION 25-95. EXECUTIVE AGENCY REORGANIZATION.

The Governor may reorganize executive agencies by executive order. Ill. Const., art. V, sec. 11. Either house may prevent the executive order from taking effect by adopting a resolution disapproving the order. If neither house adopts such a resolution within 60 calendar days after the executive order's delivery to the General Assembly, the executive order takes effect by its terms. Ill. Const., art. V, sec. 11. If the General Assembly does not wish to modify the terms of the executive order, it may pass a revisory bill making the statutory changes necessary to conform the statutes to the changes made by the executive order. (The General Assembly's failure to enact such a bill does not affect the validity of the reorganization as ordered by the Governor. 15 ILCS 15/10.) Indeed, the Legislative Reference Bureau is required by statute to prepare such a revisory bill for the next annual session of the General Assembly. 15 ILCS 15/10; 25 ILCS 135/5.06.

If the General Assembly wishes to modify the terms of the executive order, it must make the necessary statutory changes in a regular substantive bill rather than in a revisory bill. Neither the Illinois Constitution nor the statutes require that one house adopt a resolution disapproving the executive order before the General Assembly may pass a bill modifying the terms of the order. Nor do the Constitution or statutes require that the executive order be in effect before the General Assembly enacts statutory changes to modify it. The General Assembly may change the statutes at any time, regardless of the terms or effective date of the Governor's executive order, because the legislative power is vested in the General Assembly. Ill. Const., art. IV, sec. 1. For recent examples of bills modifying executive orders, see: Public Acts 89-50 and 89-445 (concerning creation of the Department of Natural Resources); Public Act 89-507 (creating the Department of Human Services); Public Acts 93-382 and 93-586 (concerning the transfer of certain State agency functions and personnel to the Department of Central Management Services, the Department of Commerce and Economic Opportunity, the Department of Revenue, and the Illinois Emergency Management Agency); and Public Act 93-735 (concerning the creation of the Department of Financial and Professional Regulation).

If a bill modifying the terms of an executive order passes both houses and is approved by the Governor, that legislation supersedes the terms of the executive order to the extent it specifically conflicts with those terms. The bill normally includes a provision stating that it supersedes the terms of the executive order. For example, see Section 80-40 of the Department of Natural Resources Act (20 ILCS 801/80-40, added by Public Act 89-445) and Section 80-40 of the Department of Human Services Act (20 ILCS 1305/80-40, added by Public Act 89-507).

Cross references:

- (1) Section 70-40 concerning implementation of an executive agency reorganization by means of a revisory bill.
- (2) Chapter 87 concerning resolutions disapproving executive orders.

SECTION 25-100. EXTENDING INTERNAL DELAYED REPEAL DATE.

A Sec. may contain a provision for an internal delayed repeal date, such as "This Section is repealed on January 1, 2010". The Sec. will also contain a parenthetical caption stating, "(Section scheduled to be repealed on January 1, 2010)". An amendatory provision to extend the repeal date to January 1, 2015 appears as follows:

This Section is repealed on January 1, 2015 ~~2010~~.

Do not change the repeal date in the parenthetical caption, however. The repeal date in the parenthetical caption is changed only after the bill becomes law; the date change is made as a database correction.

Cross references:

- (1) Section 30-5, subsection (c), concerning internal repealers.
- (2) Section 70-25 concerning database corrections.
- (3) Section 70-30, subsection (a), concerning parenthetical captions.

SECTION 25-105. POWERS AND DUTIES.

In the context of the statutes, a “power” is the authority of a State agency or other entity (such as a unit of local government) to perform a particular function; it is permissive. A “duty” is an agency or other entity’s obligation to perform a function; it is mandatory.

Occasionally, the statutes do not differentiate between an agency or other entity’s powers and its duties. For example, see 20 ILCS 605/605-10, which provides that the Department of Commerce and Economic Opportunity has the "powers and duties" enumerated in the Sections that follow. Many of those Sections, however, begin with phrases such as "To cooperate ..." or "To establish ..." and do not state whether the Department "may" or "must" (or "shall") perform the described function. See 20 ILCS 605/605-15 and 605-20. Is a particular function a power or is it a duty? One cannot tell. Neither the affected agency or other entity nor one seeking to hold the agency or entity accountable will know whether the function is permissive or mandatory.

To avoid ambiguity when you add a new function for an agency or other entity to perform, always specify whether the agency or other entity "may" perform it or “must” perform it. Do this even when the new function is added to a series of Sections of an Act that do not differentiate between "powers" and "duties" (as in the case of 20 ILCS 605/605-10 and the Sections following it). See 20 ILCS 605/605-302 for an example that follows this instruction.

Also specify whether an agency or other entity "may" perform a new function or “must” perform it even when the new function is added to a series of items within an existing Section of an Act that do not differentiate between "powers" and "duties". (For an example of bad drafting, see 20 ILCS 5/5-505, which fails to differentiate between "powers" and "duties" both in a series contained in a single sentence and in a series contained in separate numbered paragraphs.) See 20 ILCS 2520/4, subdivision (k), for an example that follows this instruction.

In both of the above instances, the need for clarity supersedes the desire for consistency in style.

CHAPTER 30. REPEALERS.

- 30-5. EXPRESS REPEAL.
 - (a) STRIKE THROUGH.
 - (b) EXTERNAL.
 - (c) INTERNAL.
 - (d) SAVING CLAUSE.
 - (e) REPEAL DATE.
- 30-10. GENERAL REPEAL.
- 30-15. IMPLIED REPEAL.
- 30-20. REPEAL AND RE-ENACTMENT.
- 30-25. REPEAL OF REPEALER.
- 30-27. EXTENDING A REPEAL DATE.
- 30-30. INVALID REPEAL.
- 30-35. REPEAL OF AMENDATORY ACT.
- 30-40. SUBDIVISION INOPERATIVE.
- 30-45. PROVISIONS INOPERATIVE FOR A PERIOD OF TIME.

SECTION 30-5. EXPRESS REPEAL.

Existing statutory law may be repealed expressly, generally, or by implication. The best way, by far, is to repeal existing law expressly. Express repeal may be accomplished by strike through, external repeal, or internal repeal.

Cross reference: Section 20-55, concerning expiration.

(a) STRIKE THROUGH. Whenever an amendatory provision of a bill shows language of an existing Act stricken through, indicating that it is to be omitted from the law, this has the effect of repealing the stricken language. *Krimmel v. Eilson*, 406 Ill. 202, 205 (1950). For example, when existing law is shown in a bill as follows, "This Act shall be administered by the Director of Agriculture ~~Secretary of State~~", the stricken language is being repealed.

(b) EXTERNAL. The easiest and usually the best way to repeal one or more Secs., Articles, or Acts is to do so by a separate Section of an amendatory bill. This type of repealer Section may not become part of the existing Act containing the repealed provisions; it is external to the Act. If the repealer Section is in a bill creating a new Act, it will be assigned an ILCS citation in the new Act. A reference to the repealed Sec. and its ILCS citation will be retained in the compiled statutes as a "placeholder" so that the same Sec. number will not be assigned to a different Sec. that may be added to the Act later. (See Section 25-35 of this Manual.) An example of a repealer Section follows:

A BILL FOR

AN ACT concerning agriculture.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

- (505 ILCS 950/8 rep.)
- (505 ILCS 950/9 rep.)
- (505 ILCS 950/9.1 rep.)
- (505 ILCS 950/9.2 rep.)
- (505 ILCS 950/10 rep.)

(505 ILCS 950/11 rep.)

Section 5. The Corncob Pipe Act is amended by repealing Sections 8, 9, 9.1, 9.2, 10, and 11.

Note that the bill lists each repealed Sec. individually (rather than "by repealing Sections 8 through 11") so that there is no confusion as to which Secs. are actually being repealed. (See also Section 25-35 of this Manual.)

Another example follows:

(505 ILCS 925/Art. 5 rep.)

Section 5. The Soybean Soup Act is amended by repealing Article 5.

Section 10. The Corncob Pipe Act is amended by changing Section 12 as follows:

(505 ILCS 950/12) (from Ch. 5, par. 3512)

Sec. 12. Penalty. Any person who intentionally violates this Act is guilty of a Class 3 felony ~~A misdemeanor.~~

(Source: P.A. 80-9999.)

(505 ILCS 950/13 rep.)

Section 15. The Corncob Pipe Act is amended by repealing Section 13.

In the last example Section 15 of the bill could say, "Section 13 of said Act is repealed". Confusion might arise, however, as to whether Section 13 of the Corncob Pipe Act or Section 13 of the Soybean Soup Act is being repealed. For clarity cite the Act in full.

Occasionally a bill contains a provision repealing an entire Act. An example follows:

(505 ILCS 910/Act rep.)

Section 5. The Tomato Products Act is repealed.

(c) **INTERNAL.** There are some situations in which it is best to internalize the repeal within the Section, Article, or Act being repealed. The most common situation in which internal repeal is preferable is when the repealer is to take effect on a date after the effective date of the amendatory Act. An example follows:

Section 10. The Soybean Soup Act is amended by changing Section 19.1 as follows:

(505 ILCS 925/19.1) (from Ch. 5, par. 3419.1)

Sec. 19.1. Free soup. The Department of Agriculture must serve free soybean soup, prepared with Illinois-grown soybeans and ham hocks, at the Illinois State Fair. This Section is repealed on September 1, 2010.

(Source: P.A. 80-9999.)

Section 99. This Act takes effect July 1, 2010.

In the example, because the repeal is internalized by amending the Section, the parenthetical ILCS reference is "925/19.1" rather than "925/19.1 rep."

A case of much confusion in which the future repeal was first external, then also made internal, and then supposedly repealed is *Pflugmacher v. Cosentino*, 165 Ill.App.3d 1083 (1988). The case illustrates why future repeal should be internalized from the beginning.

Cross reference: Section 70-30 concerning parenthetical references.

(d) SAVING CLAUSE. It is sometimes necessary to include a saving clause in connection with the repeal of a statute. An example follows:

(505 ILCS 950/13 rep.)

Section 15. The Corncob Pipe Act is amended by repealing Section 13. The repeal of Section 13 does not apply to any action pending before the effective date of this amendatory Act of the 98th General Assembly.

Cross reference: Section 35-50, subsection (c), concerning applicability of a repealer.

(e) REPEAL DATE. When creating a repeal date, use the first day of a month rather than the last day of the preceding month unless the requester insists otherwise. For example, if a statute states that a provision is repealed on June 30, the repeal takes effect at 12:01 a.m. on June 30. A requester will usually want a provision to remain in effect through the end of a month and its repeal to take effect on the first day of the following month. As a drafter, it is your responsibility to explain this to a requester who asks for a repealer to take effect on the last day of the month. The Illinois statutes contain instances of repealers taking effect on the last day of the month, and many of these are probably due to a drafter's failure to explain the consequences of such a provision to the requester.

SECTION 30-10. GENERAL REPEAL.

Express repeal discussed in Section 30-5 is limited to those situations in which specific language or a specific Section, Article, or Act is repealed. Another way in which existing law is expressly repealed, in a sense, is generally, without specifying any particular language, Section, Article, or Act.

For example, assume that an existing Section of the Bubonic Plague Abatement Act provides that rats may not be kept as house pets, and then a bill, as follows, becomes law:

A BILL FOR

AN ACT concerning health.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The House Pet Act is amended by adding Section 35 as follows:

(410 ILCS 950/35 new)

Sec. 35. Rats. Notwithstanding any other law to the contrary, a rat may be kept as a house pet if the rat is muzzled at all times except when confined in a locked cage.

The added Section of the House Pet Act has the effect of generally repealing, or at least amending, all existing law to the contrary, including the Section of the Bubonic Plague Abatement Act.

Although there are times during the heat of a legislative session when there is not enough time to do the research necessary to specifically find all existing law that should be repealed and the phrase "notwithstanding any other law to the contrary" is useful, avoid the use of that phrase if possible and expressly repeal or otherwise change the appropriate Sections of existing law.

SECTION 30-15. IMPLIED REPEAL.

Existing law may be repealed by implication if the terms and necessary operation of a later statute are repugnant to and cannot be harmonized with the terms and effect of an earlier statute. Avoid this method of repeal if possible. *U.S. Bank National Association v. Clark*, 216 Ill. 2d 334 (2005); *Lily Lake Road Defenders v. County of McHenry*, 156 Ill.2d 1 (1993). Thorough research is the only means of prevention.

Cross reference: Section 25-20, concerning amendment by reference.

SECTION 30-20. REPEAL AND RE-ENACTMENT.

Sometimes a Sec., Article, or Act is repealed, and, in the same bill, the repealed language is re-enacted without significant change as a different Sec., Article, or Act. This occurs during codification and may also occur when language is merely moved from one place to another. The general rule is that the repealed language is not really repealed and the re-enacted language is merely a continuation of the repealed language. *People ex rel. Dailey v. Ross*, 272 Ill. 285 (1911).

When the bill codifies several Acts, it is advisable to expressly state that it is a continuation of prior law as in the example in Section 20-10 of this Manual. Also see Chapter 75 of this Manual.

When a bill repeals language and then re-enacts the same or substantially similar language as part of a different Sec., Article, or Act, consider adding a Section near the end of the bill similar to the following example:

Section 90. Continuation of prior law. Language added by this amendatory Act of the 98th General Assembly that is identical to or substantially the same as language repealed by this Act is a continuation of the prior law rather than a new or different law.

The example is useful whenever legislative intent might not otherwise be crystal clear. Also see Section 2 of the Statute on Statutes, 5 ILCS 70/2.

SECTION 30-25. REPEAL OF REPEALER.

If all or part of an Act is repealed, then repeal of the repealer does not revive the repealed law. 5 ILCS 70/3. To become law again the full text of the repealed language must be re-enacted. This rule applies only if the repeal has become effective, however.

A different situation is when, before a future repealer takes effect, the future repealer is itself repealed. For example, if an Act has a Section providing that the Act is repealed on July 1, 2010 and an amendatory Act effective June 30, 2010 repeals the repealer Section, then the Act continues in effect beyond July 1, 2010. The repeal of the Act never became effective.

SECTION 30-27. EXTENDING A REPEAL DATE.

Suppose that an Act contains a Section repealing the Act on, for example, July 1, 2010. Late in the spring 2010 session, the General Assembly may pass a bill extending the repeal date to July 1, 2011. In passing the bill, the General Assembly intends that the Act continue in effect after July 1, 2010 and until July 1, 2011. While the General Assembly may pass the bill before the Act's scheduled repeal on July 1, 2010, the Governor may not approve the bill before that date. If the Governor does not approve the bill before July 1, 2010, is the Act repealed

on that date by operation of law? If so, must the General Assembly then re-enact the Act in full with the new repeal date? Are actions taken in reliance on the Act after July 1, 2010 and before the Act's re-enactment valid?

Section 3 of the Statute on Statutes (5 ILCS 70/3) controls:

Sec. 3. No act or part of an act repealed by the General Assembly shall be deemed to be revived by the repeal of the repealing act.

According to Section 3, the legislative action changing the Act's repeal date does not revive the Act after its repeal on July 1, 2010. The Act would have to be re-enacted in full, and its provisions could not have been in effect during the period between July 1, 2010 and the effective date of the re-enactment.

Section 1 of the Statute on Statutes (5 ILCS 70/1) provides:

Sec. 1. In the construction of statutes, this Act shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly

One could argue that under Section 1, the General Assembly can manifest its intent to supersede Section 3. Using the example presented in this Section, the General Assembly, in its bill extending the Act's repeal date, could have specifically stated its intent that:

- (i) the Act not be repealed on July 1, 2010; and
- (ii) the Act be in continuous effect from its original effective date until July 1, 2011 or until the Act is otherwise repealed.

Suppose that July 1, 2010 passed before the Governor approved the bill. In that case, regardless of whether the General Assembly gave such an expression of its intent in the bill extending the Act's repeal date, the General Assembly should pass a new bill that reenacts the Act and adds to the Act a new Section that does the following:

- (1) States that the General Assembly's intent in passing the bill extending the Act's repeal date was to change the Act's repeal date.
- (2) States that the General Assembly's intent was that the Act was not subject to repeal on July 1, 2010.
- (3) States that any construction of the original repealer Section that results in the repeal of the Act on July 1, 2010 would be inconsistent with the General Assembly's manifest intent.
- (4) States the General Assembly's intent that the Act be in continuous effect from its original effective date until it is otherwise repealed.
- (5) Validates actions taken in reliance on or pursuant to the Act.
- (6) States that the bill sets forth the Act in full and specifically re-enacts it as a continuation of the Act.

Cross reference: Section 25-100 concerning extending an internal delayed repeal date.

SECTION 30-30. INVALID REPEAL.

The general rule, notwithstanding a typical severability clause, is that if any provision of an Act is invalid, then a repealer contained in the Act is also usually invalid. *Hendricks v. Gamble*, 217 Ill.App. 422 (1920). The rule makes sense when the invalid provision is clearly intended to replace the repealed provision. In any doubtful situation, however, consider expressly stating the intent rather than relying on the rule. An example follows:

Section 20. Invalid provisions. The amendatory provisions of this Act are intended to replace the repealed provisions. If the amendatory provisions are held invalid, the repealers shall be invalid.

You should also consider an inseverability clause as discussed in Section 20-50, subsection (b), of this Manual.

If the intent is that the repealers are to stand regardless of the invalidity of the other provisions, then expressly state that intent in addition to the statutory or other severability clause. An example follows:

Section 20. Repealers; validity. Those provisions of this Act that repeal existing law shall be valid regardless of the invalidity of any other provision of this Act.

SECTION 30-35. REPEAL OF AMENDATORY ACT.

The amendatory provisions of an Act cannot be repealed by repealing the amendatory Act. Once an amendatory Act becomes law, the changes made to existing law are incorporated into that law. The changes may be undone only by setting forth the text in full and showing the changes that restore the text to the language as it existed before the amendatory Act became law.

If an Act contains both new and amendatory provisions, then a repeal of the Act repeals only the new provisions; it does not repeal the amendatory provisions once they have taken effect.

SECTION 30-40. SUBDIVISION INOPERATIVE.

Sometimes you must provide for the "repeal" of a subsection or other subdivision of a Section of an Act rather than the repeal of the entire Section. Therefore, if you want to "repeal" only subsection (c) of a Section of an Act, you can add the following as a new sentence at the end of that subsection:

The provisions of this subsection (c), other than this sentence, are inoperative after December 31, 2010.

Use this example (i) when a subdivision is first added and is intended to include a "repeal" or "sunset" date and (ii) when the "repeal" date is added to an existing subdivision and is intended to be delayed beyond the bill's effective date. When an existing subdivision is to be "repealed" or made inoperative on the bill's effective date, strike through the subdivision as explained in Section 25-25, subsection (d), of this Manual.

SECTION 30-45. PROVISIONS INOPERATIVE FOR A PERIOD OF TIME.

Suppose that you are asked to "repeal" an existing Act for a limited time. This can be done by making the Act inoperative for a specified period of time:

Section 5. The Widget Act is amended by adding Section 3 as follows:

(995 ILCS 195/3 new)

Sec. 3. Act inoperative. Notwithstanding any other provision of law, this Act is inoperative during fiscal years 2015, 2016, and 2017.

Similar language can be added to a Section to make the Section inoperative for a specified period of time.

CHAPTER 35. EFFECTIVE DATE AND APPLICABILITY.

- 35-5. EFFECTIVE DATE; GENERALLY.
- 35-10. CONSTITUTIONAL REQUIREMENT.
- 35-15. STATUTORY RULES.
- 35-20. DATES DISTINGUISHED.
- 35-25. EFFECTIVE DATE PROVISIONS.
 - (a) UNIFORM DATE.
 - (b) UPON BECOMING LAW.
 - (c) SPECIFIC DATE.
 - (d) MEASURED DATE.
 - (e) WHICHEVER LATER.
 - (f) VARIED DATES.
 - (g) CONDITIONAL DATE.
- 35-30. DATE BECOMES LAW.
- 35-35. DATE PASSED.
- 35-40. ACTUAL EFFECTIVE DATE.
- 35-45. DRAFTING ASSUMPTIONS.
- 35-50. APPLICABILITY: RETROACTIVE OR PROSPECTIVE.
 - (a) GENERAL RULE; *CAVENEY V. BOWER*.
 - (b) DRAFTING APPLICABILITY CLAUSES.
 - (1) WORDS AND PHRASES.
 - (2) PROSPECTIVE APPLICATION LIMITED.
 - (3) POSSIBLE RETROACTIVE APPLICATION.
 - (4) APPLICATION TO A PENDING CASE.
 - (5) INTERNALIZED APPLICABILITY CLAUSE.
 - (c) REPEAL; SAVING CLAUSE.
 - (d) TAX ACTS.
 - (e) VALIDATION ACTS.
- 35-52. REVIVAL OF CAUSES OF ACTION.
- 35-55. TWO NEW ACTS IN ONE BILL.
- 35-60. ADDING EFFECTIVE DATE TO OR AMENDING THE EFFECTIVE DATE OF A PUBLIC ACT.
- 35-65. CONTROLLING VERSION OF STATUTE.
- 35-70. NO ACCELERATION OR DELAY.

SECTION 35-5. EFFECTIVE DATE; GENERALLY.

The effective date of a law is the date it becomes generally enforceable. Drafting the language of an effective date provision of a bill is relatively easy and straightforward once the sponsor indicates what that date should be. The sponsor's job of picking the date is more difficult because bills with accelerated effective dates considered after a certain date must be passed by an extraordinary majority of both houses of the General Assembly. Once a bill becomes law, however, determining the actual effective date, regardless of the date stated in the bill, can achieve a level of difficulty sufficient to induce recurring nightmares. The further horror of it all is that you as a drafter can do nothing to avoid the problem because it is generated by the rules for determining when a bill is "passed". The date of passage is something outside your control and impossible to predict at the time a bill is drafted.

SECTION 35-10. CONSTITUTIONAL REQUIREMENT.

Section 10 of Article IV of the Illinois Constitution, Ill. Const., art. IV, sec. 10, provides as follows:

Sec. 10. The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June 1. A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

(Source: Amendment adopted at general election November 8, 1994.)

SECTION 35-15. STATUTORY RULES.

In response to the constitutional mandate, the General Assembly amended the Effective Date of Laws Act providing for uniform effective dates. Sections 1 and 2 of the Act, 5 ILCS 75/1 and 75/2, provide as follows:

Sec. 1. Bills passed before June 1.

(a) A bill passed prior to June 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on January 1 of the following year, or upon its becoming a law, whichever is later.

(b) A bill passed prior to June 1 of a calendar year that does provide for an effective date in the terms of the bill shall become effective on that date if that date is the same as or subsequent to the date the bill becomes a law; provided that if the effective date provided in the terms of the bill is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date.

(Source: P.A. 88-597, eff. 11-28-94.)

Sec. 2. Bills passed after May 31. A bill passed after May 31 of a calendar year shall become effective on June 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to each house provides for an earlier effective date in the terms of the bill or unless the General Assembly provides for a later effective date in the terms of the bill; provided that if the effective date provided in the terms of the bill is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date.

(Source: P.A. 88-597, eff. 11-28-94.)

A transitional provision Section also was added to the Effective Date of Laws Act to provide for uniform effective dates for bills passed in 1994. 5 ILCS 75/2.1.

SECTION 35-20. DATES DISTINGUISHED.

There are 4 distinguishable dates in analyzing an effective date problem: (1) the effective date provided in the bill, if any, (2) the date the bill becomes law, (3) the date the bill is passed, and (4) the actual effective date determined under the statutory rules once (1), (2), and (3) are known.

All 4 dates can be the same. For example, if a bill is passed by the General Assembly on May 10, provides by its terms that it is effective on May 10, and is approved by the Governor on May 10, then it becomes law on May 10 and its actual effective date is also May 10.

On the other hand, several of the dates may be different. For example, if a bill is passed on June 2, contains no effective date provision, and is approved on June 25, then it becomes law on June 25 and its actual effective date is June 1 of the next calendar year under the statutory rules.

Even though 2 or more of the 4 dates usually coincide, each must be considered separately.

SECTION 35-25. EFFECTIVE DATE PROVISIONS.

(a) UNIFORM DATE. A bill does not need its own express effective date provision. The uniform effective date provided by statute will control if the bill has no express effective date provision.

(b) UPON BECOMING LAW. The earliest date an Act may become effective is the date it becomes law. An example follows:

Section 99. Effective date. This Act takes effect upon becoming law.

The language in the example is standard and is taken from the language of the statute. Don't use other phrases. "Upon passage" is almost always before becoming law. "Upon approval" may never occur; a veto may be overridden or acceptance of an amendatory veto may be certified. "Upon enactment" probably means upon becoming law, but it may mean the same as "passage", the action of the General Assembly, because of the way "enacted" is used in the Illinois Constitution. "Immediately" probably means the earliest possible date, which would be the same as upon becoming law, but the phrase is not customarily used. The language in the example based on the statutory language is the best choice.

A requester may want an immediate effective date on a bill but may not be assured of a three-fifths majority vote on the bill after May 31 of a calendar year (for example, in the fall veto session). (See Section 10 of Article IV of the Illinois Constitution, Ill. Const., art. IV, sec. 10, and Section 2 of the Effective Date of Laws Act, 5 ILCS 75/2.) Should the requester try to move the bill after May 31 with an immediate effective date and risk having the bill declared "not passed" if it does not receive the required three-fifths majority vote, or should the requester delete the immediate effective date to give the bill a better chance at passage? You may be able to craft an effective date provision that (i) specifies an immediate effective date, contingent on the bill receiving the required number of votes, and (ii) allows for passage of the bill (without an immediate effective date) even without a three-fifths majority vote. Consider the following example:

Section 99. Effective date. This Act takes effect upon becoming law if it passes each house of the General Assembly by the number of votes required by Section 10 of Article IV of the Illinois Constitution and in the Effective Date of Laws Act; otherwise it takes effect on June 1 of the next calendar year after passage by the second house.

In this example, if the bill passes each house by a simple majority vote before May 31 or by a three-fifths majority vote after May 31, it will take effect upon becoming law. If the bill passes each house by less than a three-fifths majority vote after May 31, it will take effect on June 1 of the next calendar year after passage by the second house.

Before using a contingent effective date provision as in this example, consider and convey to the requester the following:

(1) Neither the parliamentarian of the House nor the parliamentarian of the Senate has interpreted an effective date provision such as this or considered its propriety.

(2) No court has interpreted an effective date provision such as this or considered its propriety.

(3) No court has considered the question of a bill's effective date if the bill has an immediate effective date, is passed by one house by a simple majority before May 31, and is passed by the second house by a three-fifths majority after May 31.

(c) **SPECIFIC DATE.** The effective date Section of a bill may name a specific date. An example follows:

Section 99. Effective date. This Act takes effect on October 1, 2010.

Stating a specific effective date is useful when the effective date is delayed (beyond the uniform effective date provided by statute) to allow a transition period before a law is enforced. If the delayed effective date applies to a new Act or to a new Section added to an existing Act, it is sufficient to state the effective date in a separate Section of the bill.

On the other hand, if the delayed effective date applies to changes made in an existing Section and you use a separate effective date Section, LRB will have to create 2 separate versions of the substantive Section in the statutes database if the bill making the changes becomes law. The first version will not reflect the changes but will be prefaced by a parenthetical note that that version sets forth the text of the Section **before** its amendment by the Public Act containing the delayed effective date--for example, P.A. 96-9000. The parenthetical note will also indicate that this first version is in effect until a specified date that is the effective date of P.A. 96-9000, although this information will be suppressed. (That is, the dates are coded so that they do not show in a printed bill or other legislative document but do show in the electronic form of the document.) The second version will incorporate the changes and will be prefaced by a parenthetical note that the Section sets forth the text of the Section **after** its amendment by P.A. 96-9000. The parenthetical note will also indicate that this second version takes effect on a specified date that is the effective date of P.A. 96-9000, although this information will be suppressed. (A reader of the bill may determine the effective date of Public Act 96-9000 from its source reference at the end of the second version of the statute--that is, the version "after amendment by P.A. 96-9000".)

This is apt to be confusing. Better practice, which is strongly recommended, is to internalize the delayed effectiveness within the Section being changed rather than use a separate effective date Section. Examples follow:

Sec. 10. * * *

(d) * * * This subsection applies on and after October 1, 2013.

Sec. 10. * * * The changes to this Section made by this amendatory Act of the 98th General Assembly apply on and after October 1, 2013.

Cross references:

(1) Section 25-50, subsection (b), concerning amendatory changes to statutes appearing in multiple text form.

(2) Section 70-30 concerning parenthetical references.

(d) **MEASURED DATE.** Sometimes the effective date is a future date measured from the date the Act becomes law. An example follows:

Section 99. Effective date. This Act takes effect 60 days after becoming law.

This format is also useful for delayed enforcement.

(e) WHICHEVER LATER. The most frequent situation in which it makes any sense to provide an effective date that is the later of 2 dates is when one of the dates is a specific date and the other is the date the Act becomes law. An example follows:

Section 99. Effective date. This Act takes effect on September 1, 2010 or upon becoming law, whichever is later.

Because of the statutory rules concerning effective dates, however, to merely say that the Act takes effect on a specific date accomplishes the same thing.

(f) VARIED DATES. Some parts of a bill may take effect on one date and other parts on a different date. The easiest way to accomplish this is to first make the bill effective generally on the earliest date and then except out those provisions that are to become effective later. Examples follow:

Section 99. Effective date. This Act takes effect upon becoming law, except that Sections 20 and 25 take effect one year after this Act becomes law.

Section 99. Effective date. This Act takes effect on January 1, 2011, except that Section 25 takes effect on July 1, 2011.

If some provisions of a bill are to take effect on the uniform effective date provided by statute, the effective date Section should not mention those provisions. That is, don't change a uniform effective date to January 1 or June 1 for purposes of stating an "except that" clause in the effective date Section as in the last example. For example, if Section 5 of the bill is to take effect on the uniform effective date and Section 10 is to take effect immediately, the effective date Section should appear as follows:

Section 99. Effective date. This Section and Section 10 take effect upon becoming law.

Regardless of which method you use to express varied effective dates, you must ensure that the effective date Section in one way or another accounts for every provision of the draft (and of the underlying bill, if applicable). If an effective date is not stated for a particular provision, the uniform effective date provided by statute will apply to that provision.

A technical point to bear in mind is that the effective date Section must itself take effect on the earliest date any other Section is supposed to take effect. Consider the logical quagmire otherwise.

Sometimes you must prepare an amendment that contains an effective date Section with varied effective dates. If the bill as amended by that and previous amendments contains several amendatory Sections, and if you anticipate that subsequent amendments may add additional amendatory Sections and renumber existing Sections, better practice is to identify the "excepted" provisions to which a later effective date applies by reference to an Act rather than to a bill Section number that may be changed. An example follows:

Section 99. Effective date. This Act takes effect upon becoming law, except that the changes to Section 5-2 of the Illinois Public Aid Code take effect on January 1, 2011.

(g) CONDITIONAL DATE. Sometimes a bill's amendatory provisions are conditioned on another bill becoming law or on a proposed change to the Illinois Constitution being approved by the electors of the State (see Section 25-70 of this Manual). Following is an example of an effective date provision for an Act containing in

Section 90 amendatory provisions that are conditioned on another bill (for example, House Bill 9999) becoming law:

Section 99. Effective date. This Act takes effect upon becoming law, except that Section 90 takes effect upon becoming law or on the date House Bill 9999 of the 98th General Assembly takes effect, whichever is later.

If the provisions of House Bill 9999 were to take effect on varied dates, the previous example should say "on the effective date of Section A of House Bill 9999" or, better, "on the effective date of the changes to Section X of the ABC Act made by House Bill 9999".

It is important to include the other bill's applicable effective date and the phrase "whichever is later" in the conditional bill's effective date Section. If the conditional bill's effective date Section simply provided for an immediate effective date and if the conditional bill became law before the other bill, that immediate effective date would unintentionally accelerate the amendatory language's effective date. Giving the conditional bill an effective date of "upon becoming law or on the effective date of the provisions of Section XYZ of the ABC Act as amended by House Bill 9999, whichever is later" will work whether the other bill's applicable effective date is immediate or another date.

An example of an effective date provision for an Act containing in Section 90 amendatory provisions that are conditioned on a proposed constitutional amendment taking effect follows:

Section 99. Effective date. This Act takes effect upon becoming law, except that Section 90 takes effect upon becoming law or on the effective date of the constitutional amendment proposed by House Joint Resolution (Constitutional Amendment) No. 9999 of the 98th General Assembly, whichever is later.

SECTION 35-30. DATE BECOMES LAW.

A bill becomes law on a date determined under Section 10 of Article IV of the Illinois Constitution. The determination is straightforward. The various possibilities are as follows:

- (1) The date the Governor approves a substantive or appropriation bill in its entirety.
- (2) A date 61 days after a substantive or appropriation bill is presented to the Governor if the Governor neither approves nor vetoes the bill within 60 days.
- (3) The date the second house votes by a three-fifths majority to override the Governor's total or amendatory veto of a substantive or appropriation bill.
- (4) The date the Governor approves an appropriation bill, including those items reduced by item reduction in the reduced amount, but except the items vetoed in full.
- (5) The date the second house votes to override an item veto by a three-fifths majority, with respect to the item vetoed, or votes to restore a reduced item to its original amount by a simple majority, with respect to that item in its restored amount.
- (6) The date the Governor certifies that the General Assembly has accepted an amendatory veto of a substantive or appropriation bill.

SECTION 35-35. DATE PASSED.

A complete analysis of when a bill is "passed" is beyond the scope of this Manual. It would involve a discussion of Supreme Court opinions, statutes, opinions of the Attorney General, and rulings of the presiding officers of both houses of the General Assembly. Moreover, all the issues are not fully settled. What follows is based on what the Supreme Court has ruled and on a best guess of what the Supreme Court would rule, not necessarily what it should rule. See *Mulligan v. Joliet Regional Port District*, 123 Ill.2d 303 (1988).

The Supreme Court has held that a bill is "passed" at "the time of the last legislative act necessary so that the bill would become law upon its acceptance by the governor without further action by the legislature". *People ex rel. Klinger v. Howlett*, 50 Ill.2d 242, 247 (1972). The theory is that a bill cannot be passed until it is considered in its final form by the legislature. Although Section 3 of the Effective Date of Laws Act, 5 ILCS 75/3, defines "passed", that definition must be read in the context of the Supreme Court cases that have interpreted it.

Based on the Supreme Court's definition of "passed", the following rules probably apply:

(1) If the Governor approves the bill or fails to act within 60 days after the bill is presented to the Governor, then the bill "passed" on the date the bill was first approved by both houses of the General Assembly. The date the bill is first approved is the date the second house approved the bill without amendment on third reading, the date the house of origin concurred in the second house's amendments, the date the second house receded from its amendments, or the date a conference committee report was finally adopted by both houses.

(2) If the General Assembly overrides a total, amendatory, or item veto or restores an item reduction, the bill "passed" on the date the bill was first approved by both houses of the General Assembly. Although the last legislative action is the veto override, it was first approved by the legislature in its final form on the earlier date.

(3) If the Governor amendatorily vetoes the bill and the General Assembly accepts the recommended changes, the bill "passed" on the date the second house of the General Assembly accepted the changes. This is the date the legislature approved the bill in its final form.

SECTION 35-40. ACTUAL EFFECTIVE DATE.

Once the effective date provided in the bill, if any, the date of passage, and the date the bill becomes law are determined, then the actual effective date is found by applying the statutory rules set forth in Section 35-15 of this Manual.

SECTION 35-45. DRAFTING ASSUMPTIONS.

A bill should not have an effective date provision unless the sponsor requests one. The uniform effective date determined under the statutory rules will then control. An exception is when the substantive provisions of the bill either expressly or impliedly require things to happen on a certain date or within a certain time frame; in that case the bill should have an earlier effective date.

Bills making appropriations for the coming fiscal year should have an effective date of July 1 (the first day of the new fiscal year). Supplemental appropriation bills (bills making appropriations for the current fiscal year) should have an immediate effective date.

A bill affecting the criminal law should have a uniform effective date unless the sponsor requests a different effective date. The public should have adequate notice of criminal penalties.

The House and Senate generally impose deadlines for filing bills several weeks before the session deadline. Therefore, when drafting a bill you can usually assume that the bill will be passed, if at all, before June 1 and will not need a three-fifths majority vote.

SECTION 35-50. APPLICABILITY: RETROACTIVE OR PROSPECTIVE.

(a) GENERAL RULE; *CAVENEY V. BOWER*. A law's effective date may not resolve all questions about its applicability. Retroactive application of a law may be unconstitutional under any one of 3 principles. The U.S. Constitution and the Illinois Constitution prohibit the passage of ex post facto laws and laws impairing the obligation of contracts. U.S. Const., art. I, sec. 10; Ill. Const., art. I, sec. 16. Retroactive application of a law also is prohibited if it interferes with a person's rights under the due process clause of the Illinois Constitution (art. I, sec. 2).

Throughout the years, Illinois courts have adopted several different approaches to determine whether a change to the law should be applied retroactively. The most recent approach adopted by the Illinois Supreme Court is found in *Caveney v. Bower*, 207 Ill. 2d 82 (2002). (See also *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318 (2006)). Under this approach, a court should ascertain whether the General Assembly has clearly indicated the temporal reach of the change to the law. If the General Assembly has done so, then, absent a constitutional prohibition, the court must give effect to that expression of legislative intent. *Caveney*, 207 Ill. 2d at 94.

This means that if the General Assembly intends to have a change to the law apply retroactively and expressly prescribes that intent, then the court will give effect to that intent unless it unconstitutionally interferes with a person's rights under the due process clause. *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001). There is, however, no clear answer as to when retroactive application of a change to the law unconstitutionally interferes with a person's rights under the due process clause. The Illinois Supreme Court has noted that in determining whether a retroactive tax measure is unconstitutional, courts have considered such factors as the legislative purpose behind changing the law, the length of time of the retroactivity, whether a person reasonably and detrimentally relied on the law as it existed before the change, and whether a person had adequate notice of the change. *Commonwealth Edison*, 196 Ill.2d at 43-44. Stating that an amendatory change is declaratory of existing law does not in itself mean that the change is enforceable retroactively. See *Northern Kane Educational Corp. v. Cambridge Lakes Educational Association, IEA-NEA*, 394 Ill.App.3d 755 (4th Dist. 2009).

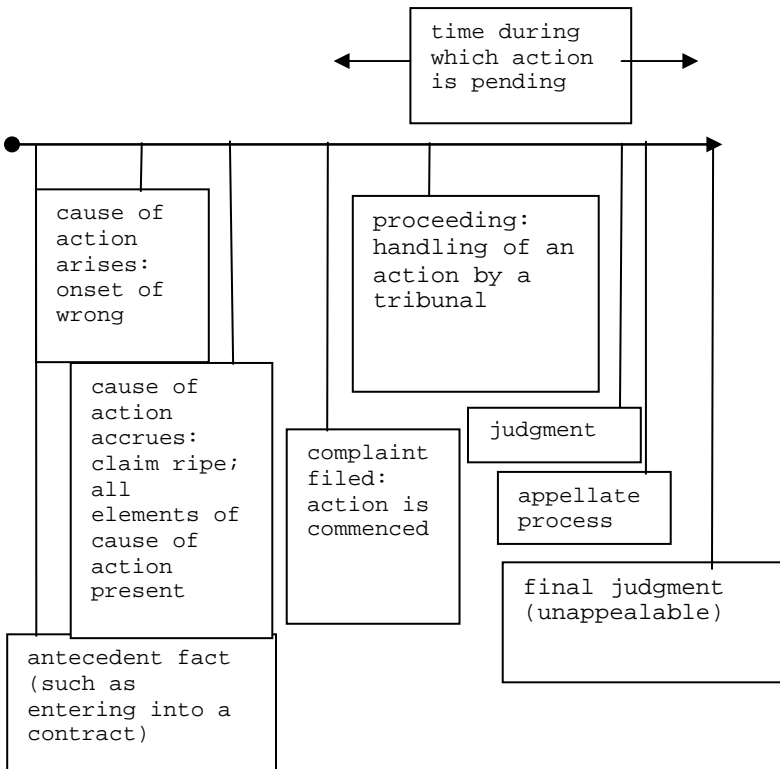
If the General Assembly has not expressly indicated the temporal reach of the change to the law, then a court will default to the General Assembly's intent as found in Section 4 of the Statute on Statutes (the general savings clause), which the Illinois Supreme Court says prohibits retroactive application of substantive changes to statutes. *Caveney*, 207 Ill. 2d at 95. Under this judicial default rule, a court must determine whether the change to the law is procedural or substantive in nature. *Caveney*, 207 Ill. 2d at 95. If the change is procedural, it may be applied retroactively; if the change is substantive, it may not.

The bottom line for drafting purposes is this: If it is important whether a bill applies only prospectively or also applies to pending cases, then the bill should expressly state its applicability.

When a court decides that applying a change to the law would be unconstitutional, it may declare the entire Act to be unconstitutional or it may declare the Act to be unconstitutional only as to the specific facts in the case it then has before it. In order to ensure that the court considers holding the Act unconstitutional only as to the specific facts in the case at hand, you should probably include a severability clause, as set forth in subsection (a) of Section 20-50 of this Manual, as a safeguard.

(b) DRAFTING APPLICABILITY CLAUSES. Applicability provisions often have been combined in a single Section with the effective date, if one is stated, but it is preferable to set them forth in a separate Section or internalize them within a substantive Section in appropriate circumstances. Remember, if there is no applicability clause in the Act, a court will apply the judicial default rule, and there is no clear way to determine how the court will decide the issue.

(1) WORDS AND PHRASES. When drafting an applicability provision, keep the meaning of the following words and phrases in mind:



Accrue; arise Some courts have held that the terms "accrue" and "arise" are synonymous, but other courts have distinguished between these terms, stating that "accrue" refers to the ripeness of the claim and "arise" refers to the onset of the underlying wrong. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 16 (1995). For example, "a cause of action based on tort accrues only when all elements are present—duty, breach and resulting injury or damage". *West Am. Ins. Co. v. Sal E. Lobianco & Son Co.*, 69 Ill.2d 126, 129 (1977). A cause of action "arises" when something is done that ought not to have been done or something is not done that ought to have been done. *Werner v. Illinois Cent. R.R. Co.*, 379 Ill. 559, 565 (1942).

Action; suit. "Action" means "a mode of proceeding in court to enforce a private right, to redress or prevent a private wrong, or to punish a public offense". Originally "action" referred to a proceeding in a court of law, while "suit" referred to a proceeding in chancery or equity and a prosecution at law. Today, however, the terms are interchangeable. Garner at 20.

Cause of action; right of action. A cause of action "consists of a single group of facts giving the plaintiff a right to seek redress for a wrongful act or omission of the defendant". *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill.2d 484, 490 (1993). A person might have a cause of action but never bring an action. A "right of action" is a right to take a case to court. Garner at 140. According to the Illinois

Supreme Court, the terms "right of action" and "cause of action" are equivalent expressions. *Lasko v. Meier*, 394 Ill. 71, 75 (1946).

Claim. "Claim" means "any right, liability or matter raised in an action". *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill.2d 458, 465 (1990).

Commence; file. "Commence" means "to initiate formally by performing the first act of". *Webster's Third New International Dictionary* 456 (1976). "File" means "to deliver a legal document to the court clerk... for placement into the official record". *Black's Law Dictionary* 642 (Rev. 7th ed. 1999). Under Section 2-201 of the Code of Civil Procedure, an action is commenced when the complaint is filed.

Complaint. Under Section 2-602 of the Code of Civil Procedure, the plaintiff's first pleading is the complaint.

Final judgment. "Final judgment" means "a court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment". *Black's Law Dictionary* at 847.

Judgment; decree. "Judgment" means "the final decisive act of a court in defining the rights of the parties". Garner at 481. Traditionally, "judgment" meant a judicial decision in a court of law and "decree" meant the judicial decision in a court of equity, admiralty, divorce, or probate. Garner at 253. Under Section 1.24 of the Statute on Statutes (5 ILCS 70/1.24), "decree" is synonymous with the term "judgment".

Order. An order is "a judge's written direction". Garner at 625.

Pending. "Pending" means "to be awaiting decision or settlement". Garner at 648. An action is "pending" from the time the action is begun until a final judgment is rendered. Also, an action is "pending" until the time for appeal has passed. *In re Estate of Stith*, 45 Ill.2d 192, 196 (1970).

Proceeding. "Proceeding" refers "to the business done by tribunals of all kinds". Garner at 697.

(2) PROSPECTIVE APPLICATION LIMITED. An example limiting prospective application follows:

Section 98. Applicability. The penalty provisions of Section 25 are enforceable against persons holding a valid license on the effective date of this Act only after this Act has been in effect for 6 months. Those penalty provisions are enforceable against other licensees upon obtaining a license.

(3) POSSIBLE RETROACTIVE APPLICATION. The following are other examples of special applicability provisions:

Section 98. Applicability. This Act applies only to causes of action accruing on or after its effective date.

Section 98. Applicability. This Act applies only to actions commenced and complaints filed on or after its effective date.

Causes of action accrue or arise. Do not use the words "causes of action filed" because complaints or petitions, not causes of action, are filed. Similarly, actions, not causes of action, are commenced.

The phrase "applies only to causes of action accruing on or after its effective date" might apply retroactively if a person had a right before the cause of action accrued. In such a case, retroactive application

would be unconstitutional if a constitutionally protected right was involved. Consider this example: A contract sets the damages for its breach. Later, a law is enacted that sets damages for breach of contract. After the law takes effect, the contract is breached. The cause of action accrued when the contract was breached, but the parties had a right to have the damages set in accordance with the contract.

The phrase "applies only to actions commenced and complaints filed on or after its effective date" applies retroactively in certain cases because "the crucial date for determining applicability of a statute is not when the rights are asserted by the filing of a complaint but when the cause of action accrued". *Zielnik v. Loyal Order of Moose, Lodge No. 265*, 174 Ill.App.3d 409 (1st Dist. 1988). Again, if a constitutionally protected right is involved, retroactive application would be unconstitutional.

(4) APPLICATION TO A PENDING CASE. The following examples express a legislative intent to have a change to the law apply to pending cases:

Section 98. Applicability. This Act applies to pending actions as well as actions commenced on or after its effective date.

Section 98. Applicability. The changes made by this amendatory Act of the 98th General Assembly apply to actions commenced or pending on or after the effective date of this amendatory Act of the 98th General Assembly.

Section 98. Applicability. This Act applies to actions with respect to which all timely appeals were not exhausted before the effective date of this amendatory Act of the 98th General Assembly.

Section 98. Applicability. This Act applies to actions not brought to final and unappealable judgment on or before its effective date as well as actions commenced on or after its effective date.

(5) INTERNALIZED APPLICABILITY CLAUSE. The examples in this subsection (b), placing an applicability clause in a separate "Section 98" to appear just before a bill's effective date, are appropriate for use in a new Act. Amendatory provisions adding an applicability clause, however, should be internalized in the Section or subsection to which the applicability clause applies because a general applicability clause Section of an amendatory bill will not appear in ILCS. An example follows:

Sec. 10. * * * The changes to this Section made by this amendatory Act of the 98th General Assembly apply only to causes of action accruing on or after the effective date of those changes.

(c) REPEAL; SAVING CLAUSE. When drafting legislation to repeal a statute, remember that a court might dismiss an action that is pending when the repeal takes effect unless a saving clause is included in the legislation. Always place the saving clause below the enacting clause, not in a preamble. See Public Act 89-2 and *Atkins v. Deere & Co.*, 177 Ill.2d 222 (1997).

(d) TAX ACTS. Applicability often needs to be specified in bills that amend tax Acts. One common method of doing this is to include the following language:

The changes to this Section made by this amendatory Act of the 98th General Assembly apply to taxable years 2012 and thereafter.

Acts that impose a tax on past transactions have sometimes been upheld, but you should proceed cautiously and avoid the word "retroactive". See *Continental Ill. Nat'l. Bank and Trust v. Zagel*, 78 Ill.2d 387 (1979), and *Johnson v. Edgar*, 176 Ill.2d 499 (1997).

(e) VALIDATION ACTS. Applicability is also an important consideration when preparing validation Acts and other curative legislation. The need for curative legislation arises in many different contexts, such as validation of an improperly published tax levy, continuation of an unintentionally repealed Act, and re-enactment of an Act with a single subject problem. Each may require a different approach from the drafter. For some examples of curative language that has been upheld, see P.A. 89-457 and *Johnson v. Edgar*, 176 Ill.2d 499 (1997), and P.A. 86-4 and *Bates v. Board of Educ., Allendale Community Consol. Sch. Dist. No. 17*, 136 Ill.2d 260 (1990).

Cross reference: Section 20-85 concerning validation of actions.

SECTION 35-52. REVIVAL OF CAUSES OF ACTION.

You may be asked to draft language that makes certain provisions applicable to pending causes of action and that also revives causes of action that otherwise may have been barred under limitation provisions previously in effect. The Illinois Supreme Court has held, however, that the expiration of a statute of limitation creates a vested right to assert that defense that is protected by the Illinois Constitution; the General Assembly may not interfere with that right and breathe life into a time-barred claim. *Sepmeyer v. Holman*, 162 Ill.2d 249 (1994).

Cross-reference: Section 35-50 concerning retrospective and prospective applicability of a law.

SECTION 35-55. TWO NEW ACTS IN ONE BILL.

Occasionally you may be asked to prepare an amendment or conference committee report that, if adopted, will make the bill contain new provisions in 2 or more separate Articles, each of which will be compiled with a different ILCS chapter or Act number. Even if each Article is to take effect on a different date, use a single effective date Section at the end of the bill, as described in Section 35-25, subsection (f), of this Manual. If an effective date Section were also inserted in each Article, and if a legislator wanted to further amend the effective date provisions, either an Article's effective date Section or the bill's effective date Section might be changed without the corresponding change being made in the other. The bill would then state 2 different effective dates for the same Article. To avoid this possible result, do not insert an effective date Section in each Article.

For an example, see Public Act 89-209, which contains the following new Acts:

- (1) The Business Opportunity Sales Law of 1995 (Article 5 of the Public Act, compiled at 815 ILCS 602/).
- (2) The Illinois Business Brokers Act of 1995 (Article 10, compiled at 815 ILCS 307/).
- (3) The Illinois Loan Brokers Act of 1995 (Article 15, compiled at 815 ILCS 175/).

The Public Act's single effective date provision is contained in Article 99. (Public Act 89-209 illustrates the preferred Section numbering sequence described in Section 15-15 of this Manual. Note, however, that better practice would have been to eliminate "Illinois" and "of 1995" in the short titles. See Section 20-5 of this Manual.)

SECTION 35-60. ADDING AN EFFECTIVE DATE TO OR AMENDING THE EFFECTIVE DATE OF A PUBLIC ACT.

Occasionally you may be asked to add an effective date Section to a bill that already has been passed by the General Assembly. The request usually is made under the following circumstances: (i) a bill has been passed by the same General Assembly without an effective date provision; (ii) the requester desires that the bill have an immediate effective date; and (iii) the immediate effective date provision will be added by an amendment to an amendatory bill pending before the General Assembly. If the bill to which the immediate effective date is being added has become law, the provisions adding the effective date may follow the following example:

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Section 15. "AN ACT concerning local government", approved July 23, 2007, (Public Act 95-5000) is amended by adding Section 99 as follows:

(P.A. 95-5000, Sec. 99 new)

Sec. 99. Effective date. This Act (Public Act 95-5000) takes effect on the effective date of this amendatory Act of the 95th General Assembly (Senate Bill 8065 of the 95th General Assembly).

In the example "Public Act 95-5000" is the previous bill to which the effective date Section is being added; "Senate Bill 8065" is the amendatory bill by means of which the effective date provision is being added. The added effective date Section does not have a parenthetical ILCS citation (since it is being added to an amendatory Act), but the parenthetical reference to "P.A. 95-5000, Sec. 99 new" indicates its "location" in the statutory scheme with reference to the law of which it will become a part. The text of the new Sec. is underscored because the Act to which it is being added has become law.

The amendatory bill also should have its own effective date Section providing that the Section (Section 15 in the example) adding the immediate effective date takes effect upon becoming law.

Cross references:

(1) Section 25-70, subsection (b), concerning adding an effective date Section to a previous bill that has not become law.

(2) Section 35-50 concerning retroactive and prospective applicability of statutory changes.

SECTION 35-65. CONTROLLING VERSION OF STATUTE.

As described in Chapter 70 of this Manual, the General Assembly in one 2-year term often passes several Public Acts that relate to the same subject matter. After passing one version of a statute, the General Assembly may decide that it prefers a different version. In order to express its intent that the second version control over the first, the General Assembly may add to the second version a statement that the second version controls.

For example, in 1993 the 88th General Assembly passed Senate Bill 937, which contained many amendatory provisions "in relation to the operation of State and local government". Among other matters, the bill added Section 17-116.3 to the Illinois Pension Code to provide for early retirement incentives for Chicago teachers. In 1993 the General Assembly also passed Senate Bill 617, which, among other matters "in relation to State government", added a different version of the same Section to the Illinois Pension Code. In the second version, the General Assembly included the following subsection:

(h) The version of this Section included in this amendatory Act of 1993 is intended to and shall control over the version of this Section included in Senate Bill 937 of the 88th General Assembly, notwithstanding Section 6 of the Statute on Statutes. All persons qualifying for early retirement incentives under this Section shall be subject to the limitations and restrictions provided in the version of this Section included in this amendatory Act.

See Public Acts 88-85 and 88-89.

SECTION 35-70. NO ACCELERATION OR DELAY.

Section 25-50, subsection (b), of this Manual describes the use of a "no acceleration or delay" provision when a bill includes multiple versions of a statute. The purpose of such a provision is to ensure that the bill does not accelerate or delay the taking effect of changes to the statute made by the bill or a previous Public Act.

There is another instance in which the use of a "no acceleration or delay" provision is appropriate. Assume that in the spring session of 2012 the General Assembly passes a bill that makes changes to Section 5-2 of the Illinois Public Aid Code; the bill does not specify an effective date and is approved by the Governor as Public Act 97-8000. The changes to Section 5-2 will take effect on January 1, 2013. Further assume that for the fall veto session of 2012 you are asked to draft a bill that makes additional changes to Section 5-2 of the Illinois Public Aid Code and to give the bill an immediate effective date. The bill should use the statute base that includes the changes made by Public Act 97-8000 and should include a "no acceleration or delay" provision as in the example in Section 20-50, subsection (b). Otherwise, if the General Assembly passes the bill and the Governor approves it before January 1, 2013, the bill's immediate effective date may unintentionally accelerate the effective date of the changes made by Public Act 97-8000.

CHAPTER 40. SYNOPSIS; ABR; LRB DRAFT NAME.

- 40-5. STATUTORY REQUIREMENT.
- 40-10. ILCS CITATIONS.
- 40-15. ELEMENTS OF SYNOPSIS.
 - (a) ACT.
 - (b) SUMMARY.
 - (c) EFFECTIVE DATE.
- 40-20. SYNOPSIS EXAMPLES.
- 40-22. MISCELLANEOUS SYNOPSSES.
- 40-25. ABR.
- 40-30. LRB DRAFT NAME.

SECTION 40-5. STATUTORY REQUIREMENT.

Section 1 of the Bill Synopsis Act, 25 ILCS 30/1, provides as follows:

Sec. 1. Each bill in the General Assembly, when printed, shall bear, at the top of the front page of the bill, a synopsis prepared by the Legislative Reference Bureau summarizing the substance of the bill.

The purpose of a synopsis is to provide useful information about the bill at a glance.

SECTION 40-10. ILCS CITATIONS.

As noted in Section 25-35, there is a parenthetical citation to ILCS before each Section of existing law in the amendatory provisions of a bill. The ILCS citation of all Sections, titles, and Article headings amended by the bill are also shown above the synopsis in a column in the order in which they appear in the bill. The synopsis also shows whether the Act contains new provisions. Examples follow:

New Act
30 ILCS 730/3.1 new
220 ILCS 5/3-105 from Ch. 111 2/3, par. 3-105
15 ILCS 20/38 from Ch. 127, par. 38
20 ILCS 3005/2.1 from Ch. 127, par. 412.1
30 ILCS 105/13.4 from Ch. 127, par. 149.4
30 ILCS 105/25a new
30 ILCS 105/30 from Ch. 127, par. 166
30 ILCS 105/25 rep.
30 ILCS 110/Act rep.
110 ILCS 805/3-27.1 from Ch. 122, par. 103-27.1
110 ILCS 805/3-38 from Ch. 122, par. 103-38
110 ILCS 805/5-1 from Ch., 122, par. 105-1
110 ILCS 805/Art. V-A heading new
110 ILCS 805/5A-5 new
110 ILCS 805/5A-10 new
110 ILCS 805/5A-15 new
110 ILCS 805/5A-20 new

Secs. and Article headings that are added to an existing law or repealed do not have a corresponding chapter and paragraph reference. The inclusive Secs. in the last example are listed individually rather than as "110

ILCS 805/5A-5 new through 805/5A-20 new". Similarly, if inclusive Secs. are being repealed, list them individually in the synopsis. (See Section 30-5, subsection (b), of this Manual for examples of parenthetical citations to ILCS for multiple repealed Secs. in the body of a bill.)

If the list of ILCS citations is too long to be accommodated on the synopsis page, the phrase "See Index" will appear above the synopsis, and a separate Index, showing the "statutes amended in order of appearance" in the bill, will be printed following the last page of the bill's substantive text. Even though the Index heading refers to "statutes amended", it will indicate whether the bill contains provisions creating a new Act (just as if the citations appeared above the synopsis).

In the case of an appropriation bill or a land transfer bill, it has been customary to not include a reference to "New Act" in the bill's synopsis because those bills are not codified in ILCS after becoming law. Note, however, that in the case of a bill that amends an existing appropriation or land transfer Public Act, the amendatory bill's synopsis should include a reference to the Section of the Public Act that is being changed, added, or repealed. Examples follow:

P.A. 95-9000, Article 10, Section 17

P.A. 95-9000, Article 8, Section 6 new

P.A. 95-9000, Article 5, Section 4 rep.

SECTION 40-15. ELEMENTS OF SYNOPSIS.

(a) ACT. The first element of a synopsis is an identification of the Act or Acts affected by the bill. If the bill creates a new Act, include that Act's short title in the synopsis. The synopsis should mention any Act being amended or repealed. If many Acts are being amended or repealed, however (for example, in a codification bill), the synopsis may contain a reference to "various other Acts". If the bill changes an Act's short title, mention that in the synopsis. Examples follow:

Amends the Code of Civil Procedure.

Creates the Business Corporation Act of 1989, repeals the Business Corporation Act of 1983, and amends various other Acts.

(b) SUMMARY. The summary of the bill's contents should be concise and to the point. Detail should be informative, but not burdensome. The synopsis should describe the change that the bill makes in the law and should not merely recite what the law says after the change is made. A synopsis should be understandable to a person not already familiar with the bill; consider the audience. Don't leave out definite and indefinite articles; a synopsis is much less readable without them. For example, say "Adds *a* provision concerning ..." instead of "Adds provision concerning ...". Say "Requires *the* Department to ..." instead of "Requires Department to ...". The synopsis should never be sarcastic or flippant in tone.

The synopsis should not contain subjective evaluations of changes made in the law by the bill (for example, that a change "clarifies" a certain matter).

Examples follow:

Changes the meaning of "person" to include trusts and estates.

Provides for the comprehensive licensing and regulation of soda jerks by the Department of Financial and Professional Regulation. Sets educational and job training requirements, with grandfather exceptions.

Creates the Soda Jerk Advisory Board, including at least one licensed soda jerk, appointed by the Director of Financial and Professional Regulation. Denies home rule powers. Amends the Regulatory Sunset Act to provide for repeal on January 1, 2016.

If a bill affects a particular department of State government or the head of a department, don't say just "the Department" or "the Director" in the synopsis. Specify the department or the head of the department as in the preceding example, at least in the initial reference to the department or head. If the synopsis refers to more than one department or head of a department, make sure that each such reference clearly identifies the department or head to which it applies.

In a synopsis of amendatory provisions, describe a change in the law as in the following example:

Requires (instead of [or rather than] allows) an expelled student to be immediately transferred to an alternative school program.

Drafters have commonly used "now" in a synopsis to differentiate a bill or amendment's amendatory provisions from current law. In that case, the synopsis in the preceding example would state, "... (now, allows) ...". The use of "now" may be confusing, however, especially because the synopsis is expressed in the present tense. The reader may have to stop and think: Does "now" refer to current law or to the amendatory provisions in the bill or amendment? Better practice is to use "instead of" or "rather than".

A synopsis should not contain italics. Sometimes a case is prominent in a findings or legislative intent Section (for example, when dealing with a finding that a statute is unconstitutional). While the italicized language looks fine in the document itself, the language that is italicized will disappear in the synopsis on the General Assembly web site. The drafter should remove the italics tags in the synopsis.

With the exception of a "shell" bill, which is discussed below, a synopsis should not contain the word "Section". Instead of using "In a Section concerning fees, provides. . ." , the drafter should use "In provisions concerning fees, provides. . .".

A "shell" bill makes no substantive change in the law (see Section 25-25, subsection (f), of this Manual). The summary of the contents of the bill should reflect this. The summary also should mention the subject matter of the Section being amended. Examples follow:

Amends the Code of Civil Procedure. Makes technical changes in a Section concerning forcible entry and detainer.

Amends the Criminal Code of 2012. Makes a technical change in a Section concerning the short title.

Note that the synopsis of a bill such as the last example should not say that the bill makes a technical change "in the short title" because the short title itself remains unchanged.

If the "shell" bill creates a new Act and contains only a short title provision (without any substantive provisions--see Section 20-7 of this Manual), the synopsis should state that fact. An example follows:

Creates the Weather Forecaster Licensing Act. Contains only a short title provision.

A lengthy bill that makes many changes in the law poses a special problem. The synopsis should be descriptive, but it shouldn't be too long. You may have to describe the most important or substantial changes and then add the following: "Makes other changes."

Never copy a synopsis drafted by others outside the Legislative Reference Bureau. Instead, write your own synopsis based on what the bill does.

Cross references:

- (1) Section 20-45, subsection (k), concerning a synopsis for a denial or limitation of home rule powers.
- (2) Section 25-55 concerning a synopsis for an exemption from the State Mandates Act.
- (3) Section 95-38 concerning use of italics.

(c) EFFECTIVE DATE. If the bill has its own effective date provision, indicate the date at the end of the synopsis. Examples follow:

Effective October 10, 2010.

Effective immediately.

Although "immediately" is not used in the effective date provision of a bill, it is customarily used in the synopsis. See Section 35-25, subsection (b).

SECTION 40-20. SYNOPSIS EXAMPLES.

SYNOPSIS AS INTRODUCED:

625 ILCS 5/11-501 from Ch. 95 1/2, par. 11-501
625 ILCS 5/11-501.1 from Ch. 95 1/2, par. 11-501.1
625 ILCS 5/11-501.2 from Ch. 95 1/2, par. 11-501.2

Amends the Illinois Vehicle Code to change from 0.10% to 0.05% the alcohol concentration at which a person is presumed to be driving under the influence of alcohol.

SYNOPSIS AS INTRODUCED:

105 ILCS 305/2 from Ch. 122, par. 1503-2
110 ILCS 205/10 from Ch. 144, par. 190

Amends the Educational Reform Act and the Board of Higher Education Act. Places the Illinois Mathematics and Science Academy under the general jurisdiction of the Illinois Board of Higher Education. Effective July 1, 2011.

SYNOPSIS AS INTRODUCED:

230 ILCS 20/1.1 from Ch. 120, par. 1051.1
230 ILCS 20/4 from Ch. 120, par. 1054
230 ILCS 20/5 from Ch. 120, par. 1055

Amends the Pull Tabs and Jar Games Act. Provides that no single prize may exceed \$500 (instead of \$250). Provides that the cost of all tickets sold in a game may not exceed \$4,000. Eliminates the limit of 4,000 tickets in a game. Provides that the aggregate value of all prizes or merchandise awarded in a single day may not exceed \$3,250 (instead of \$2,250), except for a limit of \$5,000 (instead of \$3,250) in certain counties. Changes the specifications for pull tab and jar game tickets. Effective July 1, 2011.

SYNOPSIS AS INTRODUCED:

New Act

Creates the Employer-Assisted Community Housing Fund Act. Provides for matching grants or loans by the Department of Commerce and Economic Opportunity to employers for the purpose of helping their employees obtain affordable housing economically located with respect to their place of employment. Requires the Director of the Department to report annually to the Governor and the General Assembly concerning implementation of the Act. Effective immediately.

The synopsis printed on an engrossed bill is the synopsis of the bill as introduced. Thus, if the bill was amended in the first house, the synopsis printed on the engrossed bill will not take into account amendments made in the first house and may be misleading. Similarly, the ILCS citations appearing above the synopsis on the engrossed bill are the citations from the bill as introduced and may not accurately indicate the contents of the engrossed bill.

SECTION 40-22. MISCELLANEOUS SYNOPSSES.

When the Governor vetoes or reduces an item of appropriation in a bill, LRB prepares a synopsis of the Governor's message for the Legislative Synopsis and Digest and the General Assembly's web site. The synopses of the Governor's messages for the following bills of the 97th General Assembly can be used as examples: SB2474 (both item veto and reduction); SB2409 (reduction); SB2332 (item veto).

When the Governor amendatorily vetoes a bill, LRB prepares a synopsis of the Governor's message for the Legislative Synopsis and Digest and the General Assembly's web site. The synopses of the Governor's message for HB190 of the 97th General Assembly can be used as an example.

The word "recommends" is used in an amendatory veto synopsis but not in an item veto or reduction synopsis.

No synopsis is prepared for a total veto.

When the Governor issues an executive order, LRB prepares an ABR and a synopsis of the executive order for the Legislative Synopsis and Digest and the General Assembly's web site. For examples, browse synopses of executive orders in the Legislative Synopsis and Digest or on the General Assembly's web site. Include the executive order's effective date in the synopsis.

SECTION 40-25. ABR.

An ABR is an abbreviated synopsis of a bill. An ABR is used by the Legislative Reference Bureau in its Legislative Synopsis and Digest and by the Legislative Information System in its computer digest and is also displayed on the vote boards in each chamber. An ABR is limited to a total of 30 characters and spaces. Each letter is capitalized. Abbreviations do not end in a period. An ABR may contain punctuation marks such as a hyphen, an ampersand, a slash, a colon, a percent sign, or a dollar sign. An example follows:

CIV PRO-LIMITATION-MED MALPR

The example indicates that the Code of Civil Procedure is being amended concerning the limitation period on medical malpractice actions.

Usually the Act being amended is indicated first, but this is not necessary if the space can be used more effectively to describe the bill or resolution by using a different key word or phrase (for example, the name of an affected department of State government).

ABR's often appear in alphabetically sorted lists such as the sponsor index at the back of the Digest. Thus, it is important that the first word of an ABR be a key word that people would look for to find the bill in an alphabetized list.

An ABR for a "shell" bill should indicate the subject matter of the bill and that the bill is a "shell". Generally, a requester wants a "shell" bill amending a certain Act or concerning a certain subject--for example, the Illinois Municipal Code or municipalities generally. The ABR for such a bill should indicate the bill's subject matter with a general reference to the subject of the bill as expressed in the bill's title, according to the table set forth in Section 10-20 of this Manual. In addition, the ABR should include "TECHNICAL" or "TECH" after the subject matter statement to identify the bill as a "shell". An example of an ABR for such a bill follows:

LOCAL GOVERNMENT-TECH

For a "shell" bill creating a new Act and containing only a short title provision, the ABR should indicate the bill's subject matter using the terminology of the short title to the extent possible. For a "shell" bill creating the Weather Forecaster Licensing Act, an example of an ABR follows:

WEATHER FORECASTER-TECH

Always try to use whole words rather than abbreviations. In particular, don't waste time trying to make up an abbreviation when there is enough room to use the whole word. When you use abbreviations, they must be clear enough to be understandable. If one of the standard abbreviations in the following examples is appropriate for your draft, use it. Don't waste time trying to make up a new abbreviation for a word or phrase that already has a standard abbreviation. People are accustomed to seeing the standard abbreviations, so an ABR that uses the standard abbreviations is easier to read. Finally, don't waste time trying to think of a way to cram into the ABR every single thing that a bill says. Keep it simple and intelligible.

Some examples of abbreviations of Acts follow:

| | |
|----------|--|
| BNK ACT | Illinois Banking Act |
| BUS CORP | Business Corporation Act of 1983 |
| CD CORR | Unified Code of Corrections |
| CIV PRO | Code of Civil Procedure |
| CNTY CD | Counties Code |
| CRIM CD | Criminal Code of 2012 |
| CRIM PRO | Code of Criminal Procedure of 1963 |
| ELEC CD | Election Code |
| FOIA | Freedom of Information Act |
| HWY CD | Illinois Highway Code |
| INC TX | Illinois Income Tax Act |
| INS CD | Illinois Insurance Code |
| JUV CT | Juvenile Court Act of 1987 |
| MHDD CD | Mental Health and Developmental Disabilities Code |
| MUNI CD | Illinois Municipal Code |
| NURS HM | Nursing Home Care Act |
| PEN CD | Illinois Pension Code |
| PROP TX | Property Tax Code |
| PUB AID | Illinois Public Aid Code |
| SCH CD | School Code |

| | |
|----------|---------------------------|
| TWP CD | Township Code |
| UCC | Uniform Commercial Code |
| VEH CD | Illinois Vehicle Code |
| WRK COMP | Workers' Compensation Act |

Some governmental abbreviations follow:

Constitutional Offices

| | |
|--------|---------------------|
| ATTGEN | Attorney General |
| AUDGEN | Auditor General |
| COMPT | State Comptroller |
| GOV | Governor |
| LTGOV | Lieutenant Governor |
| SOS | Secretary of State |
| TREAS | State Treasurer |

Executive Departments

| | |
|--------------|--|
| GOMB | Governor's Office of Management and Budget |
| DPT AGING | Dept. on Aging |
| DPT AGRIC | Dept. of Agriculture |
| DCEO | Dept. of Commerce and Economic Opportunity |
| DCFS | Dept. of Children and Family Services |
| CMS | Dept. of Central Management Services |
| DOC | Dept. of Corrections |
| IEMA | Illinois Emergency Management Agency |
| DES | Dept. of Employment Security |
| DFPR | Dept. of Financial and Professional Regulation |
| DHFS | Dept. of Healthcare and Family Services |
| DPT HUMN RTS | Dept. of Human Rights |
| DHS | Dept. of Human Services |
| DPT JUV JUST | Dept. of Juvenile Justice |
| DPT LABOR | Dept. of Labor |
| DPT MIL AFF | Dept. of Military Affairs |
| DNR | Dept. of Natural Resources |
| IDOT | Dept. of Transportation |
| IDPH | Dept. of Public Health |
| DPT REV | Dept. of Revenue |
| DPT ST POL | Dept. of State Police |
| DPT VET AFF | Dept. of Veterans' Affairs |
| FIRE MARSHL | State Fire Marshal |

Local Government

| | |
|--------|----------------------------|
| LOCGOV | Local government generally |
| CNTY | Counties |
| DIST | District |
| MUNI | Municipalities |
| TWP | Townships |

Education

| | |
|------------|---------------------------|
| BD HIGH ED | Board of Higher Education |
|------------|---------------------------|

| | |
|----------|--------------------------|
| COM COL | Community College Board |
| SCHOOL | School District |
| ST BD ED | State Board of Education |

Boards, Commissions, Etc.

| | |
|----------------|--|
| BD ELEC | State Board of Elections |
| CDB | Capital Development Board |
| COMP REV BD | Compensation Review Board |
| CUB | Citizens Utility Board |
| EPA | Environmental Protection Agency |
| GAME BD | Illinois Gaming Board |
| HUMN RTS COMMN | Human Rights Commission |
| ICC | Illinois Commerce Commission |
| IFA | Illinois Finance Authority |
| IHDA | Illinois Housing Development Authority |
| PCB | Pollution Control Board |
| RACE BD | Illinois Racing Board |

Legislative Support Services

| | |
|-------|--|
| COGFA | Commission on Government Forecasting and Accountability |
| JCAR | Joint Committee on Administrative Rules |
| LAC | Legislative Audit Commission |
| LEC | Legislative Ethics Commission |
| LIS | Legislative Information System |
| LIG | Legislative Inspector General |
| LPU | Legislative Printing Unit |
| LRB | Legislative Reference Bureau |
| LRU | Legislative Research Unit |
| OAC | Office of the Architect of the Capitol |

An ABR for an appropriation bill begins with a dollar sign. If the appropriation is of a standard type, the dollar sign is followed by the abbreviated type and the agency name. The abbreviations for the standard types of appropriations are as follows:

- GRANTS for grants.
- OCE for ordinary and contingent expenses.
- SUPP for supplemental appropriations.
- CAP for capital projects.

Some examples follow (note that there should be no space between the dollar sign and the next character):

- \$GRANTS-DCFS
- \$OCE-LRB
- \$SUPP-EPA
- \$CAP-CDB

If the appropriation does not fit into one of the standard types, then the dollar sign is followed by the agency name and a description of the project or purpose as in the following example:

\$DCEO-PROMOTE SOYBEANS

If the appropriation bill is a "shell", include "TECH" in the ABR to identify it as a "shell", as in the following example:

\$DPT HUMN RTS-TECH

SECTION 40-30. LRB DRAFT NAME.

Each document prepared by the Legislative Reference Bureau is assigned an LRB draft name. The draft name appears on the cover page of a bill or constitutional amendment resolution below the synopsis and on all other pages in the upper right corner. Each LRB draft name is unique and identifies the document. An example of an LRB draft name for a bill follows:

LRB095 54321 DRJ 98765 b

In the example:

- "LRB" indicates that the document was prepared by the Legislative Reference Bureau.
- "095" indicates that the document was prepared for the 95th General Assembly.
- "54321" indicates the sequential number of the Legislative Reference Bureau file relating to the document.
- "DRJ" indicates the initials of the LRB attorney who drafted the document.
- "98765" indicates the log ID number that is unique to the document.
- "b" indicates that the document is a bill.

If the document is not a bill, the LRB draft name will end with one of the following instead of "b":

- "a" if the document is an amendment.
- "c" if the document is a conference committee report.
- "e" if the document is a Constitutional amendment.
- "m" if the document is a miscellaneous new document.
- "r" if the document is a resolution.
- "s" if the document is a revisory bill.
- "v" if the document is an amendatory veto motion.

In the case of an amendment, conference committee report, or amendatory veto motion, the sequential file number in the document's LRB draft name will be the same as that of the bill affected by the amendment or other document. The amendment or other document will have a unique log ID number, however. Similarly, in the case of an alternate version of a document or a redraft of a document, the sequential file number may remain the same, but the log ID number will always change so that the document may be identified by its unique draft name.

CHAPTER 45. NOTE ACTS AND MANDATES.

- 45-5. GENERALLY.
- 45-10. FISCAL NOTES.
- 45-15. STATE MANDATES.
 - (a) DEFINITIONS.
 - (b) MANDATE STAMPS.
 - (c) REIMBURSABLE MANDATES.
 - (1) SERVICE MANDATES.
 - (2) PERSONNEL MANDATES.
 - (3) PENSION MANDATES.
 - (4) TAX EXEMPTION MANDATES.
 - (d) EXCLUSIONS.
 - (1) REQUESTED.
 - (2) NO APPRECIABLE COST.
 - (3) OFFSETTING SAVINGS.
 - (4) COSTS RECOVERED.
 - (5) MINIMUM COSTS.
 - (e) NONREIMBURSABLE MANDATES.
 - (1) FEDERALLY MANDATED.
 - (2) ORGANIZATION AND STRUCTURE.
 - (3) DUE PROCESS.
- 45-20. STATE DEBT IMPACT NOTES.
- 45-25. CORRECTIONAL BUDGET AND IMPACT NOTES.
- 45-30. JUDICIAL NOTES.
- 45-35. PENSION IMPACT NOTES.
- 45-40. HOME RULE NOTES.
- 45-45. BALANCED BUDGET NOTES.
- 45-50. HOUSING AFFORDABILITY IMPACT NOTES.
- 45-55. COMBINATIONS.

SECTION 45-5. GENERALLY.

Note: Although the term “fiscal note” refers to the notes provided for under the Fiscal Note Act (25 ILCS 50/1, *et seq.*), in common usage the term “fiscal note” is also used as a generic label for all of the notes referred to in this Chapter. Because of this, don’t rely on the requester’s use of the label “fiscal note”. Instead, make certain that you know the specific purpose of the requester to ensure that you are working with the right note.

When a bill is considered by the General Assembly, the members must be aware of the consequences of the proposed legislation. Nine areas in which a bill may have an impact are specially designated for scrutiny. These areas are governmental revenue and spending, reimbursable State mandates, governmental debt, the correctional system, the number of judges, the public pension systems, home rule powers, supplemental appropriation bills, and single family residential housing affordability. Impact in these areas occurs frequently and with important consequences. In certain situations the chief sponsor of the bill is required to obtain and file information concerning the bill’s impact in these areas.

The Legislative Reference Bureau affixes a stamp to the original of each bill it prepares if the bill may have an impact in any of these 9 areas. The stamp indicates the area in which the bill may have an impact and serves to alert the chief sponsor that he or she may be required to provide information in that area. Senate Rule 5-5 and House Rule 41(a) (97th G.A.) provide that the Senate and House respectively shall comply with all effective Illinois laws requiring notes on bills.

Note and mandate stamps (other than for Balanced Budget Notes and certain Fiscal Notes) are required only on bills. An amendment, motion, or conference committee report may have an impact in one of the 9 areas, and the chief sponsor may be required to obtain and provide information, but you as a drafter need not be concerned with note or mandate stamps (other than for Balanced Budget Notes and certain Fiscal Notes) on any of these documents. Balanced Budget Note stamps are required on certain amendments and conference committee reports. Fiscal Note stamps are required on certain amendments affecting specified Acts related to mental health and developmental disabilities.

In most situations whether a bill needs a note or mandate stamp affixed is clear. There are many marginal cases, however. When the question could reasonably go either way, take the cautious route and affix a stamp. Your job is to indicate that one of the note Acts or the State Mandates Act might apply, not to make the final decision.

SECTION 45-10. FISCAL NOTES.

A fiscal stamp is required whenever the purpose or effect of a bill, either directly or indirectly, is to do any of the following:

- (1) expend any State funds;
- (2) increase or decrease the revenues of the State;
- (3) require the expenditure of their own funds by units of local government, school districts, or community college districts;
- (4) increase or decrease the revenues of units of local government, school districts, or community college districts; or
- (5) revise the distribution of State funds among units of local government, school districts, or community college districts. 25 ILCS 50/1 .

The statute further provides that indirect revenues include, but are not limited to, increased tax revenues or other increased revenues resulting from economic development, job creation, or cost reduction.

P.A. 92-567 (effective January 1, 2003) amended the Fiscal Note Act to provide that any bill *or amendment* that amends the Mental Health and Developmental Disabilities Code (405 ILCS 5/) or the Developmental Disability and Mental Disability Services Act (405 ILCS 80/) requires a fiscal note. 25 ILCS 50/1 and 25 ILCS 50/7. Therefore, be sure to check the "Fiscal Note" box on the top sheet if you're drafting a bill *or amendment* that amends either of those Acts.

Note that this requirement applies to shell bills as well as to substantive bills. Also note that it applies to *every amendment* that makes a change in either of the Acts -- no matter how insignificant the change.

This requirement is similar to the requirements imposed by the Balanced Budget Note Act in that under this requirement LRB must apply a Fiscal Note stamp to an amendment. The language added by P.A. 92-567 does not mention conference committee reports, whereas CCRs are specifically mentioned in the Balanced Budget Note Act. To be safe, however, a drafter should interpret the language to also require a fiscal note stamp for a *conference committee report* if the CCR (i) recommends concurring in or receding from an amendment that makes changes in the Mental Health and Developmental Disabilities Code or the Developmental Disability and Mental Disability Services Act or (ii) recommends amending or further amending one of those Acts.

A bill making a direct appropriation does not require a fiscal stamp.

Arguably, every bill considered by the General Assembly costs the State some money merely because the bill is prepared, introduced, and considered for passage. A fiscal note is not intended to cover the legislative cost, however; the note is intended to cover the cost of implementing the bill once it becomes law.

Some clear situations in which a fiscal stamp is required are raising or lowering taxes, requiring or eliminating governmental services, and changing the State aid formula for schools.

If the fiscal impact of a bill is minimal, speculative, or impossible to measure, then a fiscal stamp need not be affixed. You must exercise some common sense.

It appears in situation number (3) concerning the expenditure of funds by units of local government, school districts, or community college districts that a fiscal stamp is necessary only when an expenditure of funds is required. For example, if a bill merely authorizes, but does not require, municipalities to provide certain additional services, then a fiscal stamp is not necessary.

In situations (1), (2), (4), and (5), however, no easy distinction can be drawn between an authorization and requirement. Therefore, a fiscal stamp should be affixed in those situations whether the bill creates an authorization or requirement.

Whenever a fiscal stamp is affixed because of a bill's impact on funds of units of local government, school districts, or community college districts, consider whether a State mandate stamp should also be affixed.

SECTION 45-15. STATE MANDATES.

(a) DEFINITIONS. A "State mandate" is "any State-initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues". It does not include a court order unless the order is to enforce a statute or executive action creating or expanding a mandate. A mandate may be either reimbursable or nonreimbursable by the State. 30 ILCS 805/3, subsec. (b).

A "local government" is "a municipality, county, township, other unit of local government, school district, or community college district". 30 ILCS 805/3, subsec. (a).

Note that a circuit clerk is not a county or other local governmental official but is a nonjudicial member of the judicial branch of State government. *Drury v. County of McLean*, 89 Ill.2d 417 (1982). See Ill. Const., art. VI, sec. 18, subsec. (b). Thus a statutory provision that requires a circuit clerk to establish, expand, or modify certain activities of the office is usually not a "State mandate". Also note, however, that Section 20 of the Clerks of Courts Act (705 ILCS 105/20) requires a county board to provide necessary rooms, furniture, and vaults for the circuit clerk and requires the county treasury to pay the cost of those items. Carefully consider whether a particular statutory provision affecting a circuit clerk will necessitate additional expenditures from county revenues and thus be a "State mandate".

(b) MANDATE STAMPS. A mandate stamp must be affixed whenever a bill creates or expands a reimbursable State mandate. The stamp must be affixed even when the provisions of the bill expressly exempt the applicability of the State Mandates Act as discussed in Section 25-55 of this Manual. 30 ILCS 805/8, subdiv. (b)(1); Senate Rule 5-5 and House Rule 41(a) (97th G.A.).

Whenever a mandate stamp is required, it is always also necessary to affix a fiscal stamp. 30 ILCS 805/8, subdiv. (b)(2).

(c) REIMBURSABLE MANDATES. The following State mandates require the State to reimburse local governments unless they are otherwise excluded as discussed in subsection (d):

(1) SERVICE MANDATES. A service mandate is one that creates or expands governmental services or delivery standards for services. 30 ILCS 805/3, subsec. (f). This includes mandated services that were previously provided at the option of the local government. 30 ILCS 805/6, subsec. (g).

(2) PERSONNEL MANDATES. A personnel mandate is one that affects the salaries, wages, qualifications, training, hours, location of employment, working conditions, fringe benefits, and other benefits of local government employees. 30 ILCS 805/3, subsec. (h).

(3) PENSION MANDATES. A pension mandate is one that increases the pension benefits of local government employees. 30 ILCS 805/6, subsec. (e). A pension impact stamp and a fiscal stamp will also be required.

(4) TAX EXEMPTION MANDATES. A tax exemption mandate is one that exempts privately owned property or other specified items from the local tax base. 30 ILCS 805/3, subsec. (g).

Cross reference: Section 25-55 concerning exemption of a mandate from reimbursement by the State.

(d) EXCLUSIONS. In certain situations otherwise reimbursable mandates are excluded and nonreimbursable. 30 ILCS 805/8, subsec. (a). If a mandate is excluded and nonreimbursable, the Act establishing the mandate should explicitly state that it is excluded and give the reason; otherwise, the local government may not be obligated to implement the mandate unless moneys are appropriated for that purpose by the General Assembly. A mandate may be excluded for any of the following reasons:

(1) REQUESTED. It accommodates a request from local governments.

(2) NO APPRECIABLE COST. The additional duties can be carried out by existing staff and procedures at no appreciable net cost increase.

(3) OFFSETTING SAVINGS. The additional costs are offset by savings resulting in no aggregate increase in net costs.

(4) COSTS RECOVERED. The costs are wholly or largely recovered from federal, State, or other external financial aid.

(5) MINIMUM COSTS. The additional annual net costs are less than \$1,000 for each local government affected or less than \$50,000 in the aggregate for all local governments affected.

(e) NONREIMBURSABLE MANDATES. Reimbursement under the State Mandates Act is not required for the following mandates:

(1) FEDERALLY MANDATED. Legislation required by a federal mandate is nonreimbursable. 30 ILCS 805/3, subsec. (b).

(2) ORGANIZATION AND STRUCTURE. Mandates concerning local government organization and structure are nonreimbursable. They include mandates concerning the form and organization of local government, the establishment of forms and structures for interlocal cooperation, local elections, the designation of officers and their powers, duties, and responsibilities, and the prescription of administrative practices and procedures. 30 ILCS 805/3, subsec. (c). A mandate that expands the duties of a public official by requiring the provision of additional services is a reimbursable service mandate and cannot be characterized as a nonreimbursable organization and structure mandate. 30 ILCS 805/3, subsec. (f).

(3) DUE PROCESS. Due process mandates are nonreimbursable. They include mandates concerning the administration of justice, notification and conduct of public hearings, procedures for administrative

and judicial review, and protection of the public from malfeasance, misfeasance, and nonfeasance of local officials. 30 ILCS 805/3, subsec. (d).

SECTION 45-20. STATE DEBT IMPACT NOTES.

A State debt impact stamp must be affixed to any bill that "proposes to increase or add new long term debt authorization or would require, through appropriation, the use of bond financed funds". 25 ILCS 65/3.

Section 2 of the State Debt Impact Note Act, 25 ILCS 65/2, defines "long-term debt authorization" as follows:

Sec. 2. "Long-term debt authorization" means (1) dollar amount of bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which can be sold in support of designated purposes by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, not including units of local government or school districts; or

(2) the dollar amount of bond and other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue and which can be sold in support of designated purposes by the State, any department, authority, public corporation and quasi-public corporation of the State, the State colleges and universities, and any other public agency created by the State, not including units of local government or school districts.

"Long-term debt authorization" as defined in the Act is broader than "State debt" as defined in the Illinois Constitution because "State debt" includes only that which is secured by the full faith and credit of the State. Ill. Const., art. IX, sec. 9, subsec. (a). Don't confuse these concepts. A "State debt impact note" is required even when the debt is not secured by the full faith and credit of the State.

SECTION 45-25. CORRECTIONAL BUDGET AND IMPACT NOTES.

A correctional budget and impact stamp is required whenever a bill (1) creates a new criminal offense for which a sentence to the Department of Corrections may be imposed, (2) enhances any class or category of offense to a higher grade or penalty for which a sentence to the Department of Corrections is authorized, (3) requires a mandatory commitment to the Department of Corrections, (4) creates a new criminal offense for which a commitment to a juvenile detention facility, sentence of probation, intermediate sanctions, or community service may be imposed, or (5) enhances any class or category of offense to any grade or penalty for which adjudication, commitment, or disposition by a circuit court to the custody of a Probation and Court Services Department may result. 25 ILCS 70/2.

As a practical matter, a correctional budget and impact stamp is needed when (i) a felony or misdemeanor is created or (ii) a felony or misdemeanor is reclassified to a higher class. A correctional budget and impact stamp is not needed for a petty offense or business offense.

Cross reference: Section 20-40, subsection (a), concerning classified offenses.

SECTION 45-30. JUDICIAL NOTES.

A judicial stamp is required whenever a bill has the purpose and effect of increasing or decreasing the number of appellate judges, circuit judges, or associate circuit judges, either directly or indirectly. 25 ILCS 60/1.

A judicial stamp is required only when the "number" of judges is affected. A bill that proposes, for example, a new criminal offense may have the effect of increasing the caseloads of judges, but a judicial stamp is not required.

SECTION 45-35. PENSION IMPACT NOTES.

A pension impact stamp is required whenever a bill proposes to amend the Illinois Pension Code or the State Pension Funds Continuing Appropriation Act. 25 ILCS 55/2.

A pension bill often also requires a fiscal stamp, and those amending or affecting Articles 3 through 13 or Article 17 of the Illinois Pension Code may also require a mandate stamp.

SECTION 45-40. HOME RULE NOTES.

A home rule stamp is required whenever a bill denies or limits any power or function of a home rule unit. 25 ILCS 75/5.

Even if a preemption of home rule powers does not appear in a bill's provisions, you still may need to mark the "Home Rule Note" box on the bill request top sheet. Check the table of preempted home rule powers and functions in the LRB Act Analyses to see whether the Act you're amending already contains a preemption provision that applies to a new or amendatory provision in the bill. If it does, then mark the "Home Rule Note" box on the top sheet.

SECTION 45-45. BALANCED BUDGET NOTES.

A balanced budget stamp is required for every supplemental appropriation bill, for an amendment to a supplemental appropriation bill, and for an amendment to a bill that would cause the bill to become a supplemental appropriation bill. 25 ILCS 80/10. A "supplemental appropriation bill" is defined as an appropriation bill that is (i) introduced or amended (including any changes made by means of a conference committee report) on or after July 1 of a fiscal year and (ii) proposes (as introduced or as amended) to authorize, increase, decrease, or reallocate any moneys appropriated for the same fiscal year from the General Revenue Fund, the Common School Fund, the General Revenue Common School Special Account Fund, or the Education Assistance Fund. 25 ILCS 80/5.

Note that a balanced budget stamp must be applied to an *amendment* or *conference committee report* in certain instances as required by the Balanced Budget Note Act. Also note that if the source of the funds is not specified in a supplemental appropriation, it is assumed that the source of the funds is the General Revenue Fund, and a balanced budget stamp is required.

SECTION 45-50. HOUSING AFFORDABILITY IMPACT NOTES.

A housing affordability impact stamp is required for every bill (except those making a direct appropriation) whose purpose or effect is to directly increase or decrease the cost of constructing, purchasing, owning, or selling a single family residence. 25 ILCS 82/5. This may include legislation affecting such diverse subjects as contractors, realtors, insurance, property and utility taxes, local governmental units, and recorders.

SECTION 45-55. COMBINATIONS.

Theoretically, a bill could require a mandate stamp and all note stamps other than a balanced budget note stamp. This seldom occurs, but a bill often requires 2 or more stamps.

CHAPTER 50. AMENDMENTS.

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SECTION 50-5. GENERALLY.

An amendment makes changes to a bill or resolution while the bill or resolution is being considered by the General Assembly.

Cross references:

- (1) Section 25-5 for the distinction between an "amendment" to a bill and an "amendatory bill".
- (2) Section 80-45 concerning amendment of a resolution.

SECTION 50-10. BASIC STRUCTURE.

An amendment is made up of 2 basic parts: a heading and a body. The heading identifies the bill being amended. The body indicates the number of the amendment and the changes to be made to the bill. An example follows:

AMENDMENT TO HOUSE BILL 6215

AMENDMENT NO. _____. Amend House Bill 6215 as follows:

on page 1, line 10, after "city", by inserting ", village, or incorporated town"; and

on page 6, line 21, after "city", by inserting ", village, or incorporated town".

The body of an amendment is structured as one continuous sentence telling the enrolling and engrossing clerk how to change the bill.

SECTION 50-15. STATE OF THE BILL.

The first task in drafting an amendment is to determine the current state of the bill. If the bill is still being considered by the house of origin, then in drafting the amendment you must take into account the bill as it was introduced together with all amendments that have been or will have been adopted by the house of origin before the amendment being drafted. If the bill has passed the house of origin and is being considered by the second house, then you must take into account the engrossed bill (incorporating any amendments adopted by the house of origin) and all amendments that have been or will have been adopted by the second house before the amendment being drafted.

Cross reference: Section 50-80 concerning timing problems.

SECTION 50-20. INTERNAL REFERENCES.

(a) PAGE AND LINE OF BILL. The cover page of a bill, containing the synopsis and other information, is unnumbered. All other pages are numbered consecutively beginning with "1", although the number is not shown on page number 1.

Each line of each numbered page is also numbered from top to bottom in the left margin beginning with "1".

An example of a bill, with the number of lines per page shortened for purposes of illustration, follows:

HOUSE BILL 7220

A BILL FOR

1 AN ACT concerning civil law.

3 **Be it enacted by the People of the**
4 **State of Illinois, represented in the**
5 **General Assembly:**

6 Section 5. The Code of Civil Procedure is
7 amended by changing Section 15-1401 as follows:

8 (735 ILCS 5/15-1401)

9 Sec. 15-1401. Deed in lieu of foreclosure.

10 The mortgagor and mortgagee may agree on a

11 termination of the mortgagor's interest in the
12 mortgaged real estate after a default by a
13 mortgagor. Any mortgagee or mortgagee's nominee
14 may accept a deed from the mortgagor in lieu

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1 of foreclosure subject to any other claims
2 or liens affecting the real estate. Acceptance of
3 a deed in lieu of foreclosure shall relieve from
4 personal liability all persons who may owe
5 payment or the performance of other obligations
6 secured by the mortgage, including guarantors of
7 ~~such indebtedness or obligations~~, except to the
8 extent a person agrees not to be relieved in an
9 instrument executed contemporaneously. A deed in
10 lieu of foreclosure, whether to the mortgagee or
11 mortgagee's nominee, shall not effect a merger of
12 the mortgagee's interest as mortgagee and the
13 mortgagee's interest derived from the deed in
14 lieu of foreclosure.
15 (Source: P.A. 84-1462.)

The line numbers of each page of the bill are shown on the left margin.

In an amendment the line of text that is being changed may be identified by reference to the page and line numbers of the bill. An example of an amendment to House Bill 7220, the previous example, follows:

1 AMENDMENT TO HOUSE BILL 7220

2 AMENDMENT NO. ____ . Amend House Bill 7220
3 as follows:

4 on page 1, line 7, by replacing "Section
5 15-1401" with "Sections
6 15-1401 and 15-1405 and adding Section 15-1406";
7 and

8 on page 1, lines 12 and 13, by replacing "a
9 mortgagor" with "the a mortgagor"; and

10 on page 2, below line 15, by inserting the
11 following:

12 "(735 ILCS 5/15-1405)
13 Sec. 15-1405. Power of sale. No real
14 estate within this State may be sold by virtue of
15 any power of sale contained in a mortgage or any
16 other agreement, and all such mortgages may ~~only~~
17 be foreclosed only in accordance with this
18 Article.
19 (Source: P.A. 84-1462.)

20 (735 ILCS 5/15-1406 new)
21 Sec. 15-1406. Termination of equity of

22 redemption. A foreclosure by any method
 23 authorized by this Part 14 terminates the
 24 mortgagor's equity of redemption."

In the last example, on page 1, lines 12 and 13 of the bill "a mortgagor" is replaced with "the a mortgagor". It would be inaccurate to merely replace "a" with "the a" because "a" appears twice in line 12. It would then be unclear as to which "a" is being changed or whether both are being changed.

In the house of origin, the page and line numbers of a bill stay the same even after amendments are adopted. In the second house, if there are no amendments adopted by the house of origin, then the engrossed bill (the version of the bill in the second house) usually has the same page and line numbers as the bill as introduced, but may not if formatting is changed in the engrossing process. If there are amendments adopted by the house of origin, however, then the engrossed bill will incorporate those amendments. The engrossed bill being considered by the second house will then almost definitely have page and line numbers different from those of the bill as introduced. Therefore, it is imperative that amendments in the second house refer to page and line numbers of the engrossed bill.

Amendments, conference committee reports, amendatory veto motions, and constitutional joint resolutions are also given page and line numbers that can be used to identify text within the document.

(b) PAGE AND LINE OF AMENDMENT. Sometimes an amendment is adopted that makes changes so that in a further amendment to the same bill it is impossible to identify the text that is being amended by page and line references to the bill. In this situation you may identify the text by describing its location other than by page and line numbers or, sometimes, by identifying the page and line numbers of the amendment.

Using the example House Bill 7220, assume the amendment shown as an example in subsection (a) is adopted as House Amendment No. 1 and the bill is then to be further amended. An example of an amendment to House Bill 7220 by reference to the page and line numbers of Amendment No. 1 follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220, AS AMENDED, with reference to page and line numbers of House Amendment No. 1, on page 1, line 23, by replacing "the" with "any".

(c) DESCRIPTIVE. Sometimes it is impossible to identify the text to be amended by reference to the page and line numbers of either the bill or a previous amendment. In that case you must identify the text by describing its location within the bill as changed by previously adopted amendments. If any part of an amendment must be descriptive, all of the amendment must be so. You cannot alternate between descriptive and page and line references.

Using the example House Bill 7220, assume again that the amendment shown as an example in subsection (a) is adopted by the House as Amendment No. 1 and that the bill is then to be further amended. An example of an amendment to House Bill 7220 by descriptive reference follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220, AS AMENDED, as follows:
 in Section 5, Sec. 15-1401, the sentence beginning "The mortgagor", by replacing "the a mortgagor" with "any a mortgagor"; and
 in Section 5, Sec. 15-1406, by replacing "mortgagor's equity of redemption" with "equity of redemption of all mortgagors".

In identifying the added Sec. 15-1406 for the purpose of locating the text to be amended, it is referred to as "Sec. 15-1406" even though it appears in the bill, as amended, as "Sec. 15-1406". The reason is that underscoring should be used only when the language underscored is then and there being added as new language to an existing statute. In the descriptive clause, Sec. 15-1406 is not then and there being added.

When amending by descriptive reference, describe a location in the bill by starting with the most general unit of organization and ending with the most particular. It is easier for a person reading an amendment to look first for the most general location in the bill and then for successively more particular locations. Do not say "in the sentence beginning "The mortgagor" in Sec. 15-1401 of Section 5, by replacing..." going from the particular to the general; it is much harder to follow.

Any text within a bill can be identified descriptively, but you must take great care to be clear and accurate. The descriptions may also become quite complex. An alternative is to delete the entire text of the bill and replace it with text incorporating the bill (either as introduced or engrossed) and all previous amendments together with the new changes. Total replacement is discussed in Section 50-85 of this Manual.

SECTION 50-25. AS AMENDED.

An amendment is either (1) to the bill, as introduced or engrossed, or (2) to the bill as it has previously been amended by the house in which it is currently being considered. The distinction is not between an unamended bill and a previously amended bill, but is rather between text of the bill that has not been changed by previous amendment and text that has been changed by previous amendment. It is only when the text that is currently being amended has already been changed that the amendment is to the bill, as amended.

Using the example House Bill 7220, assume the amendment shown as an example in subsection (a) of Section 50-20 is adopted as House Amendment No. 1 and the bill is then to be further amended. An example of an amendment to the bill, as amended, follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220, AS AMENDED, with reference to page and line numbers of House Amendment No. 1, on page 1, line 14, after "estate", by inserting "located".

Making the same assumptions, an example of an amendment to the bill as introduced follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220 on page 2, line 3, by replacing "relieve" with "absolve ~~relieve~~".

SECTION 50-30. HEADING.

The heading of an amendment identifies the document as an amendment and names the bill being amended. An example follows:

AMENDMENT TO HOUSE BILL 9999

If the amendment is to the bill, as amended, it is not necessary to include "as amended" in the heading. Also, common practice is not to identify an amendment as a House Amendment or Senate Amendment or as a Floor Amendment or Committee Amendment.

If you are amending a bill filed during a special session of the General Assembly, the amendment's heading must so identify the bill, as in the following example:

AMENDMENT TO HOUSE BILL 1, FIRST SPECIAL SESSION

SECTION 50-35. BEGINNING CLAUSE.

An amendment begins with its number and then identifies the bill and, if applicable, the amendment that is the basis for page and line references. Examples follow:

AMENDMENT NO. _____. Amend Senate Bill 9999

AMENDMENT NO. _____. Amend House Bill 8668 as follows:

AMENDMENT NO. _____. Amend House Bill 9117, AS AMENDED, with reference to page and line numbers of Senate Amendment No. 4,

If the amendment is to the bill, as amended, this is indicated and the phrase is capitalized for emphasis.

The amendment number is left blank and is inserted either by the Secretary of the Senate or the Clerk of the House when the amendment is filed. Each house numbers its own amendments consecutively beginning with "1".

If you are amending a bill filed during a special session of the General Assembly, the amendment's beginning clause must so identify the bill, as in the following example:

AMENDMENT NO. _____. Amend House Bill 1, First Special Session,

SECTION 50-40. DELETE, INSERT, OR REPLACE.

(a) LOCATION OF CHANGE. The first thing an amendment should do with respect to each change it makes is identify the location of the text to be changed. Examples follow:

on page 6, line 14, by deleting

on page 3, line 4, after "his", by inserting

in Section 4, in the introductory clause, by replacing

in Section 2, Sec. 5-1102, subsec. (b), the sentence beginning "The mayor shall", by replacing

on page 2, line 15, after the comma, by inserting

on page 3, immediately below line 17, by inserting

on page 3, immediately above line 18, by inserting

in Section 5, immediately below the end of Sec. 16.25, by inserting

on page 4, by replacing lines 2 and 3 with

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on page 3, lines 5 and 8, after "director" each time it appears, by inserting

on page 5, lines 3 and 7, by replacing "director" each time it appears with

by replacing line 6 on page 3 through line 15 on page 6 with

by replacing the title with

by replacing everything after the enacting clause with

by replacing everything before the enacting clause with (if the bill has a preamble following the title)

(b) DELETE. To merely remove text from the bill, the accepted phrase is "by deleting". Examples follow:

on page 16, by deleting lines 7 through 15; and

by deleting line 8 on page 17 through line 5 on page 18; and

Don't use the phrase "by striking". In order to avoid confusion, "strike" is used only to refer to striking through text to show that existing law is to be omitted.

Sometimes an amendment has the effect of deleting all the changes originally proposed by the bill to a Section of existing law so that, if the amendment is adopted, the Section will read exactly as it already reads in current law. In this case, the amendment should delete the entire Section from the bill. A Section of existing law should not appear in the amendatory provisions of a bill if the bill makes no changes to the Section. (But see Section 25-50, subsection (b), of this Manual concerning the treatment of statutes that appear in multiple text form.)

(c) INSERT. If text is merely to be inserted, the accepted phrase is "by inserting". An example follows:

on page 5, line 12, before the period, by inserting "or by any other means"; and

(d) REPLACE. When text is to be deleted and new text inserted at the same place, an easy way to do it is as follows:

on page 1, line 4, by replacing "X" with "Y"; and

There are several other alternative phrasings that are acceptable. Examples follow:

on page 5, line 12, by changing "X" to "Y"; and

on page 5, line 15, by deleting "X" and replacing it with "Y"; and

on page 5, line 20, by deleting "X" and inserting instead "Y"; and

(e) UNDERSCORE; STRIKE THROUGH. In indicating the text that is to be deleted or inserted by an amendment, you must take great care to strike through exactly as the language appears in text to be deleted and to underscore exactly as the language will appear in text to be inserted.

An example based on House Bill 7220, shown as an example in subsection (a) of Section 50-20, assuming no previous amendments, is as follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220 as follows:

on page 1, lines 12 and 13, by replacing "a mortgagor" with "any a mortgagor"; and

on page 2, lines 6 and 7, by replacing "~~of such indebtedness~~" with "of such indebtedness".

SECTION 50-45. CONSTRUCTING A SERIES.

The body of an amendment is one sentence, often long, consisting of a beginning clause and a series of itemized changes to the bill. The parts of the series are connected by "; and", and each part is separated by a blank line for ease in reading. The order in which the itemized changes appear in the amendment should be the same order as the text being changed appears in the bill.

In constructing a series of itemized changes, it is best to be consistent in the method used to identify the locations of changes to the text. Make all changes by one method: by reference to page and line numbers of the bill, by reference to page and line numbers of a previous amendment, or descriptively. Although it is possible to mix methods of reference, it tends to become confusing if not done with extreme care.

Using the example House Bill 7220 shown in subsection (a) of Section 50-20, and assuming no previous amendments, suppose that an amendment to the bill proposes to amend the bill (i) "on page 1, by replacing line 1" with a new title and (ii) "by replacing everything after the enacting clause" with a new substantive change. The first itemized change in this example is referenced to page 1 of the bill. Logically, the reference to page 1 stays the same in the succeeding itemized changes until the page reference is changed. Does the second itemized change delete only page 1 after the enacting clause or also all of page 2? You can avoid this sort of ambiguity by using a consistent method of reference throughout the amendment.

Suppose that an amendment proposes to make changes on lines 8, 12, and 23 on page 1 of a bill. It has been common to identify the location of the first proposed change as "on page 1, line 8" and to identify the locations of the other proposed changes as "on line 12" and "on line 23" without repeating the page number because it is unchanged. Better practice, however, is to identify the page number for the location of each proposed change, even if it is the same as the page number for the location of the preceding proposed change. This avoids confusion in identifying the location of a proposed change, especially if the text of the proposed change is lengthy. Using the above example, assume that the text of the proposed change on line 8 begins on page 1 of the amendment and ends on page 2 or a later page of the amendment. If the amendment identifies the location of the second proposed change only as "on line 12", a person reading the amendment may have to go back to page 1 of the amendment to determine which page of the bill "line 12" is on.

SECTION 50-50. GERMANENESS.

An amendment may be ruled out of order by the Speaker of the House or the President of the Senate if the subject matter of the amendment is not germane to the subject matter of the bill. If the sponsor of an amendment asks that it be prepared for a specific bill, however, there is usually little, if anything, that you can do concerning germaneness other than to alert the sponsor to the potential problem and to try to devise a new title for the bill indicating some connection between the amendment and the bill. (The title may not have to be changed if it already broadly describes the bill's subject, as suggested in Section 10-20 of this Manual).

Under the 1870 Illinois Constitution the germaneness of an amendment to a bill was a constitutional requirement enforced by the courts. Section 13 of Article IV of the 1870 Illinois Constitution required a bill to be read on 3 different days in each house. On the basis of the 3-reading requirement, the Supreme Court held that a bill amended by an amendment not germane to the original bill was invalid. *Giebelhausen v. Daley*, 407 Ill. 25, 46-48 (1950).

The 1970 Illinois Constitution also contains a 3-reading requirement. Ill. Const., art. IV, sec. 8, subsec. (d). But the 1970 Illinois Constitution, unlike the 1870 Illinois Constitution, adopts the enrolled bill rule as follows: "The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. Const., art. IV, sec. 8, subsec. (d). On the basis of the enrolled bill rule, the Supreme Court has held that the 3-reading requirement is a procedural matter to be determined by the presiding officers of the 2 houses, not by the courts. *Fuehrmeyer v. City of Chicago*, 57 Ill.2d 193, 198 (1974). See also *Geja's Cafe v. Metropolitan Pier and Exposition Authority*, 153 Ill.2d 239 (1992), in which the Illinois Supreme Court refused to abandon the enrolled bill doctrine and upheld the validity of a statute that was passed despite the fact that the General Assembly did not comply with the 3-reading requirement. But the court admonished the General Assembly to police itself and reserved the right to revisit the enrolled bill rule if the General Assembly continues to violate the rule. In *People v. Dunigan*, 165 Ill.2d 235 (1995), however, no such admonishment appeared in the majority opinion of the Illinois Supreme Court. The court in *Dunigan* held that the enrolled bill rule precludes the court from inquiring into the legislature's compliance with the procedural requirements for passage of bills. The court concluded that subsection (d) of Section 8 of Article IV of the Illinois Constitution leaves to the President of the Senate and the Speaker of the House the determination of whether the bill has been read by title on 3 different days in each house. When the Speaker and President of the Senate certify that the procedures for passage have been met, the enrolled bill rule precludes the court from considering whether the General Assembly has complied with the 3-reading requirement. This does not mean that germaneness is no longer constitutionally required. It merely shifts the decision on germaneness from the courts to the presiding officers of both houses.

Determining whether an amendment is germane sometimes requires divination on the part of the presiding officer. The courts define germaneness as having a "common tie ... found in the tendency of the provision to promote the object and purpose of the act to which it belongs". *Dolese v. Pierce*, 124 Ill. 140, 147 (1888). This is not a very precise standard. In ruling from the chair, the presiding officer often speaks in terms of horizontal and vertical germaneness. Horizontal germaneness means dealing with the same subject matter as the bill and requires application of the imprecise judicial definition of germaneness. Vertical germaneness means amending the same Act that is already being amended by the bill, assuming that the bill amends only one Act and contains no new or original provisions. If a bill amends more than one Act or also contains new or original provisions, then an amendment will have to be horizontally germane.

As previously noted, all you can do is alert the sponsor to a potential germaneness problem and try to show a connection in an amended title.

Cross reference: Section 5-10 concerning the single-subject rule.

SECTION 50-55. TITLE.

Each time you prepare an amendment you must check the title of the bill to determine whether the title needs to be changed to include the subject matter of the amendment. See the example amendment in subsection (a) of Section 50-20.

NOTE: As of December 2012, the practice of the Parliamentarians of both the House and the Senate on amendments that change the title of a bill is to rule them out of order.

Cross references: Sections 10-20 through 10-35 concerning titles.

SECTION 50-60. INTRODUCTORY CLAUSE.

An amendment often proposes to amend a Sec. of existing law not yet amended by the bill but contained in the same Act as other Secs. that are amended by the bill. The amendment should insert the additional Sec. in the ILCS order within the Section of the bill amending the appropriate Act. You must also change the introductory clause to include the additional Sec. number. See the example in Section 50-20, subsection (a), of this Manual.

Cross reference: Section 25-10 concerning introductory clauses.

SECTION 50-65. ADDITIONAL SECS. AND SECTIONS.

(a) SEC. IN ACT ALREADY AMENDED. When an amendment proposes to amend a Sec. of existing law not yet amended by the bill but contained within the same Act as other Secs. that are amended by the bill, the insertion can be made within the appropriate amendatory Section of the bill as suggested in Section 50-60 of this Manual. There are times, however, when the bill has grown by previous amendment and the structure of the bill has become so complex that descriptive references to the locations of text to be changed are impossibly confusing. It is then acceptable to add a new amendatory Section to the bill amending the additional Sec., even though another amendatory Section of the bill amends the same Act.

(b) SEC. IN ACT NOT YET AMENDED. When an amendment proposes to amend a Sec. of existing law not contained in any Act already amended by the bill, then you should add a new amendatory Section of the bill at a point to maintain the chapter and Act sequence of ILCS, if possible. You can number the new amendatory Section in the proper sequence within the bill, and if the Sections of the bill are numbered in multiples of 5, you need not renumber the subsequent Sections of the bill. On the other hand, if the Sections of the bill are not numbered in multiples of 5 and renumbering the subsequent Sections of the bill is too troublesome, you can assign the new amendatory Section a number within the Arabic decimal system between the Sections where it is inserted (for example, Section 3.5). Section numbers of amendatory Sections of the bill do not become part of the Acts they amend, so the numbering of those Sections is not critical.

(c) SECTION OF A NEW ACT. When an amendment proposes to add a new Section to a new Act, insert the new Section at its logical place and give it a Section number within the numbering scheme of the bill. If the Sections of the bill creating the new Act are numbered in multiples of 5 and you have time to renumber the subsequent Sections and change internal references, assign the new Section a number that is a multiple of 5 and renumber the subsequent Sections (and change internal references) as necessary. If you don't have time to renumber subsequent Sections and change internal references, you may assign the new Section a number ending in 2, 3, 7, or 8. If the Sections of the bill are not numbered in multiples of 5, you may need to renumber subsequent Sections of the bill to avoid assigning the new Section a number such as 6.5. Assigning the next multiple of 5 or whole number to the new Section and renumbering subsequent Sections is not an ironclad rule, but it is better practice for a new Act to at least start its life with the best numbering scheme used consistently to allow for maximum further expansion in later years. Whenever you renumber Sections of a new Act in the bill, you must verify, and correct if necessary, all internal Section references within the new Act and amendatory provisions of the bill.

Cross reference: Section 15-15 concerning Section numbers.

SECTION 50-70. MULTIPLE NEW ACTS.

Occasionally an amendment will propose to add a new Act to a bill that already contains a different new Act. When drafting an amendment that, if adopted, will result in a bill containing 2 or more new Acts, place each new Act in a separate Article of the bill. Give each of those Articles a short title in the form "ABC Act".

References within each Article to the new Act contained within that Article should be to "this Act", just as in the case of a bill containing only one new Act.

Prior practice was to give each Article a short title in the form "ABC Law", but this then required changing "Act" to "Law" in multiple places: (i) the short title of the new Act contained in the underlying bill and each reference to "this Act" contained in that new Act and (ii) the short title of the new Act being added to the underlying bill and each reference to "this Act" contained in the added new Act. Using a short title in the form "ABC Act" in each Article eliminates the need to change "Act" to "Law" in all those places and thus eliminates the possibility of overlooking one or more of those necessary changes.

References to "this Act" in the body of each Article shouldn't be confusing if the short title Section of each Article includes an explanation of such references as in the following example:

Section 1-1. Short title. This Article may be cited as the Railroad Station Restoration Grant Act, and references in this Article to "this Act" mean this Article.

SECTION 50-75. ONE AMENDMENT OR SERIES.

Sometimes a sponsor requests that several changes be made to a bill. All the changes may be incorporated into a single amendment, particularly when the changes are not controversial or when the changes are logically inseparable.

There are other times, however, when some changes are likely to be more controversial than others. The sponsor may then prefer to offer the changes in a series of separate amendments. In a doubtful situation, seek instructions from the sponsor. When the changes are to be made by a series of amendments, then you and the sponsor should establish the sequence in which the amendments will be offered and decide whether alternative versions are necessary.

SECTION 50-80. TIMING PROBLEMS.

(a) ALTERNATIVE VERSIONS. As discussed in Section 50-15, you must determine the current state of the bill before drafting an amendment. There are times, however, when the state of the bill may change between the time the amendment is drafted and when it is offered. An intervening amendment may not affect the same text as the amendment in question, in which case the amendment will still be in order. Other times an intervening amendment affects the same text, in which case the amendment in question will be out of order. There is usually no way for you to anticipate whether an intervening amendment will be offered and, if so, whether it will be adopted. If an intervening amendment is adopted, the sponsor may have to request a new version of the amendment taking into account the intervening amendment.

There are times, however, when it is known that other amendments will be offered before the amendment in question. Other amendments may already have been filed or you may be preparing a series of amendments for the same sponsor. In this situation, the sponsor may wish to have alternative versions of the amendment prepared, one assuming a prior pending amendment is adopted and another assuming it is not adopted.

(b) STACKING. When numerous other amendments will be offered before the amendment in question, it is often impractical to prepare a separate amendment for each alternative. In other situations, it may be known that there will be other amendments offered first, but the content of those amendments may not be known at the time the amendment in question is drafted. There may still be a way to make the amendment in question work no matter what alternative actually becomes the case, particularly when the amendment in question proposes to amend existing law rather than create a new Act. The method is to stack either Articles or Sections at a predetermined location in the bill.

A simple example is when there are several prior pending amendments and the task is to draft one amendment to be offered after all the others have been offered. Using the example House Bill 7220 shown in subsection (a) of Section 50-20, assume there are a dozen pending amendments all dealing with civil practice and procedure, some amending the Code of Civil Procedure and some amending other Acts, but none of the other amendments creating Articles within the bill. The amendment in question could be in the following form:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220 as follows:

by inserting immediately below the enacting clause the following:

"ARTICLE 5.

Section 5-5. The Cemetery Maintenance District Act is amended by adding Section 13 as follows:

(70 ILCS 105/13 new)

Sec. 13. Eminent domain. A cemetery maintenance district may acquire property by eminent domain proceedings as provided in the Eminent Domain Act.

Section 5-10. The Rescue Squad Districts Act is amended by adding Section 13.5 as follows:

(70 ILCS 2005/13.5 new)

Sec. 13.5. Eminent domain. A rescue squad district may acquire property by eminent domain proceedings as provided in the Eminent Domain Act.

ARTICLE 10."

Note that the bill's original title is broad enough to cover any possibility within the general subject matter of the bill and the various amendments. The last example should work no matter what previous amendments are adopted, except if a previous amendment changed the title. Then the amendment in question should be to the bill, as amended. This situation can be covered by preparing one alternative amendment the same as the example, but with ", AS AMENDED," inserted after "7220" in the beginning clause and with a provision changing the title, if appropriate.

In the preceding example, the insertion of an Article (instead of a single Section) immediately below the enacting clause is appropriate if the inserted text is a new Act or consists of 2 or more Sections that form a cohesive unit.

Another simple example is when there are no prior pending amendments and the task is to draft a series of amendments for the same sponsor to be offered consecutively. Each amendment (and an alternative to the bill, as amended) could be in the following form:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220 as follows:

by inserting immediately below the enacting clause the following:

"Section 5. The Code of Civil Procedure is amended by adding Section 15-1406 as follows:

(735 ILCS 5/15-1406 new)

Sec. 15-1406. Termination of equity of redemption. A foreclosure by any method authorized by this Part 14 terminates the mortgagor's equity of redemption."; and

by renumbering all subsequent Sections consecutively in ascending numerical order using whole numbers in increments of 5 beginning with the number "10".

Each amendment in the series can be in the form of the last example, but with a different Section 5. No matter which amendments are adopted and regardless of the order in which they are adopted, the next amendment in the series (to the bill, as amended) should still work.

Assume in the last example that the sponsor also wishes to add an immediate effective date to the bill. This can be done as in the following example (and an alternative to the bill, as amended), but the effective date amendment must be the last amendment offered in the series:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220 as follows:

by inserting at the end of the bill the following:

"Section 999. Effective date. This Act takes effect upon becoming law.".

If the bill being amended already has an effective date provision at the end of the bill and the sponsor wishes to change it, then in the last example the added Section 999 should replace the last Section at the end of the bill rather than be inserted immediately below the last Section.

Stacking amendments can be a very useful tool. It is simple in principle and can be adapted to cover a wide range of situations. Take care, however, to make sure it will work in the particular situation you face.

(c) STACKING; AMENDMENTS IN UNCERTAIN ORDER. When it is unknown which amendment or amendments of a group of amendments will be adopted, or what order they might be adopted in, and the bill needs to be prepared to accept any possible combination of those amendments, prepare the bill to address this situation by creating an amendment that establishes an open structure to receive the substantive amendments. For example, using SB 1013 from the 96th G.A.:

1 AMENDMENT TO SENATE BILL 1013

2 AMENDMENT NO. _____. Amend Senate Bill 1013, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Article 1.

6 Article 99.

7 Section 99-99. Effective date. This Act takes effect upon
8 becoming law."

Once this amendment has been adopted, then any combination of subsequent amendments can be adopted, in any order, provided they have both (1) the language of lines 3 and 4 of the following amendments, and (2) a unique section number, as shown in line 5 of the following amendments:

1 AMENDMENT TO SENATE BILL 1013

2 AMENDMENT NO. _____. Amend Senate Bill 1013, AS AMENDED,
3 by inserting the following in its proper numeric sequence in
4 Article 1:

5 "Section 1-20. The Unified Code of Corrections is amended
6 by changing Section 5-5-3 as follows:..."

1 AMENDMENT TO SENATE BILL 1013

2 AMENDMENT NO. _____. Amend Senate Bill 1013, AS AMENDED,
3 by inserting the following in its proper numeric sequence in
4 Article 1:

5 "Section 1-25. The Criminal Code of 1961 is amended by
6 adding Section 12-6.5 as follows:..."

Senate Amendments 1 through 10 to SB 1013 from the 96th G.A. are an example of this structure in practice. Senate Amendment 1 creates the open structure, Senate Amendments 2 through 10 were substantive amendments: Senate Amendments 2 through 9 show how to add amendments to existing law to the structure created by Senate Amendment 1; Senate Amendment 10 shows how to insert a new Act into this structure.

1 AMENDMENT TO SENATE BILL 1013

2 AMENDMENT NO. _____. Amend Senate Bill 1013, AS AMENDED,
3 by inserting the following immediately above Article 99:

4 "Article 2.

5 Section 2-1. Short title. This Article may be cited as the..."

SECTION 50-85. TOTAL REPLACEMENT.

There are 2 common situations in which an amendment totally replaces the body of a bill and often the title also. One situation is when the amendment, although limited to the same general subject as the bill in order to maintain germaneness, does something entirely different from what the bill does. Another situation is when, because of previous amendments, the bill has become hard to follow because of the necessity of flipping back and forth between the bill and the various amendments. A new amendment incorporating all previous amendments as well as the new changes will clean up the bill.

An example of a format that may be used for total replacement follows:

AMENDMENT TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Bill 7220, AS AMENDED, as follows:

by replacing the title with the following:

"AN ACT"; and

by replacing everything after the enacting clause with the following:

"...".

Total replacement for the purpose of cleaning up a bill and making the bill more readable has one disadvantage that could, depending on the sponsor's desire, preclude using that method: total replacement tends to hide the new changes being made by the amendment.

SECTION 50-90. APPROPRIATION BILLS.

Appropriation bills are amended in the same manner as any other bill.

There are times, however, when an appropriation bill becomes so complicated (because of prior adopted amendments) that it is virtually impossible to accurately describe the location of the changes to be made by a new amendment. An appropriation bill, because of its structure, does not easily lend itself to descriptive references to text within the bill.

One solution is to totally replace the body of the bill as discussed in Section 50-85. Because of the typical length of appropriation bills, however, a total replacement usually results in an extremely long amendment.

Another solution, much simpler, is to refer to the page and line numbers of the bill to identify the item of appropriation and then identify the amount to be changed as it has been previously amended, if that is the case. To illustrate this method of amendment, assume the following bill, much shorter than most appropriation bills, is pending in the Senate:

SENATE BILL 6336

A BILL FOR

1 AN ACT making appropriations for the
2 ordinary and contingent expenses of the
3 Department of Agriculture.

4 **Be it enacted by the People of the**
5 **State of Illinois, represented in the**
6 **General Assembly:**

7 Section 5. The following amounts, or so
8 much of those amounts as may be necessary,
9 respectively, are appropriated to the Department
10 of Agriculture to provide free soybean soup at
11 the 2007 Illinois State Fair:

12 For Illinois grown soybeans \$10,000
13 For Illinois raised ham hocks 6,000
14 For cooking equipment 2,000
15 For supplies 4,000

16 For personal services..... 8,000
 17 TOTAL \$30,000

18 Section 99. Effective date. This Act
 19 takes effect on July 1, 2007.

Assume Senate Amendment No. 1 changed page 1, line 12, from "\$10,000" to "\$13,000", page 1, line 13, from "6,000" to "7,000", and page 1, line 17, from "30,000" to "34,000".

Assume Senate Amendment No. 2 changed page 1, line 14, from "2,000" to "5,000" and page 1, line 17, from "34,000" to "37,000".

A further amendment could be as follows:

AMENDMENT TO SENATE BILL 6336

AMENDMENT No. _____. Amend Senate Bill 6336, AS AMENDED, with reference to page and line numbers of the bill for purposes of identifying the items of appropriation and with reference to the amended amount of each item, where amended, as follows:

on page 1, line 13, by replacing "7,000" with "9,000"; and

on page 1, line 15, by replacing "4,000" with "3,000"; and

on page 1, line 17, by replacing "37,000" with "38,000".

A final point to remember about amendments to appropriation bills is that it is the line item amounts that control; the totals shown for the line item amounts, if the totals are incorrect, do not limit or expand the line item amounts in any way. For instance, assume Senate Bill 6336, shown as an example in this Section, has not been amended and that an amendment is adopted changing "\$10,000" on page 1, line 12, to "\$15,000", but without changing the total of \$30,000. The line item amounts will control, and the total will be \$35,000, regardless of the total shown in the bill. For this reason, when amending the line item amounts in an appropriation bill, it has been the custom and practice to not amend the totals of line item amounts even though changes in one or more line items make those totals incorrect. This custom and practice is supported by an opinion of the Attorney General issued in connection with appropriations to pay certain claims against the State. The Attorney General stated that it was obviously the General Assembly's intent not to appropriate the stated total but rather to appropriate a sum sufficient to pay for the enumerated items. 1971 Op.Atty.Gen., p. 117.

SECTION 50-95. AMENDMENT TO AMENDMENT.

Although uncommon, before its adoption an amendment may itself be amended. Don't confuse this with an amendment to a bill, as amended, as discussed in Section 50-25 of this Manual. An example of an amendment to an amendment based on the amendment to House Bill 7220, shown in subsection (a) of Section 50-20, assuming it is numbered House Amendment No. 1, follows:

AMENDMENT TO HOUSE AMENDMENT NO. 1

TO HOUSE BILL 7220

AMENDMENT NO. _____. Amend House Amendment No. 1 to House Bill 7220 on page 1, line 14, by replacing "estate" with "estate located".

Better practice is to prepare a new amendment incorporating the changes, rather than amending the initial amendment.

SECTION 50-100. SYNOPSIS AND ILCS CITATIONS.

The Legislative Reference Bureau prepares a synopsis for each amendment and also indicates what ILCS citations are added or deleted by the amendment. The synopsis and ILCS citations are not printed with the amendment, but are used by LRB for its Legislative Synopsis and Digest and by the Legislative Information System for its computerized synopsis and digest of bills.

An example based on House Bill 7220 and the amendment shown as an example in subsection (a) of Section 50-20 follows:

Adds reference to:
735 ILCS 5/15-1405 from Ch. 110, par. 15-1405
735 ILCS 5/15-1406 new

Provides that an authorized method of foreclosure terminates the mortgagor's equity of redemption. Makes grammatical changes.

As another example, assume that a bill amends Section 17 of the Soil and Water Conservation Districts Act and has an immediate effective date. Further assume that an amendment changes the title and replaces everything after the enacting clause with an amendment to Section 8 of the Act and adds an immediate effective date. The amendment synopsis would be as follows:

Deletes reference to:
70 ILCS 405/17 from Ch. 5, par. 120.

Adds reference to:
70 ILCS 405/8 from Ch. 5, par. 113.

Deletes everything. Amends the Soil and Water Conservation Districts Act. Authorizes a petition by 15 (rather than 25) people for creation of a district. Effective immediately.

Initially stating that the amendment deletes everything draws notice to the fact that the amendment replaces everything that was previously in the bill. (It is understood that "Deletes everything" does not mean that the amendment deletes the bill's enacting clause.) Although both before and after the amendment the bill has an immediate effective date, the amendment synopsis should restate the effective date; otherwise, since the synopsis indicates that everything is deleted, a reader could infer that there is no stated effective date. A similar situation arises if the amendment deletes everything after the enacting clause and then reinserts the provisions of the bill as introduced except for certain changes, retaining the bill's immediate effective date. Again, restate the effective date in the synopsis of the amendment even if the synopsis states that the amendment reinserts the provisions of the bill as introduced.

Whether an amendment replaces everything after the enacting clause or amends a bill by page and line number, if the amendment affects a particular department of State government or the head of a department, don't say just "the Department" or "the Director" in the synopsis. Specify the department (for example, the Department on Aging) or the head of the department (for example, the Director of Aging), at least in the initial reference to the department or head. Don't assume that a reader of the amendment synopsis will know the department or head referred to in the bill. If the synopsis refers to more than one department or head of a department, make sure that each such reference clearly identifies the department or head to which it applies.

If an amendment deletes everything after the enacting clause and reinserts the provisions of the bill (as introduced, as engrossed, or as amended) except for certain changes, make sure that the amendment's synopsis describes the changes made by the amendment and doesn't simply restate the synopsis of the document being amended. An example follows:

Replaces everything after the enacting clause with substantially similar provisions, but with changes that include the following: (1)....

Assume that a second amendment to the bill in the preceding example replaces everything after the enacting clause with changes to Section 8 of the Act that are different than the changes made by the first amendment. The amendment synopsis should not contain either a "Deletes reference to" entry or an "Adds reference to" entry. The "Deletes reference to" and "Adds reference to" entries should reflect the *change* in the Secs. contained in the bill before and after the adoption of the amendment. In this example there is no such change; both before and after the adoption of the amendment, the bill makes changes to Section 8 of the Act.

If an amendment deletes or adds a new Act, the "deletes reference to" or "adds reference to" list of citations should indicate that as in the following example:

Deletes reference to:
New Act
XX ILCS XX/XX

Assume that a bill contains a new Act. Assume further that an amendment replaces the new Act with a different new Act (or with a different version of the same new Act) or that an amendment adds a second new Act. The amendment synopsis should not contain either a "Deletes reference to" entry or an "Adds reference to" entry for a new Act. Both before and after the adoption of the amendment, the bill contains a new Act. The summary of the amendment's contents should enable a reader to understand what the amendment does. Including "new Act" in a "Deletes reference to" or "Adds reference to" entry in this case does not convey any useful information.

CHAPTER 55. MOTIONS TO CONCUR OR RECEDE.

55-5. GENERALLY.

55-10. EXAMPLES.

55-15. EFFECTIVE DATE.

SECTION 55-5. GENERALLY.

Amendments adopted by the second house must be further acted upon by the house of origin before a bill is considered passed. The house of origin may either concur or not concur in the second house's amendments. If the house of origin does not concur, then the second house may either recede or not recede from its amendments. Each of these actions is initiated by motion.

The Legislative Reference Bureau does not draft motions to concur or recede. The Clerk of the House and the Secretary of the Senate provide pre-printed forms for filing these motions.

SECTION 55-10. EXAMPLES.

Some examples, based on the assumption that the Senate adopts 2 amendments to House Bill 7220, follow:

I move to concur in Senate Amendments Nos. 1 and 2 to House Bill 7220.

I move not to concur in and ask the Senate to recede from Senate Amendments Nos. 1 and 2 to House Bill 7220.

I move to concur in Senate Amendment No. 1 to House Bill 7220. I further move not to concur in and ask the Senate to recede from Senate Amendment No. 2 to House Bill 7220.

I move to recede from Senate Amendments Nos. 1 and 2 to House Bill 7220.

I move not to recede from Senate Amendment No. 2 to House Bill 7220 and request a conference.

The language of the examples is based on Senate Rule 8-1 and House Rule 72 (97th G.A.).

SECTION 55-15. EFFECTIVE DATE.

Motions to concur or recede often are made in the closing days of a legislative session. If made near or after the May 31 cut-off for determining the effective date of laws, then potential effective date problems must be considered. (See Chapter 35 of this Manual.) The house of origin may wish not to concur and the second house may wish not to recede so that a conference committee may be appointed to revise the effective date provision of the bill.

CHAPTER 60. CONFERENCE COMMITTEE REPORTS.

- 60-5. GENERALLY.
- 60-10. ACTION BY HOUSE OR SENATE.
- 60-15. ACTION BY HOUSE AND SENATE.
- 60-20. UNABLE TO AGREE.
- 60-25. EFFECTIVE DATE.
- 60-30. SYNOPSIS AND ILCS CITATIONS.

SECTION 60-5. GENERALLY.

If the house of origin does not concur in the second house's amendments and the second house refuses to recede, then, if requested, the presiding officers appoint a conference committee, consisting of 5 members of each house, to consider the differences between the 2 houses.

The conference committee may simply recommend that one house reconsider its previous action and either concur in or recede from the amendments in dispute. Often, however, the conference committee will additionally recommend that the bill be further amended. Thus, a conference committee report can serve the same function as a motion to concur or recede or an amendment, or both, but in a different format.

If the conference committee cannot agree on a recommendation to be made to both houses, or if one house refuses to adopt the conference committee report, then the conference committee may be discharged. A second conference committee is then often appointed to try again to reach an agreement. If the second conference committee cannot agree, or if either house refuses to adopt the second conference committee report, then the bill is effectively dead. There can be no third conference committee. Senate Rule 8-5(b) and House Rule 76(c) (97th G.A.).

A conference committee report has not been filed since 2005. Even though conference committee reports have largely fallen into disuse, you should have a general idea of what they are and how they work because you may encounter them when you research old legislation and it is possible that we may get requests for them in the future.

SECTION 60-10. ACTION BY HOUSE OR SENATE.

If the conference committee recommends action by only one house, then the format of the following example may be used:

95TH GENERAL ASSEMBLY
 CONFERENCE COMMITTEE REPORT
 ON HOUSE BILL 7220

To the President of the Senate and the Speaker of the House of Representatives:

We, the conference committee appointed to consider the differences between the houses in relation to Senate Amendments Nos. 1 and 2 to House Bill 7220, recommend that the Senate recede from Senate Amendments Nos. 1 and 2.

Submitted on, 2007.

| | |
|-----------------------------------|----------------------------------|
| Senator | Representative |
| Senator | Representative |
| Senator | Representative |
| Senator | Representative |
| Senator | Representative |
| Committee for the Senate | Committee for the House |

If the names of the Senators and Representatives who are members of the committee are known at the time the report is drafted, then insert the names below the signature lines.

SECTION 60-15. ACTION BY HOUSE AND SENATE.

If the conference committee recommends action by both houses, then the format of the following example (in which the signature lines are omitted) may be used:

95TH GENERAL ASSEMBLY
SECOND CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 7220

To the President of the Senate and the Speaker of the House of Representatives:

We, the second conference committee appointed to consider the differences between the houses in relation to Senate Amendments Nos. 1 and 2 to House Bill 7220, recommend the following:

- (1) that the House concur in Senate Amendment No. 1; and
- (2) that the Senate recede from Senate Amendment No. 2; and
- (3) that House Bill 7220 be further amended on page 1, line 10, by replacing "X" with "Y".

Submitted on, 2007.

In the last example the report is by the second conference committee, and this is expressed both in the heading and the body. If the report had recommended that the Senate recede from all of its amendments, then the recommendation to amend the bill should be that it "be amended", rather than "be further amended". It is the engrossed bill (the version of the bill considered by the second house), together with any amendments adopted by the second house that are to stay on the bill, that is the version of the bill amended by a conference committee report.

If, for example, the House votes to concur in Senate Amendment No. 1 but not in Senate Amendment No. 2 and the Senate refuses to recede from Senate Amendment No. 2, a conference committee needs to report only in relation to Senate Amendment No. 2. Don't refer to Senate Amendment No. 1 in the report, which should contain a

recommendation concerning only Senate Amendment No. 2. A recommendation to amend the bill should be that the bill (since its status is the engrossed bill as amended by Senate Amendment No. 1) "be further amended" in the manner stated.

SECTION 60-20. UNABLE TO AGREE.

If the conference committee is unable to agree and requests to be discharged, then the format of the following example (in which the signature lines are omitted) may be used:

95TH GENERAL ASSEMBLY
CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 7220

To the President of the Senate and Speaker of the House of Representatives:

We, the conference committee appointed to consider the differences between the houses in relation to Senate Amendments Nos. 1 and 2 to House Bill No. 7220, report that we are unable to agree and request that we be discharged.

Submitted on, 2007.

SECTION 60-25. EFFECTIVE DATE.

Conference committee reports are usually submitted near or after the May 31 cut-off date with respect to determining the effective date of laws. You must consider potential effective date problems. (See Chapter 35 of this Manual.)

SECTION 60-30. SYNOPSIS AND ILCS CITATIONS.

The Legislative Reference Bureau prepares a synopsis of the conference committee's recommendations and indicates the ILCS citations that are added or deleted by the report. ILCS citations may be added or deleted either by the amendatory provisions or by the second house receding from any of its amendments, or both. (For example, if the report recommends that the second house recede from an amendment, the synopsis should state that the report "deletes reference to" an ILCS citation deleted from the bill as a result of that recession or "adds reference to" an ILCS citation restored to the bill as a result of that recession.) If the report recommends only concurrence in or recession from the second house's amendments and does not recommend any other change to the bill, the synopsis statement "Recommends that the (House or Senate) (concur in or recede from) (House or Senate) Amendments Nos. 1 and 2" is sufficient. The synopsis does not need to explain the effect of the concurrence or recession.

Cross reference: Section 50-100 concerning synopsis and ILCS citations for amendments.

CHAPTER 65. VETO MOTIONS.

- 65-5. GENERALLY.
- 65-10. TOTAL VETO.
- 65-15. ITEM VETO.
- 65-20. REDUCTION VETO.
- 65-25. AMENDATORY VETO.
 - (a) TO OVERRIDE.
 - (b) TO ACCEPT.

SECTION 65-5. GENERALLY.

As discussed in Section 1-15, subsection (d), the Governor has several veto options. The General Assembly may respond to the Governor's veto by means of various motions. The forms of the motions are controlled by the rules of each house. Senate Rule 9-4 and House Rule 80 (97th G.A.).

SECTION 65-10. TOTAL VETO.

For both houses, the form to override a total veto follows:

I move that Bill do pass, notwithstanding the veto of the Governor.

SECTION 65-15. ITEM VETO.

Each item of an item veto must be voted on separately.

For both houses, the form to override an item veto follows:

I move that the item on page, line, of Bill..... do pass, notwithstanding the item veto of the Governor.

SECTION 65-20. REDUCTION VETO.

Each item of a reduction veto must be voted on separately.

For both houses, the form to restore a reduction veto follows:

I move that the item on page, line, of Bill be restored, notwithstanding the item reduction of the Governor.

SECTION 65-25. AMENDATORY VETO.

(a) TO OVERRIDE. For both houses, the form to override an amendatory veto follows:

I move that Bill do pass, notwithstanding the specific recommendations of the Governor.

(b) TO ACCEPT. For both houses, the form to accept an amendatory veto follows:

I move to accept the specific recommendations of the Governor as to
..... Bill in manner and form as follows: (inserting herein the
language deemed necessary to effectuate the specific recommendations).

The motion then makes changes to the bill in the same manner as an amendment. The version of the bill that forms the basis for accepting the Governor's specific recommendations for change is the enrolled bill. The enrolled bill is the version sent to the Governor and incorporates all changes made between the engrossed bill and final passage by both houses.

When the General Assembly receives the Governor's specific recommendations for change, the Legislative Reference Bureau prepares a synopsis of the recommendations and indicates Sections added or deleted by the amendatory veto (See Section 40-22 of this Manual). The Legislative Reference Bureau does not prepare a separate synopsis to accompany a motion to accept the Governor's specific recommendations for change.

CHAPTER 70. MULTIPLE ACTS; REVISORY BILLS.

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SECTION 70-5. GENERALLY.

Each General Assembly has a life of 2 years. During that 2-year period there are usually several Public Acts relating to the same subject matter. These Public Acts are to be read together and reconciled, if possible. If the Public Acts are irreconcilable, however, then the conflict must be resolved. As part of the ongoing process of reconciliation and resolving conflicts, the Legislative Reference Bureau prepares revisory bills, usually at least twice during the 2-year term of each General Assembly.

Revisory bills make no substantive change in the law, but are an essential part of maintaining the State's statutes. LRB is authorized to prepare these bills under subsection (h) of Section 5.04 of the Legislative Reference Bureau Act, 25 ILCS 135/5.04.

Revisories are prepared by LRB in accordance with the general rules of statutory construction and, in particular, Section 6 of the Statute on Statutes, 5 ILCS 70/6. Although Section 6 of the Statute on Statutes addresses only multiple amendments enacted by the same General Assembly, LRB applies the same rules when combining multiple amendments enacted by different General Assemblies, a situation that arises primarily with respect to bills for a new General Assembly that have been prepared while the previous General Assembly was still active.

SECTION 70-10. INTENT OF LEGISLATURE.

The purpose of reconciling and resolving conflicts between different Public Acts is always to carry out the intention of the legislature. This is the primary and overriding rule of construction in all situations.

The General Assembly has provided guidelines for determining and implementing its intention. Section 6 of the Statute on Statutes, 5 ILCS 70/6, follows:

Sec. 6. Two or more Acts which relate to same subject matter and which are enacted by the same General Assembly shall be construed together in such manner as to give full effect to each Act except in case of an irreconcilable conflict. In case of an irreconcilable conflict the Act last acted upon by the General Assembly is controlling to the extent of such conflict. The Act last acted upon is determined by reference to the final legislative action taken by either house of the General Assembly, whether such final action is passage on third reading in the second house, concurring in or receding from an amendment, adoption of a conference committee report, acceptance of the Governor's specific recommendations for change, or passage over the Governor's veto. However, for the purpose of determining the effective date of laws under Section 10 of Article IV of the Constitution of 1970 and "An Act in relation to the effective date of laws", approved July 2, 1971, a bill is "passed" at the time of its final legislative action before presentation to the Governor as provided in paragraph (a) of Section 9 of Article IV of the Constitution of 1970.

An irreconcilable conflict between 2 or more Acts which amend the same section of an Act exists only if the amendatory Acts make inconsistent changes in the section as it theretofore existed.

The rules of construction provided for in this section are applicable to Acts enacted by the same General Assembly throughout the 2 year period of its existence.

The first step, therefore, is to try to construe the 2 or more Public Acts together in a way that gives full effect to each Public Act. In most situations the changes, although to the same Section of existing law, are not in conflict with one another. It is then merely a matter of merging the changes together into a single version of the Section.

If the changes are inconsistent and cannot be reconciled, then it is presumed that the intention of the legislature is that the Act which was last acted on by the General Assembly has precedence and controls. The "last act" of the General Assembly is literally what it says (passage on third reading in the second house, concurring in or receding from an amendment, adoption of a conference committee report, acceptance of an amendatory veto, or override of a veto). Don't confuse "last act" in this context with "passage" for the purpose of determining the effective date of laws, which is discussed in Section 35-35 of this Manual. See *In re J.H.*, 304 Ill.App.3d 188 (4th Dist. 1999) for an example of a court's application of these provisions.

SECTION 70-15. COMBINING REVISORY.

(a) WHEN NOT NECESSARY. Sometimes when there are multiple amendatory Acts affecting the same Section of existing law, one of the Acts will include all of the other amendments.

For example, assume that P.A. 95-9990 makes the following change to Section 2-1-2 of the Illinois Municipal Code, 65 ILCS 5/2-1-2.

Sec. 2-1-2. No incorporation under other laws. No municipality shall incorporate under any other general law which may be in force for the incorporation of municipalities.

(Source: Laws 1961, p. 576.)

Assume P.A. 95-9991 makes the following change:

Sec. 2-1-2. No municipality shall incorporate under any other general law that ~~which~~ may be in force for the incorporation of municipalities.
(Source: Laws 1961, p. 576.)

Further assume P.A. 95-9992 makes the following changes:

Sec. 2-1-2. No incorporation under other laws. No municipality shall incorporate under any other general law that ~~which~~ may be in force for the incorporation of municipalities.
(Source: Laws 1961, p. 576.)

Because P.A. 95-9992 makes all the changes made by P.A. 95-9990 and P.A. 95-9991, there is no need for a combining revisory. P.A. 95-9992 reconciles the other 2 Acts with itself and is, in a sense, a revisory. Therefore, the text of P.A. 95-9992 may be relied on as the accurate version of Section 2-1-2.

(b) UNDERSCORE; STRIKE THROUGH. In a combining revisory use underscoring only to indicate material not included in any of the multiple Acts; don't use underscoring to indicate material added by any of the multiple Acts. The reason is that the underscored matter in the multiple Acts is not being added as new language by the revisory bill; it is already the law and is merely being reconciled. Similarly, striking through language in a revisory bill indicates material not stricken by any of the multiple Acts; material stricken by any of the multiple Acts is simply deleted.

For example, assume Section 5 of an existing Act is amended by P.A. 95-9993 as follows:

Sec. 5. The territory ~~area~~ of the Authority shall be composed of the following counties:
(1) Sangamon;
(2) Logan; ~~and~~
(3) Menard; and
(4) Christian.

Assume Section 5 is also amended by P.A. 95-9994 as follows:

Sec. 5. The area of the Authority shall be composed of the following counties:
(1) Sangamon;
(2) Logan; ~~and~~
(3) Menard; and
(4) Morgan.

In a revisory bill combining P.A. 95-9993 and P.A. 95-9994, Section 5 would appear as follows:

Sec. 5. The territory of the Authority shall be composed of the following counties:
(1) Sangamon;
(2) Logan;
(3) Menard; ~~and~~
(4) Christian; and
(5) (4) Morgan.
(Source: P.A. 95-9993, eff. 1-1-08; P.A. 95-9994, eff. 1-1-08; revised 9-1-07.)

Cross references:

- (1) Section 25-25 concerning strike through and underscore.
- (2) Section 10-45 concerning use of a preamble to explain changes to text shown underscored in a revisory.

(c) WHEN RECONCILABLE. When the multiple amendatory Acts are reconcilable, they are simply merged in the revisory bill to produce a version incorporating all changes. See the example in subsection (b) combining P.A. 95-9993 and P.A. 95-9994.

Be careful to check the effective dates of the sources being merged in the revisory bill. If a source has an accelerated or delayed effective date, internalize that effective date in the text of the Section and underscore it. (See Section 35-25, subsection (c), of this Manual.)

If the effective date is not easily internalized, the best solution may be to store the Section in dual text format. In that case, each version of the Section will be preceded by a parenthetical note as described in subsection (b) of Section 25-50 of this Manual. When using dual text format, be careful to include the changes made by the other sources of the Section in both versions of the text if appropriate.

Cross references:

- (1) Section 25-50 concerning statute base and source references.
- (2) Section 70-30 concerning parenthetical references preceding the text of a Section.

(d) WHEN IRRECONCILABLE. Sometimes the changes made by multiple Acts are inconsistent and cannot be reconciled. It is then necessary to fall back on the statutory guidelines based on the last action by the legislature.

For example, assume P.A. 95-9995 makes the following change to Section 14 of an existing Act:

Sec. 14. The secretary of the board is entitled to a salary of \$5,000 ~~\$4,000~~ per year.

Assume P.A. 95-9996 makes the following change:

Sec. 14. The secretary of the board is entitled to a salary of \$3,000 ~~\$4,000~~ per year.

Assume that P.A. 95-9995 passed the second house on third reading on July 1, 2007 and was approved by the Governor on July 20, 2007. Further assume that P.A. 95-9996 passed the second house on third reading on June 30, 2007 and was approved by the Governor on July 21, 2007. The last action of the General Assembly on P.A. 95-9995 was July 1, 2007, passage by the second house on third reading. The last legislative action on P.A. 95-9996 was June 30, 2007, also passage by the second house on third reading. Thus, even though P.A. 95-9996 was the last to become law, it is controlled by P.A. 95-9995 because P.A. 95-9995 was the one last acted on by the legislature. In a combining revisory bill Section 14 would appear as follows:

Sec. 14. The secretary of the board is entitled to a salary of \$5,000 ~~\$3,000~~ per year.

(Source: P.A. 95-9995, eff. 1-1-08; P.A. 95-9996, eff. 1-1-08; revised 9-10-07.)

The last example illustrates a simple and straightforward conflict that is easily resolved. Some conflicts, or apparent conflicts, can be quite murky; you must then remember that legislative intent always controls. If legislative intent cannot reasonably be discerned, then LRB does not attempt to revise the Section; instead, LRB notifies leadership offices that a substantive bill to correct the problem will be necessary.

Cross reference: Section 35-65 concerning a legislative statement of intent that one version of a statute control over another version passed in the same term of the General Assembly.

(e) SHOWING SOURCE. In the previous examples illustrating how a Section of existing law would appear in a revisory bill, the source Public Acts are shown at the end of the Section in order to cross-reference the multiple Acts being combined. These references do not become part of the law. All source Public Acts for the Section from the current and the last previous General Assemblies are shown. Source Public Acts from earlier General Assemblies are omitted from the list of source references. If one of the source Public Acts from an earlier General Assembly is relevant to the revisory, however, it may be retained.

The word "revised" and the date the revisory was prepared are included in the source line to indicate that the Section was the subject of a combining, renumbering, or technical revisory.

Cross reference: Section 25-50 concerning source references.

(f) RENUMBERING. Sometimes multiple amendatory Acts will each add a new Section to an existing Act under the same Section number.

For example, assume P.A. 95-9997 adds Section 5.1001 to the State Finance Act as follows:

Sec. 5.1001. The Corncob Pipe Fund.

Also assume P.A. 95-9998 adds a new Section 5.1001 as follows:

Sec. 5.1001. The Soybean Soup Fund.

The 2 added Sections are not intended to be inconsistent versions of the same Section. They are intended to be 2 distinct and separate Sections. One, either one, simply needs to be renumbered. This can be done in a combining revisory bill as follows:

Section 37. The State Finance Act is amended by setting forth and renumbering multiple versions of Section 5.1001 as follows:

(30 ILCS 105/5.1001)

Sec. 5.1001. The Corncob Pipe Fund.

(Source: P.A. 95-9997, eff. 7-1-07.)

(30 ILCS 105/5.1002)

Sec. 5.1002. ~~5.1001.~~ The Soybean Soup Fund.

(Source: P.A. 95-9998, eff. 7-1-07; revised 10-1-07.)

The parenthetical ILCS citation is to the Section as renumbered.

If a new Section is renumbered, be sure to look through the Public Act that added the Section (including that Section itself) to identify any cross-references that need to be changed. Also search later Public Acts (using the computer) for cross-references to the renumbered Section. In determining which Section to renumber, consider the number of cross-references that will have to be changed to reflect the renumbering.

(g) SUCCESSOR ACTS. Sometimes a successor Act is enacted and the Act it replaces is repealed. During the same session of the General Assembly, Acts may also be enacted amending the replaced Act. It is presumed, so long as the amendments to the replaced Act are not inconsistent with the successor Act, that the General Assembly intends to give full effect to both the successor Act and the amendments to the replaced Act. This can be done by incorporating the amendments into the successor Act.

For example, assume that P.A. 95-6661 creates the Holiday and Commemorative Day Act, replacing and repealing numerous Acts, including the Veterans Day Act. Section 8 of the Holiday and Commemorative Day Act follows:

Sec. 8. The eleventh day of November of each year shall be a holiday, to be known as Veterans Day, which shall be observed throughout the State as a day on which to hold appropriate exercises in commemoration of the victory of the United States Army, United States Navy, and the United States Air Force in all wars.

Section 8 is identical to Section 1 of the Veterans Day Act. Also assume that P.A. 95-6662 amends Section 1 of the repealed Act as follows:

Sec. 1. The eleventh day of November of each year shall be a holiday, to be known as Veterans Day, which shall be observed throughout the State as a day on which to hold appropriate exercises in commemoration of the courageous men and women who served in ~~victory of~~ the United States Army, United States Navy, United States Marine Corps, and ~~the~~ United States Air Force in peace and war ~~all wars~~.

A combining revisory would amend Section 8 of the successor Act to incorporate the amendments to the repealed Act as follows:

Sec. 8. The eleventh day of November of each year shall be a holiday, to be known as Veterans Day, which shall be observed throughout the State as a day on which to hold appropriate exercises in commemoration of the courageous men and women who served in ~~victory of~~ the United States Army, United States Navy, United States Marine Corps, and ~~the~~ United States Air Force in peace and war ~~all wars~~.

(Source: P.A. 95-6661, eff. 7-15-07; incorporates P.A. 95-6662, eff. 8-1-07; revised 10-1-07.)

Unlike the case of a normal combining revisory, the changes are shown with striking and underscoring because they are being incorporated into a different Section.

In addition, Section 1 of the replaced Act may be rerepealed in the combining revisory in order to make the record clear that it is not revived.

There are other times when the amendments to the replaced Act are inconsistent with the successor Act. In that case, the affected provisions may be treated as described in subsection (h) of this Section.

There is not always a simple solution to resolving conflicts or apparent conflicts. Each problem requires thorough analysis to determine legislative intent.

(h) REPEAL. Sometimes one Public Act amends a Section of an existing Act while another Public Act repeals the same Section. The Section cannot both be the law as amended by the one Public Act and also be repealed. In this case the Section may simply be treated as having been repealed without the need for further treatment in a revisory bill. The more difficult question is what to do with the amendments made by the one Public Act.

For example, assume that P.A. 95-6665 repeals Section 5 of an Act while P.A. 95-6666 amends the Section as follows:

Sec. 5. Advisory board. The Soybean Soup Advisory Board is created to advise the Director of Agriculture concerning free soybean soup at the Illinois State Fair. The Board shall consist of 5 ~~3~~ members appointed by the Director. Each member shall serve at the pleasure of the Director.

Reading P.A. 95-6665 and P.A. 95-6666 together, they say that if we have a Soybean Soup Advisory Board, then it will consist of 5, rather than 3, members, but we decide not to have a Soybean Soup Advisory Board. Usually, Section 5 will simply be treated as having been repealed. If necessary for clarity, it may be rerepealed in a revisory bill.

As another example, however, assume that P.A. 95-6667 repeals Section 9 of an Act while P.A. 95-6668 amends Section 9 as follows:

Sec. 9. Feasibility study; soybean ink.

(a) The Director of Revenue may conduct a feasibility study to determine the cost effectiveness of printing Illinois tax return forms on paper made from corn plant pulp.

(b) All Illinois tax return forms must be printed using ink made from soybeans.

Reading P.A. 95-6667 and P.A. 95-6668 together, they eliminate the Director's authority to study the use of paper made from corn plant pulp but mandate the use of soybean ink. As in the preceding example, Section 9 may simply be treated as having been repealed. In a combining revisory, the language mandating the use of soybean ink may be incorporated into the Act elsewhere as in the following example:

Sec. 14. Tax forms; soybean ink.

(a) The Director of Revenue shall establish and distribute forms for all returns for Illinois taxes.

(b) All Illinois tax return forms must be printed using ink made from soybeans.

(Source: P.A. 89-8998, eff. 7-30-95; incorporates P.A. 95-6668, eff. 1-1-08; revised 10-1-07.)

SECTION 70-20. TECHNICAL CORRECTIONS REVISORY.

(a) PATENT AND TECHNICAL ERRORS. Inadvertent errors are sometimes made in the legislative process. These may be corrected in a technical corrections revisory.

For example, assume that P.A. 95-6001 adds the following Section 18 to an Act:

Sec. 18. "Public employee" means public employee as defined in the Local Government and Governmental Employees Tort Immunity Act.

Section 18 would be corrected in a technical corrections revisory as follows:

Sec. 18. "Public employee" means public employee as defined in the Local Governmental ~~Government~~ and Governmental Employees Tort Immunity Act.

(Source: P.A. 95-6001, eff. 1-1-08; revised 11-1-07.)

Occasionally text is inadvertently omitted from a Section by a Public Act. When writing a revisory to reinsert the omitted text, underscore the reinserted text (especially if the omission occurred in an action taken by an earlier General Assembly), even though it arguably is already part of the existing law. You will sometimes

encounter text in a Section of existing law that reads "of" when it should read "or". In that case strike through "of" and insert an underscored "or". Similarly, if you encounter an obvious typographical error in the text of a Section of existing law (for example, "uninformed" instead of "uniformed"; "country" instead of "county"), correct the error by striking and underscoring.

(b) REASON NOT OBVIOUS. If the reason for the technical correction is not obvious, it will generally be explained in a memo prepared by the Legislative Reference Bureau to accompany the revisory bill. Occasionally it will also be explained in the introductory clause of the Section of the revisory bill making the correction.

(c) DELETING OBSOLETE MATTER. If all or part of an existing statute becomes obsolete for any reason, then the technical corrections revisory may delete the obsolete matter. For example, after the adoption of the Compensation Review Act, 2 other existing Acts that created commissions to study salaries of members of the General Assembly and State officers became obsolete and were repealed in a technical corrections revisory.

Current practice is not to repeal a Section declared unconstitutional by the Illinois Supreme Court. For example, suppose that a Section is declared unconstitutional as applied to a particular class of persons or set of circumstances. The Section is still the law; it is merely unenforceable against that class of persons or in those circumstances. The General Assembly may be able to change the Section to overcome the constitutional infirmity. On the other hand, if a provision is unconstitutional because it was contained in a bill that was held to violate, for example, the single-subject rule (see Section 5-10 of this Manual), that provision arguably was never the law. In that case, the provision does not need to be repealed, and the General Assembly may choose to reenact it in a manner that avoids the previous finding of unconstitutionality.

Cross references:

- (1) Section 25-50, subsection (c), concerning statutes held unconstitutional.
- (2) Section 25-75 concerning invalidity of an amendatory Act.

(d) REVISING CITATIONS. Suppose that an Act renumbers or resections an existing Act or that a successor Act is enacted and the replaced Act repealed. In that case, citations throughout the statutes must be corrected. If the bill making the renumbering or other changes does not make the necessary citation corrections, the corrections may be made in a technical corrections revisory.

(e) RESECTIONING. When a single Section becomes so long that it takes several pages of a bill to set forth the full text of the Section just to make a minor change, then the Section may be broken up into several Sections for future convenience in a technical corrections revisory. The problem of an overlong Section often occurs in Sections setting forth definitions or the powers and duties of an official or entity.

For example, a single definition Section, shortened for purposes of illustration, might be resectioned as follows:

Section 31. The Henry County Toll Highway Authority Act is amended by changing and resectioning Section 4 as follows:

(605 ILCS 815/4) (was 605 ILCS 815/4, in part)

Sec. 4. Definitions. In this Act words and phrases have the meanings set forth in the following Sections.†
(Source: P.A. 79-812; revised 9-1-07.)

(605 ILCS 815/4.1 new) (was 605 ILCS 815/4, subsec. (a))

Sec. 4.1. Authority. ~~(a)~~ "Authority" means the Henry County Toll Highway Authority.†
(Source: P.A. 79-812; revised 9-1-07.)

(605 ILCS 815/4.2 new) (was 605 ILCS 815/4, subsec. (b))

Sec. 4.2. Secretary. ~~(b)~~ "Secretary" means the Illinois Secretary of Transportation. ~~and~~
(Source: P.A. 79-812; revised 9-1-07.)

(605 ILCS 815/4.3 new) (was 605 ILCS 815/4, subsec. (c))

Sec. 4.3. Toll. ~~(c)~~ "Toll" means compensation paid to the Authority for the privilege of using a portion of a toll highway as vehicular or other traffic.
(Source: P.A. 79-812; revised 9-1-07.)

Note that in the introductory clause of this example, it is sufficient to say that the bill is "resectioning" Section 4. Do not say that the bill amends the Act by "changing" Section 4 and "adding" Sections 4.1, 4.2, and 4.3.

If you divide a Section of existing law into 2 or more new Sections, be sure to search the statute base for references to the undivided Section. In the case of a reference to one or more specific subdivisions of the undivided Section that are continued in one or more new Sections, change the reference to cite the new Section or Sections. For example, if you divide Section 5 of the ABC Act so that subsection (b) of that Section becomes new Section 5.5, change a reference to "subsection (b) of Section 5" to "Section 5.5". In the case of a reference to the undivided Section generally, change the reference to cite all of the new Sections into which that Section has been divided. For example, if you divide Section 5 of the ABC Act into Sections 5 through 5.25, change a reference to "Section 5" to "Sections 5 through 5.25".

For another example of resectioning, see Section 250 of Public Act 91-357, which resectioned the "quick-take" Section of the Code of Civil Procedure (735 ILCS 5/7-103). Also see the example in subsection (b) of Section 20-25 of this Manual.

Cross reference: Section 75-10, subsec. (e); Section 75-15, subsec. (e); and Section 75-20, subsec. (e), concerning parenthetical ILCS references in codification Acts.

(f) REFERENCE TO AMENDATORY ACT. Text added to a Section of existing law by a Public Act may contain a reference to "this amendatory Act of (date or General Assembly)" or "the effective date of this amendatory Act of (date or General Assembly)". The reference may be changed in a revisory bill to reflect the appropriate Public Act number or effective date or both. Examples follow:

the changes made by Public Act 88-9904 ~~this amendatory Act of 1993~~ ...

August 1, 2005 (the effective date of Public Act 94-9010 ~~this amendatory Act of the 94th General Assembly~~ ...

In the second example, including both the effective date and the Public Act number avoids the appearance of an arbitrary date. Also include the Public Act number if there are references to more than one amendatory Act of the same year and those amendatory Acts have different effective dates. Obviously, you will need to make sure to identify the correct Public Act number and date.

SECTION 70-25. DATABASE CORRECTIONS.

A database correction is prepared in the following situations:

(1) To delete the multiple text version of a Section.

(2) To add or delete a parenthetical caption below the ILCS citation of a Section or to change a date in a caption.

- (3) To add or delete a reference in the source line of a Section or to change a date in the source line.
- (4) To correct database errors in the text of the Section.

The source line of the corrected Section will sometimes have "database correction" and the date of the correction, but these will be suppressed. That is, they will be coded so that they do not show in a printed bill or other legislative document but do show in the list of sources that accompany a draft of the bill or other document.)

SECTION 70-30. PARENTHETICAL REFERENCES.

(a) CAPTIONS. Parenthetical captions, inserted below the ILCS citation of a Section, are used to alert users of the statutes to special circumstances concerning the period during which a Section is in effect.

A Section that has a **delayed repeal date** (that is, a repeal date later than January 1 after the enactment of the repealing provision; see Section 30-5, subsection (c), of this Manual) has a caption indicating that fact. An example follows:

(Section scheduled to be repealed on January 1, 2009)

If a Section is to be repealed upon the occurrence of an external event (such as a transfer of administrative jurisdiction or the filing of a report) rather than on a specified date, the Section should have a caption as in the following examples:

(105 ILCS 5/34-13.1)

(Section scheduled to be repealed as specified in this Section)

(70 ILCS 1910/11)

(Section scheduled to be repealed on January 1, 1997 or as provided in P.A. 89-142)

(225 ILCS 52/50)

(Section scheduled to be repealed in accordance with P.A. 88-414)

If a Section has a **delayed effective date** that is later than January 1 of the year following the year in which the amendatory Act containing the Section becomes law, the Section is maintained in the statutes database in multiple text form. The "current" version of the Section has a caption as in the following example:

(Text of Section before amendment by P.A. 96-9000 in effect until March 1, 2011)

The version taking effect later has a caption as in the following example:

(Text of Section after amendment by P.A. 96-9000 taking effect March 1, 2011)

(In both versions, the phrases "in effect until xxx" and "taking effect xxx" are suppressed. That is, they are coded so that they do not show in a printed bill or other legislative document but do show in the list of sources that accompany a draft of the bill or other document. A reader of the bill may determine the effective date of Public Act 96-9000 from its source reference at the end of the second version of the statute--that is, the version "after amendment by P.A. 96-9000". See Section 25-50, subsection (b), and Section 35-25, subsection (c), of this Manual.)

If a Section has a delayed effective date and dual texts are not appropriate (for example, if there is no current text), the Section has a caption as in the following example:

(This Section may contain text from a Public Act with a delayed effective date (March 1, 2011))

The date is suppressed. After the delayed date arrives, the dual text or caption is removed by creating a database correction. (See Section 70-25 of this Manual.)

(b) SOURCES. See Section 70-15, subsections (e) and (f), Section 70-20, and Section 70-25 of this Manual.

SECTION 70-35. STRUCTURE OF REVISORY BILL.

Although combining and technical revisories could be accomplished in a series of separate bills, common practice is to do as much as possible in one large bill. A revisory bill is exempt from the single-subject rule. Ill. Const., art. IV, sec. 8, subsec. (d).

A revisory bill may be structured into Articles based on the following topics: General Provisions, Combining Revisories, Technical Corrections Revisories, and an Effective Date and Nonacceleration Clause. The revisory bill explains itself as it goes along. For an example of this structure, see P.A. 90-14. When searching for a statute in a revisory bill that is structured into Articles, you must look in both the "combining revisories" Article and the "technical corrections" Article.

A revisory bill may also be structured without using Articles. In this case, Sections of an Act subject to combining revisories and Sections subject to technical corrections are interspersed. If a Section of an Act is subject to both a combining revisory and a technical correction, both of those changes may be combined in a single version of the Section. A Section of the bill containing general provisions precedes the Sections containing combining revisories and technical corrections. Sections containing the bill's effective date and nonacceleration and nonrevival provisions follow the Sections containing combining revisories and technical corrections. For an example of this structure, see P.A. 91-357.

For other recent examples of revisory bill structure, see Public Acts 90-655, 89-626, and 89-235.

An Index at the end of the bill lists the statutes amended in the order of their appearance within the bill. The Index is not part of the law.

SECTION 70-40. EXECUTIVE AGENCY REORGANIZATION.

The Illinois Constitution allows the Governor to reorganize executive agencies by executive order if the General Assembly does not disapprove the reorganization. Ill. Const., art. V, sec. 11. If executive agency reorganization is accomplished by executive order, then the Legislative Reference Bureau has the statutory obligation of preparing a revisory bill for the next annual session of the General Assembly effecting changes to the statutes that may be necessary to conform the statutes to the changes in law made by the reorganization. 15 ILCS 15/10; 25 ILCS 135/5.06. For a recent example of such a bill, see 94SB2905, which was filed to implement Executive Order 3 (2005).

Cross references:

- (1) Section 25-95 concerning legislative changes to modify an executive order.
- (2) Chapter 87 concerning resolutions to disapprove executive orders.

CHAPTER 75. CODIFICATION ACTS.

75-5. GENERALLY.

75-10. NEW ACT.

- (a) BILL TITLE.
- (b) PURPOSE; MATTERS OF FORM.
- (c) SHORT TITLE.
- (d) SECTION AND ARTICLE NUMBERS.
- (e) PARENTHETICAL ILCS REFERENCES.
- (f) SOURCES.
- (g) STRIKING AND UNDERSCORING.
- (h) STYLE; CROSS REFERENCES.
- (i) CODIFICATION PROVISIONS.
- (j) REPEALS.
- (k) EFFECTIVE DATE.
- (l) SYNOPSIS; ABR; LRB ANALYSIS.

75-15. INCORPORATION INTO EXISTING ACT.

- (a) BILL TITLE.
- (b) REVISORY PROVISIONS.
- (c) AMENDATORY PROVISIONS.
- (d) SECTION AND ARTICLE NUMBERS.
- (e) PARENTHETICAL ILCS REFERENCES.
- (f) SOURCES.
- (g) STRIKING AND UNDERSCORING.
- (h) STYLE; CROSS REFERENCES.
- (i) REPEALS.
- (j) EFFECTIVE DATE.
- (k) SYNOPSIS; ABR; LRB ANALYSIS.

75-20. RENUMBERING AND REARRANGING OF EXISTING ACT.

- (a) BILL TITLE.
- (b) REVISORY PROVISIONS.
- (c) AMENDATORY PROVISIONS.
- (d) SECTION AND ARTICLE NUMBERS.
- (e) PARENTHETICAL ILCS REFERENCES.
- (f) SOURCES.
- (g) STRIKING AND UNDERSCORING.
- (h) STYLE; CROSS REFERENCES.
- (i) REPEALS.
- (j) EFFECTIVE DATE.
- (k) SYNOPSIS; ABR; LRB ANALYSIS.

SECTION 75-5. GENERALLY.

Section 5.04 of the Legislative Reference Bureau Act (25 ILCS 135/5.04, subsec. (h)) provides in part as follows:

(h) The Legislative Reference Bureau shall select subjects and chapters of the statutory law that it considers most in need of a revision and present to the next regular session of the General Assembly bills covering those revisions.

This language authorizes the Legislative Reference Bureau to prepare and submit to the General Assembly for consideration revisory bills as discussed in Chapter 70 of this Manual. It also authorizes the Legislative Reference Bureau to prepare and submit bills to codify the statutory law with respect to subjects selected by the Bureau. These codification bills are of 3 general types. The first type consolidates all of the laws concerning a particular subject into a single new Act or Code. Examples are the State Designations Act (5 ILCS 460/), the Township Code (60 ILCS 1/), and the Income Withholding for Support Act (750 ILCS 28/). The second type of codification bill revises an existing Act or Code by incorporating into that Act or Code the provisions of various other Acts concerning the same subject. An example is the revision of the Election Code in Article 5 of Public Act 87-1052. The third type of codification bill simply renumbers and rearranges the provisions of an existing Act or Code. An example is the revision of the Civil Administrative Code of Illinois in Public Act 91-239. A codification bill does not make any substantive changes in the meaning, effect, or application of the laws that are the subject of the bill.

A codification bill may involve the renumbering of Sections of existing law. When drafting a codification bill, prepare a disposition table showing the ILCS citation of each Section of existing law that is affected by the codification and (i) its corresponding Section number or numbers in the new Act or Code, (ii) the ILCS citation or citations indicating its incorporation into an existing Act or Code, or (iii) its repeal without continuation in the codification bill. Use the table to account for every part of every Section of existing law, and make sure that none is inadvertently repealed without continuation in the codification bill. If the codification bill becomes law, other drafters will then find the table useful when responding to a bill request for changes to a Section of prior law that was repealed by the codification bill.

Insert both a disposition table and a derivation table (the latter showing the derivation of the Sections in the new Act or Code) in a separate Article of the codification bill as in the following example:

ARTICLE 98. DISPOSITION AND DERIVATION TABLES

Section 98-1. Explanation. This Article is included only for informational purposes to show the following:

(1) How Sections of the XYZ Code as amended through Public Act 94-5000 and revised by the Legislative Reference Bureau through October 25, 2006 are renumbered and rearranged in that Code by this Act.

(2) How Sections of the XYZ Code as renumbered and rearranged by this Act are derived from that Code as amended through Public Act 94-5000 and revised by the Legislative Reference Bureau through October 25, 2006.

This Article is repealed on the effective date of this Act.

Section 98-5. Disposition table.

| | |
|---------------------|-------------------------|
| BEFORE CODIFICATION | AS CODIFIED BY THIS ACT |
| aa ILCS bb/cc | xx ILCS yy/zz |
| *** | *** |

Section 98-10. Derivation table.

| | |
|-------------------------|---------------------|
| AS CODIFIED BY THIS ACT | BEFORE CODIFICATION |
| xx ILCS yy/zz | aa ILCS bb/cc |
| *** | *** |

The following Sections set forth the suggested form for codification bills.

SECTION 75-10. NEW ACT.

(a) **BILL TITLE.** A codification bill, like any other bill, must have a title. The preferred form follows:

AN ACT to codify the law in relation to (subject).

(b) **PURPOSE; MATTERS OF FORM.** A statement of the purpose of consolidating several existing Acts into a new Act, including the purpose of not making any substantive changes in existing laws, may be advisable. A statement explaining the matters of form used in the codification bill is necessary. Because these statements will not be made Sections of the new Act (they are not in any of the existing Acts being consolidated) they may be set forth in a preamble between the title of the bill and the enacting clause. An example of the suggested form for such a preamble follows:

WHEREAS, Codification of laws relating to soup will achieve the goals of (i) consolidating the many laws relating to soup; (ii) updating the often obsolete language currently in use in these many laws; and (iii) incorporating uniform terminology that will ensure a constancy of understanding and interpretation of these laws; and

WHEREAS, The Illinois General Assembly seeks to achieve these goals by consolidating the many soup laws of Illinois into a Soup Code, without making any substantive changes in the meaning, effect, or application of those laws; and

WHEREAS, Because this Act is a codification of existing law, the following matters of form are used:

(a) The parenthetical citation before a Section in the form "(was XX ILCS XX/XX)" (i) is an informational reference to the prior law from which the Section is derived and (ii) is not part of the text of the law;

(b) In the text of a Section, (i) matter that is stricken indicates a deletion from the prior law and (ii) matter that is underscored indicates an addition to the prior law;

(c) The parenthetical citation after a Section in the form "(Source: Laws 19XX, p. XX)" or "(Source: P.A. XX-XXXX)" (i) is an informational reference to the most recent sources of the continued text in the Session Laws of Illinois and (ii) is not part of the law; therefore

(c) **SHORT TITLE.** The new Act codifying existing law, like other new Acts, should be given a short title. Because the new Act is a codifying law, its short title should be the XYZ Code (rather than the XYZ Act). Number the short title Section as described in Section 15-15 of this Manual.

(d) **SECTION AND ARTICLE NUMBERS.** Section numbers (and Article numbers if used) should follow the format described in Section 15-15 of this Manual.

(e) **PARENTHETICAL ILCS REFERENCES.** The parenthetical ILCS reference before each new Section indicates that Section's source in prior (existing) law. If Sections of prior law are being combined, indicate all sources. An example follows:

(was 60 ILCS 5/9-5 and 5/9-6)

If a Section of prior law is being split into 2 or more new Sections, indicate this. Examples follow:

(was 60 ILCS 115/3, subsec. (c))
(was 60 ILCS 10/1, in part)

Use the "in part" reference in the last example if the Section being split was not subdivided in the prior law. If the Section being split was subdivided in the prior law and a new Section uses only part of one of those subdivisions, include both references; for example, "subsec. (a), in part".

Cross reference: Section 70-20, subsection (e), concerning resectioning of a Section.

(f) SOURCES. The sources shown at the end of each new Section are the sources of the prior law. If the new Section combines matter from 2 or more Sections of prior law, then the sources shown at the end of the new Section should include the sources from all Sections of prior law being combined.

(g) STRIKING AND UNDERSCORING. Show the changes to the prior law by striking and underscoring as in amendatory bills. (See Chapter 25 of this Manual.) In a new Act generally, no text is shown stricken or underscored. In a codification bill, however, it is important to clearly show the changes to prior law (i) to reassure everyone that there are no substantive changes or (ii) if there are substantive changes, to clearly indicate those changes.

You may occasionally need to add a new Section that consists entirely of new (and therefore underscored) text and does not involve changes to a Section of prior law. For example, the Township Code contains an Article concerning the powers and duties of township supervisors. (60 ILCS 1/Art. 70). The provisions of the prior Township Law of 1874 concerning township supervisors were consolidated into that Article. Other Sections of existing laws also contain matter concerning the powers and duties of township supervisors, but it was not appropriate to remove those Sections or parts of Sections from the other laws and consolidate them into the Township Code. Since it was felt important to include in the Township Code, in some fashion, all matter relating to township supervisors, this additional matter was included in the form of new Sections referencing the existing laws that were not consolidated into the Township Code. An example follows:

Section 70-50. Supervisor of general assistance. The township supervisor shall be ex officio supervisor of general assistance in the township and shall administer the general assistance program in the township as provided in Articles VI, XI, and XII of the Illinois Public Aid Code.

Don't show either a parenthetical ILCS reference or a source.

(h) STYLE; CROSS REFERENCES.

Give each Section a succinct and accurately descriptive Section heading. You may need to modify a Section heading of a Section of prior law, especially if the Section heading is a long one or if the Section is being split into 2 or more new Sections. See Section 15-25 of this Manual.

Make sure that all Sections of the new Act conform to the outline format described in Section 15-20 of this Manual. Also clean up the style, language, and punctuation of Sections of prior law as described in Chapters 90 and 95 of this Manual.

Verify all internal cross references in the new Act. References in other Acts to Acts that were consolidated into the new Act can be updated in a revisory bill after the new Act becomes law.

(i) CODIFICATION PROVISIONS.

Include the following codification provisions in separate Sections (in a separate Article, if the codification Act is divided into Articles) after the substantive provisions of the new Act:

ARTICLE XX. CODIFICATION PROVISIONS

Section XX-1. Prior law.

(a) A provision of this Code that is the same as a prior law shall be construed as a continuation of the prior law and not as a new or different law. (b) A citation in another Act to an Act or to a Section of an Act that is continued in this Code shall be construed to be a citation to that continued provision in this Code.

Section XX-5. Other Acts of the General Assembly. If any other Act of the General Assembly changes, adds, or repeals a provision of prior law that is continued in this Code, then that change, addition, or repeal in the other Act shall be construed together with this Code.

Section XX-10. Home rule; mandates. Nothing in this Code as initially enacted (i) is a denial of or limitation on home rule powers if no denial or limitation existed under prior law or (ii) creates a State mandate under the State Mandates Act if no mandate existed under prior law.

Section XX-15. Titles; Articles; Sections; captions. The language contained in the Titles, Article headings, Section headings, and subsection captions in this Code: (1) is intended only as a general description that is not a part of the substantive provisions of this Code; (2) does not take precedence over the content of the substantive provisions of this Code; and (3) shall not be used in construing the meaning of the substantive provisions of this Code.

(j) REPEALS.

The Acts or parts of Acts that are consolidated into the new Act must be repealed. Insert the repealer provisions in a separate Section or Article after the codification provisions as in the following example:

ARTICLE XXX. STATUTES REPEALED

Section XXX-5. Repeals. The following Acts or parts of Acts are repealed:

(505 ILCS 910/Act rep.)
The Cream of Mushroom Soup Act.

(505 ILCS 925/Act rep.)
The Soybean Soup Act.

(505 ILCS 945/10 rep.)
Section 10 of the Soup Stirrers Licensing Act.

(505 ILCS 970/Act rep.)
The Ham and Beans Act.

Section XXX-10. Sections not continued. The following Sections are repealed in Section XXX-5 without being continued in the Soups of Illinois

Act: Section 1 (short title) of the Cream of Mushroom Soup Act, Section 1 (short title), Section 90 (repealer), and Section 99 (effective date) of the Soybean Soup Act, and Section 1 (short title) of the Ham and Beans Act.

In the example the Sections not continued in the codification Act are specified so that a user of the statutes can account for all Sections of the prior law being codified.

(k) EFFECTIVE DATE. Give the codification bill an effective date as described in Chapter 35 of this Manual. Place the effective date in a separate Section or Article after the repeals.

(l) SYNOPSIS; ABR; LRB ANALYSIS. Prepare a synopsis and an ABR, as described in Chapter 40 of this Manual, for the codification bill. Also prepare a separate LRB Analysis of the bill. The analysis is provided as a courtesy to partisan staff to assist them in analyzing the bill. The analysis should follow the form of the following example, which was prepared in connection with the bill creating the Township Code.

LRB ANALYSIS
88th G.A. - Spring 1993
House Bill 2120

SUMMARY: (New Act) Creates the Township Code to replace the Township Law of 1874 and other Acts concerning townships and certain township officers. Makes no substantive changes.

EFFECTIVE DATE: January 1, 1994.

BACKGROUND: Section 5.04 (h) of the Legislative Reference Bureau Act (25 ILCS 135/5.04 (h)) directs the Bureau to select subjects of the statutory law that it considers most in need of revision and to present bills covering those revisions. This bill is presented in accordance with that directive in order to consolidate the laws concerning townships.

ANALYSIS AND COMMENT: The Township Law of 1874, 60 ILCS 5/, contains the largest single body of statutory law concerning townships and township officers. There are, however, 30 other Acts that concern townships. The bill consolidates all of these provisions into a single Act that should make the law concerning townships and township officers more conveniently accessible to the people who need to know, use, and obey that law. The bill also standardizes use of the terms "township" and "township board". In addition, there are several other laws or parts of laws that concern various township officers but that are not referenced in any law specifically concerning townships. Examples include the administration of general assistance by the township supervisor as provided in the Illinois Public Aid Code, the highway commissioner's duties under the Illinois Highway Code, and the township assessor's duties under the Revenue Act of 1939. The bill includes appropriate cross-references to these other laws. The bill makes no substantive changes in the law.

SECTION 75-15. INCORPORATION INTO EXISTING ACT.

(a) BILL TITLE. The preferred form for the title of a codification bill revising an existing Act or Code by incorporating provisions of other Acts follows:

AN ACT to revise the (short title of Act or Code).

(b) REVISORY PROVISIONS. In the "revisory" codification bill, place the provisions concerning the purpose of the bill, matters of form, and codification in a separate Article immediately following the enacting clause. The suggested form for these provisions follows:

ARTICLE 1. REVISORY PROVISIONS

Section 1-5. Purpose. The purpose of this Act is to revise the ABC Code by incorporating into that Code the provisions of various other Acts or parts of Acts, making only nonsubstantive changes.

Section 1-10. Prior law.

(a) A provision added to the ABC Code by the amendatory provisions of this Act that is the same or substantially the same as a prior law shall be construed as a continuation of the prior law and not as a new or different law.

(b) A citation in an Act other than the ABC Code to an Act or to a Section of an Act that is continued in the ABC Code by the amendatory provisions of this Act shall be construed to be a citation to that continued provision in the ABC Code.

(c) The following laws are obsolete or have been held to be unconstitutional and are, therefore, repealed without being continued in the ABC Code: Section A of the BCD Act; the PQR Act.

Section 1-15. Other Acts of the General Assembly. If any other Act of the General Assembly changes, adds, or repeals a provision of prior law that is continued in the ABC Code by the amendatory provisions of this Act, then that change, addition, or repeal in the other Act shall be construed together with the ABC Code.

Section 1-20. Matters of form.

(a) The parenthetical citation before a new Section in the form "(XX ILCS XX/XX new)" (i) is an informational reference to the citation of the new Section in the Illinois Compiled Statutes and (ii) is not part of the text of the law.

(b) The parenthetical citation before a new Section in the form "(was XX ILCS XX/XX)" (i) is an informational reference to the prior law from which the new Section is derived and (ii) is not part of the text of the law.

(c) In the text of a new Section, (i) matter that is stricken indicates a deletion from the prior law and (ii) matter that is underscored indicates an addition to the prior law. The purpose of striking and underscoring in this manner is to clearly indicate all changes to prior laws that are being incorporated into the ABC Code. Matter in the text of a new Section that is not underscored or stricken is matter being added to the ABC Code from the prior law with no changes.

(d) The parenthetical citation after a Section in the form "(Source: Laws 19XX, p. XX)" or "(Source: P.A. XX-XXXX)" (i) is an informational reference to the most recent sources of the continued text in the Session Laws of Illinois and (ii) is not part of the text of the law.

Section 1-25. Home rule; mandates. No provision incorporated into the ABC Code by the amendatory provisions of this Act (i) is a denial of or limitation on home rule powers if no denial or limitation existed under

prior law or (ii) creates a State mandate under the State Mandates Act if no mandate existed under prior law.

(c) AMENDATORY PROVISIONS. Place the amendatory provisions of the bill in a separate Article that follows the following form:

ARTICLE 5. AMENDATORY PROVISIONS

Section 5-5. The ABC Code is amended by adding Section 2-175 as follows:

(XX ILCS Y/2-175 new) (was XX ILCS B/1)

Sec. 2-175. See. 1. Caffeine studies. The Department of ~~Central Management Services~~ shall conduct ongoing studies of the effects of caffeine ~~caffiene~~ on personnel performance.

(Source: P.A. 67-999.)

(d) SECTION AND ARTICLE NUMBERS. When incorporating Acts or parts of Acts into an existing Act, use Section and Article numbers that fit the current pattern within the existing Act. If it is necessary to comprehensively renumber the existing Act, then follow the numbering guidelines for new Acts described in Section 15-15 of this Manual.

(e) PARENTHETICAL ILCS REFERENCES. As in the example shown in subsection (c), the first parenthetical ILCS reference before a new Section indicates the ILCS citation of the new Section. The second parenthetical ILCS reference shows the new Section's source in the prior law. If Sections of the prior law are being combined, or if a Section of the prior law is being split, follow the guidelines set forth in Section 75-10, subsection (e), of this Manual.

(f) SOURCES. Follow the guidelines set forth in Section 75-10, subsection (f), of this Manual.

(g) STRIKING AND UNDERSCORING. Show changes to prior law by striking and underscoring. Don't underscore those parts of prior law that are not being changed even though it is new matter being added to an existing Act. This is contrary to the normal rule, but it is important to show clearly what changes are being made to prior law. See (i) the example in subsection (c) of this Section and (ii) Section 1-20, subsection (c), of the revisory provisions set forth in subsection (b) of this Section.

(h) STYLE; CROSS REFERENCES. Follow the guidelines set forth in Section 75-10, subsection (h), of this Manual.

(i) REPEALS. Place the repealer provisions in a separate Article after the amendatory provisions, following the guidelines set forth in Section 75-10, subsection (j), of this Manual.

(j) EFFECTIVE DATE. Place the effective date in a separate Article after the repeals, following the guidelines set forth in Chapter 35 of this Manual.

(k) SYNOPSIS; ABR; LRB ANALYSIS. Prepare the Synopsis, ABR, and LRB Analysis following the guidelines set forth in Section 75-10, subsection (l), of this Manual. In the LRB Analysis, the Summary section should state (for example) that the bill amends the ABC Code by incorporating into that Code the BCD Act, the XYZ Act, and so forth.

SECTION 75-20. RENUMBERING AND REARRANGING OF EXISTING ACT.

(a) BILL TITLE. The preferred form for the title of a codification bill renumbering and rearranging the provisions of an existing Act or Code follows:

AN ACT to revise the (short title of Act or Code).

(b) REVISORY PROVISIONS. In the "renumbering and rearranging" codification bill, place the provisions concerning the purpose of the bill, matters of form, and codification in a separate Article immediately following the enacting clause. The suggested form for these provisions follows:

ARTICLE 1. REVISORY PROVISIONS

Section 1-5. Purpose. The purpose of this Act is to revise the ABC Code by renumbering and rearranging the provisions of that Code, making only nonsubstantive and technical changes.

Section 1-10. Prior law.

(a) A provision revised and continued in the ABC Code by the amendatory provisions of this Act shall be construed as a continuation of the prior law and not as a new or different law.

(b) A citation in an Act other than the ABC Code to a Section of that Code that is renumbered and continued in that Code by the amendatory provisions of this Act shall be construed to be a citation to that renumbered and continued provision in that Code.

(c) The following laws are obsolete or redundant or have been held to be unconstitutional and are, therefore, repealed without being continued in the ABC Code: Section A of the BCD Act; Section O of the PQR Act.

Section 1-15. Other Acts of the General Assembly. If any other Act of the General Assembly changes, adds, or repeals a provision of prior law that is renumbered and continued in the ABC Code by the amendatory provisions of this Act, then that change, addition, or repeal in the other Act shall be construed together with the ABC Code as amended by this Act.

Section 1-20. Matters of form.

(a) The parenthetical citation before a new Section in the form "(XX ILCS XX/XX new)" or "YY ILCS YY/Art. YY new)" (i) is an informational reference to the citation of the new Section or new Article heading in the Illinois Compiled Statutes and (ii) is not part of the text of the law.

(b) The parenthetical citation before a new Section in the form "(was XX ILCS XX/XX)" (i) is an informational reference to the prior law from which the new Section is derived and (ii) is not part of the text of the law.

(c) In the text of a new Section, (i) matter that is stricken indicates a deletion from the prior law and (ii) matter that is underscored indicates an addition to the prior law. The purpose of striking and underscoring in this manner is to clearly indicate all changes to prior laws that are being renumbered and continued in the ABC Code. Matter in the text of a new Section that is not underscored or stricken is matter being continued in the ABC Code with no changes.

(d) The parenthetical citation after a Section in the form "(Source: Laws 19XX, p. XX)" or "(Source: P.A. XX-XXXX)" (i) is an informational reference to the most recent sources of the continued text in the Session Laws of Illinois and (ii) is not part of the text of the law.

Section 1-25. Home rule; mandates. No provision incorporated into the ABC Code by the amendatory provisions of this Act (i) is a denial of or limitation on home rule powers if no denial or limitation existed under prior law or (ii) creates a State mandate under the State Mandates Act if no mandate existed under prior law.

Section 1-30. Titles; Articles; Sections; captions. The language contained in the Titles, Article headings, Section headings, and subsection captions in the ABC Code:

(1) is intended only as a general description that is not a part of the substantive provisions of that Code;

(2) does not take precedence over the content of the substantive provisions of that Code; and

(3) shall not be used in construing the meaning of the substantive provisions of that Code.

(c) AMENDATORY PROVISIONS. Place the amendatory provisions of the bill in a separate Article that follows the following form:

ARTICLE 5. AMENDATORY PROVISIONS

Section 5-5. The ABC Code is amended by changing and renumbering and, in part, resectioning the Sections of the Code and by adding certain Article headings and Sections to the Code as follows:

(XX ILCS Y/Art. 1 heading new)

ARTICLE 1. SHORT TITLE AND GENERAL PROVISIONS

(XX ILCS Y/1-5 new) (was XX ILCS B/1)

Sec. 1-5. ~~See, 1-~~ Short title. This Act may be cited as the ABC Code.

(Source: Laws 1955, p. 999.)

(d) SECTION AND ARTICLE NUMBERS. When renumbering and rearranging the provisions of an existing Act, follow the numbering guidelines for new Acts described in Section 15-15 of this Manual.

(e) PARENTHETICAL ILCS REFERENCES. As in the example shown in subsection (c), the first parenthetical ILCS reference before a new Section indicates the ILCS citation of the new Section. The second parenthetical ILCS reference shows the new Section's source in the prior law. If Sections of the prior law are being combined, or if a Section of the prior law is being split, follow the guidelines set forth in Section 75-10, subsection (e), of this Manual.

(f) SOURCES. Follow the guidelines set forth in Section 75-10, subsection (f), of this Manual.

(g) STRIKING AND UNDERSCORING. Show changes to prior law by striking and underscoring. Don't underscore those parts of prior law that are not being changed even though it is new matter in a new Section being added to an existing Act. This is contrary to the normal rule, but it is important to show clearly what changes are being made to prior law. See (i) the example in subsection (c) of this Section and (ii) Section 1-20 (c) of the revisory provisions set forth in subsection (b) of this Section.

(h) STYLE; CROSS REFERENCES. Follow the guidelines set forth in Section 75-10, subsection (h), of this Manual.

(i) REPEALS. Place the repealer provisions in a separate Article after the amendatory provisions, following the guidelines set forth in Section 75-10, subsection (j), of this Manual.

(j) EFFECTIVE DATE. Place the effective date in a separate Article after the repeals, following the guidelines set forth in Chapter 35 of this Manual.

(k) SYNOPSIS; ABR; LRB ANALYSIS. Prepare the Synopsis, ABR, and LRB Analysis following the guidelines set forth in Section 75-10, subsection (l), of this Manual. In the LRB Analysis, the Summary section should state (for example) that the bill amends the ABC Code by renumbering and rearranging the provisions of the Code.

CHAPTER 77. UNIFORM ACTS.

- 77-5. GENERALLY.
- 77-10. FORM.
- 77-15. SPECIAL SITUATIONS.
- 77-20. RESOURCES.

SECTION 77-5. GENERALLY.

The National Conference of Commissioners on Uniform State Laws (NCCUSL), also known as the Uniform Law Commission (ULC)), from time to time approves, and recommends for enactment in all the states, Uniform Acts concerning various subjects. The purpose of these recommendations is to make the laws concerning these subjects uniform among the various states. Section 5.07 of the Legislative Reference Bureau Act provides in part that "the Legislative Reference Bureau shall examine all subjects on which uniformity is desirable with the laws of other states to ascertain the best means to effect uniformity in the laws of the States." (25 ILCS 135/5.07). LRB drafts bills to enact Uniform Acts in Illinois. Illinois has enacted a number of these Acts, including the Uniform Child-Custody Jurisdiction and Enforcement Act, the Uniform Commercial Code, and the Uniform Transfers to Minors Act.

In this Chapter, "Uniform Act" includes: (1) Uniform Acts that are new Acts; (2) revisions of existing Uniform Acts that have been recommended by NCCUSL for enactment in all the states; and (3) Uniform Act language that is being inserted into an Act that is not a Uniform Act. Most Uniform Acts are new Acts; an example is the Uniform Prudent Management of Institutional Funds Act (Public Act 96-29). An example of a revision is Public Act 97-1034, which revised Article 9 of the Uniform Commercial Code. An example of Uniform Act language that is inserted into an Act that is not a Uniform Act is Public Act 97-140, which added the Uniform Foreign-Country Money Judgments Recognition Act as Sections 12-661 through 12-672 of the Code of Civil Procedure and repealed an earlier version of that language that had been in the Code of Civil Procedure as Sections 12-618 through 12-626.

You can usually obtain the current final version of a Uniform Act by going to the NCCUSL web site at www.uniformlaws.org and finding the Act you need. (There are a few joint projects of NCCUSL and the American Law Institute (ALI) that are exceptions. You may not be able to find an electronic version of a joint project on the Web. If the requester can't give you an electronic copy and you encounter difficulty obtaining an electronic copy of a Uniform Act on the Web, see your supervisor for help getting an electronic copy. We should never type a Uniform Act from scratch.)

SECTION 77-10. FORM.

When preparing a draft to enact a Uniform Act, follow the form of the Act as recommended by NCCUSL rather than the form prescribed elsewhere in this Manual, except as noted in this Section and Section 77-15. For example, the Sections of a Uniform Act will not be numbered in multiples of 5. If the Uniform Act contains style, language, or punctuation that differs from the guidelines set forth in this Manual (for example, "six" instead of "6" or "which" instead of "that"), retain the style, language, or punctuation recommended by NCCUSL. One of the most common mistakes made by drafters when preparing a draft to enact a Uniform Act is painstakingly modifying a Uniform Act to conform to LRB style.

Make sure you know which version of a Uniform Act to use. The NCCUSL may revise a Uniform Act from time to time. Suppose you are asked to base a draft on a particular version of a Uniform Act. You see that the NCCUSL Web site has a more recent version that has been recommended by NCCUSL. You should advise the requester that there is a more recent version and ask the requester which version is desired.

To identify the Act as a Uniform Act, always use the short title in the Uniform Act as recommended by NCCUSL; include the word "Uniform". (Don't use "Uniform" as the first word in an Act's short title or otherwise state that an Act may be cited as a Uniform Act unless the Act is recommended by NCCUSL.)

Adaptations that individual states may need to make are usually shown by brackets. For example, a Uniform Act may contain:

```
[class[ ] felony]
```

which indicates that a state should replace the bracketed material with a penalty that is appropriate for that state. If a Uniform Act contains

```
[state department of motor vehicles]
```

a state should replace the bracketed material with the name of the appropriate office. Sometimes the appropriate Illinois language will be obvious. On the other hand, there may be nothing that suggests whether the penalty for a particular offense should be a Class 3 felony or a Class 4 felony. A Uniform Act may also contain a "legislative note" advising that certain language in the Uniform Act should be omitted or modified under certain circumstances. There may also be an "Alternative A" and "Alternative B" with a legislative note indicating the circumstances under which a state should use one of the alternatives. Sometimes NCCUSL's comments for a Section will provide guidance. If it is not clear what language is appropriate for Illinois, discuss the matter with the requester.

Some Uniform Acts have bracketed material in this form:

```
this [act]
```

This is done because some states have their statutes organized in a manner that would require calling it something other than an Act. Whenever you find "this act" with a lowercase "a", with or without brackets, change it to "this Act".

Section headings of Uniform Acts are usually in all caps. Do not use all caps. Use sentence case with proper nouns capitalized. (Change case by using "Change Case" in Word or XMetal. Don't retype text that is in all caps. Retyping results in insidious typos.)

Two Uniform Acts in ILCS have a year in parentheses at the end of the short title. When preparing a bill to enact a Uniform Act, put a year in parentheses at the end of the short title only if the text of the Uniform Act as recommended by NCCUSL includes the year in parentheses at the end of the short title. Most Uniform Acts don't have a year in parentheses at the end of the short title. (Please note that if there is a year in parentheses, it won't be the current year; instead, it will be the year the version of the Uniform Act was adopted by NCCUSL.)

SECTION 77-15. SPECIAL SITUATIONS.

In some Uniform Acts, the numbering of the short title and effective date Sections doesn't follow the Illinois method of putting the short title Section at the beginning of an Act and the effective date Section at the end of an Act. When drafting a Uniform Act as a new Act, make any needed changes to conform the Uniform Act to the Illinois method of putting the short title Section at the beginning of an Act and the effective date Section at the end of an Act. For example, suppose you are asked to draft a bill to enact the Uniform Adoption Act, which consists of Sections 1-101 through 8-106. The short title Section is 8-102 and the effective date Section is 8-104. You would add Section 1-100 as the short title Section and Section 8-107 as the effective date Section. You would not omit Sections 8-102 and 8-104 from the draft; instead, you would make them placeholder Sections:

```
Section 8-102. (See Section 1-100 for short title.)
```

and

Section 8-104. (See Section 8-107 for effective date.)

You wouldn't include Section headings for Sections 8-102 and 8-104. If you were working with a Uniform Act that included a Section 1 as something other than the short title Section, you would add the short title Section as Section 0.01.

If a Section or a subdivision of a Section is inappropriate for Illinois, you may delete the text of the Section or subdivision, but you should include a placeholder for the Section:

Section 14. (Blank).

or the subdivision:

(b) (Blank).

In addition to bracketed language mentioned in Section 77-10, in rare cases you may encounter other language that is inappropriate for Illinois. Discuss any such language with the requester and make the necessary changes.

The requester may want to add additional material to a Uniform Act. If a Section or a subdivision needs to be added, don't disturb the numbering of the Uniform Act. For example, suppose that a Uniform Act contains Sections 1 through 12. If the requester wants a new Section that logically belongs between Sections 6 and 7, you would not renumber Sections 7 through 12. Instead, you would number the new Section as Section 6.1 or 6.5. If the requester wants an additional subsection that logically belongs between subsections (b) and (c) of Section 4 of the Uniform Act, you would designate the additional subsection as (b-1) or (b-5).

When drafting a Uniform Act as a new Act, you may need to amend existing Acts to conform to the new Act. Suppose you are drafting a Uniform Act that contains Sections 1 through 10 and does not have an effective date Section. If you have to amend 14 existing Acts, you might be tempted to number the amendatory Sections as 11 through 24. Don't do this. If NCCUSL were to revise the Uniform Act someday and add a Section 11, you would have already used Section 11. Instead, number the amendatory Sections as 10.1 through 10.14.

You may be asked to use a "hip-pocket" amendment, which is language that is not officially part of a Uniform Act but has been developed for use in particular situations. In the context of a new Act, think of a "hip-pocket" amendment as a modification of the new Act rather than an amendment.

You may be asked to draft a "model Act". There are two types of model Acts: those created by NCCUSL and those created by everybody else. The Frequently Asked Questions page on the NCCUSL web site includes:

Besides uniform acts, the ULC also promulgates "model" acts. A uniform act is one in which uniformity of the provisions of the act among the various jurisdictions is a principal and compelling objective. An act may be designated as "model" if the principal purposes of the act can be substantially achieved even though it is not adopted in its entirety by every state.

If you are asked to draft a bill based upon a model Act created by NCCUSL, follow the rules for drafting a Uniform Act but don't use "Model" or "Uniform" in the short title. An example of an Illinois bill based upon a model Act created by NCCUSL is SB3356 of the 97th General Assembly, which has the short title "Dormant Mineral Interests Act" and is based upon NCCUSL's Model Dormant Mineral Interests Act. (Note that if you go to the NCCUSL Web site and find the document containing the text of the Model Dormant Mineral Interests Act, that document refers to the Act as the Uniform Dormant Mineral Interests Act. That is because that document was

created in 1986 and NCCUSL changed the status of the Act from a Uniform Act to a model Act at some point after 1986.)

If you are asked to draft a bill based upon a model Act created by someone other than NCCUSL, don't follow the rules for drafting a Uniform Act. Follow the rules in this Manual for drafting a new Act that appear elsewhere in this Manual. Don't use "Model" in the short title.

An Act may be partly derived from a Uniform Act but may have other material that is not derived from a Uniform Act. In those cases, the Act may not have "Uniform" in the short title. For example, the Illinois Marriage and Dissolution of Marriage Act, which was enacted in 1977, was partly derived from the Uniform Marriage and Divorce Act that was promulgated by NCCUSL in 1973, but it was also partly derived from earlier Illinois law. There is no hard and fast rule about whether to include "Uniform" in the short title in these situations. Follow the requester's guidance.

Section 77-5 mentions the case of Uniform Act language that is inserted into an Act that is not a Uniform Act. In those cases, we can't follow the Uniform Act's numbering, but we can follow the order. In the case of the Uniform Foreign-Country Money Judgments Recognition Act, which needs to be in Part 6 of Article XII of the Code of Civil Procedure, Sections 12-661 through 12-672 correspond to Sections 1 through 12 of the Uniform Act.

If you find what you think is an error in the text of a Uniform Act, see your supervisor.

SECTION 77-20. RESOURCES.

In addition to the NCCUSL web site mentioned above, there are other resources that may help with issues involving Uniform Acts.

The University of Pennsylvania Law Library's web site at www.law.upenn.edu/bll/archives/ulc/ulc.htm has an archive of drafts and final acts of Uniform Laws and model Acts.

Uniform Laws Annotated is a West publication including comments, state variations, citations to law review articles and cases, and other materials. The electronic version of Uniform Laws Annotated is available through Westlaw; the Westlaw database is ULA.

CHAPTER 80. RESOLUTIONS.

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SECTION 80-5. GENERAL NATURE OF RESOLUTIONS.

A resolution is an action taken by the House alone, the Senate alone, or both the House and Senate acting jointly. A resolution is not a law, however. It is not approved or otherwise acted on by the Governor and, thus, does not meet the constitutional requirements for the enactment of laws. Ill. Const., art. IV, secs. 8 and 9.

The effect of a typical resolution is merely to express the opinion of one or both houses of the legislature or to take some action short of enacting a law that is within the province of one or both houses. Moreover, a typical resolution is temporary in character. For example, a typical resolution passed by the 97th General Assembly expires and has no further effect once the 98th General Assembly takes office. See 1955 Op.Atty.Gen., p. 55 and the cases cited in that opinion.

Some resolutions, however, do have legal effect. For example, the General Assembly by joint resolution may disapprove requests for school mandate waivers or modifications, 105 ILCS 5/2-3.25g, or authorize new toll highways, 605 ILCS 10/14.1.

SECTION 80-10. SCOPE OF THIS CHAPTER.

This Chapter discusses resolutions generally and substantive resolutions and death resolutions in particular, but excludes housekeeping resolutions, such as those concerning adjournment or rules. This Chapter also excludes resolutions concerning constitutional amendments (which are discussed in Chapter 85 of this Manual) and resolutions disapproving Executive Orders (which are discussed in Chapter 87 of this Manual).

In the past the General Assembly adopted many congratulatory and recognition resolutions. Under current rules, however, the Senate does not adopt these resolutions. Instead, congratulations or recognition is expressed in a certificate of recognition signed by the sponsoring member. Senate Rules 3-6(a) and 6-4 (97th G.A.). However, LRB will draft congratulatory resolutions for a Senate sponsor, as Senate rules may be suspended to accommodate such a resolution. The House may adopt congratulatory resolutions, but a member also may sponsor a certificate of recognition. House Rules 16(b) and 48 (97th G.A.).

SECTION 80-15. FORMAT OF A RESOLUTION.

A resolution has 2 distinct parts: the heading and the body. The body, in turn, has 2 distinct parts: the whereas clauses and the resolved clauses. The body is one, and only one, sentence. Thus, a resolution should have one period as an ending punctuation mark, no more, and that period should always appear at the end of the resolution.

(a) **HEADING.** There are 3 general types of resolutions: House resolutions, Senate resolutions, and joint resolutions. A joint resolution may originate in either the House or the Senate, but to be effective it must be approved by both houses. The heading of a resolution reflects which general type of resolution it is and, in the case of a joint resolution, the house in which it originates. Thus, the heading of a resolution will be one of the following:

HOUSE RESOLUTION
 SENATE RESOLUTION
 HOUSE JOINT RESOLUTION
 SENATE JOINT RESOLUTION

(b) **BODY.** The body of a resolution is one sentence consisting of whereas clauses and resolved clauses.

(1) **WHEREAS CLAUSES.** Whereas clauses generally state facts, although opinions are usually intermixed. The whereas clauses are sometimes referred to collectively as the preamble.

The first whereas clause should indicate what the resolution is all about. If it is a substantive resolution, for example, it should state the problem or other situation that will be addressed by the resolution. If it is a death resolution, it should state who is being memorialized and that he or she has died. The reason for indicating the gist of the resolution up front in the first whereas clause is so that anyone picking up the resolution can take a quick look at its beginning and learn what it is about. Examples follow:

WHEREAS, Illinois includes 2 major metropolitan areas as well as a large number of medium-sized cities; and

WHEREAS, Many single parents in this State as well as in other states who have few or no job skills must support themselves and their families; and

WHEREAS, Mr. John Doe of Anytown, Illinois, passed away on Wednesday, January 17, 2007; and

If the remaining whereas clauses contain facts, those facts should be stated in chronological order if possible. Opinions are often intermixed with the facts. An example (in this case, from SR202 of the 91st G.A.) of whereas clauses containing facts and opinions, including the initial whereas clause indicating the purpose of the resolution, follows:

WHEREAS, The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) required all states to create a

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centralized state disbursement unit for the collection and disbursement of certain child support checks; and

WHEREAS, Illinois' state disbursement unit began operating on October 1, 1999; and

WHEREAS, Unforeseen delays have occurred in processing and distributing child support checks to custodial parents throughout the State; and

WHEREAS, Many custodial parents are facing extreme financial hardship as a result of this unfortunate delay in processing child support checks; and

WHEREAS, This delay has left many parents unable to pay necessary expenses such as rent or mortgage payments, utility payments, day care bills, and food expenses; and

WHEREAS, Custodial parents throughout the State, waiting for their child support payments, are incurring or at risk of incurring late fees, financial penalties, or the loss of crucial services such as housing, utilities, and day care services; and

WHEREAS, Custodial parents should not be financially or otherwise penalized for the delay in processing child support checks; and

WHEREAS, The Department of Public Aid and the state disbursement unit are working together to expeditiously resolve the backlog in child support payments; and

WHEREAS, This unfortunate situation offers an unprecedented opportunity for businesses and creditors to be compassionate and lend a helping hand to those in need; therefore, be it

Another example follows:

WHEREAS, We have learned with sadness that Mr. John Smith of Anytown, Illinois, passed away on February 1, 2007; and

WHEREAS, Mr. Smith was born in Anytown on April 1, 1929, the son of Mr. George and Mrs. Mabel Smith, and graduated from Anytown High School in 1947; and

WHEREAS, Mr. Smith served his country honorably during the Korean War and received the Purple Heart for wounds he received in action during the assault on Pork Chop Hill; and

WHEREAS, Mr. Smith and Miss Lettie Carlson were married in Reno, Nevada, on November 13, 1954, and their union has been blessed with one son, Mr. Albert Smith, who is a noted mystery writer; and

WHEREAS, Mr. John Smith was the proprietor of the Smith Hardware Store in Anytown for many years where, with patience and expertise, he helped the fix-it-yourselfers of Anytown accomplish successful home repairs; and

WHEREAS, From 1968 to 1976 Mr. Smith served the citizens of Anytown as their mayor and ensured their economic security by inducing ABC Appliances, Inc. to locate its manufacturing plant in Anytown; and

WHEREAS, Mr. Smith lived a righteous life in devotion to Christ as a member of the Anytown United Church, serving as a deacon for many years; and

WHEREAS, The death of Mr. John Smith is a great loss to his fine family, his many friends, and all the citizens of Anytown; therefore, be it

As stated in the introduction to Section 80-15, a resolution should have only one period, and it should be at the end of the resolution. If a whereas clause contains 2 or more statements that could be complete sentences, separate the statements with a semicolon instead of a period or put each such statement in a separate whereas clause.

Cross reference: Section 80-50, subsection (c), concerning paragraph structure of a resolution.

(2) RESOLVED CLAUSES. The initial resolved clause begins by indicating which house is stating its opinion or taking action or that both houses are stating a joint opinion or taking joint action. Thus, it always begins in one of the following ways, which will correspond with the general type of resolution expressed in the heading:

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that

RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that

RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that

The balance of the initial resolved clause and the resolved clauses that follow indicate the action being taken by one or both houses, such as urging action by the Governor, establishing a commission, expressing sorrow, or whatever else the House, Senate, or both have a mind to do.

An example of an initial resolved clause based on the resolution concerning the child support state disbursement unit follows:

RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that the members of the Illinois State Senate respectfully urge all utility companies, day care centers, land-lords, mortgage companies, and other creditors to recognize the hardships custodial parents are facing due to the delays in receiving child support payments; and be it further

An example of an initial resolved clause based on the death resolution for Mr. John Smith follows:

RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we express our deep sorrow at the passing of Mr.

John Smith, that we offer our heartfelt sympathy to his family, and that we join his many friends and all the citizens of Anytown in honoring his memory; and be it further

The final resolved clause often states to whom a copy of the resolution is to be delivered or presented and is known as the presentation clause. Examples follow:

RESOLVED, That suitable copies of this resolution be delivered to the Director of Healthcare and Family Services and the head of the State Disbursement Unit.

RESOLVED, That a suitable copy of this resolution be presented to Mrs. Lettie Smith with our sincere condolences.

SECTION 80-20. STRUCTURE OF A RESOLUTION.

The structure of a resolution follows a fixed standard. The heading is capitalized and centered. Each whereas clause begins with "WHEREAS," capitalized, and the initial letter of the first word following "WHEREAS," is capitalized. Each whereas clause except the last ends with "; and". The last whereas clause ends with "; therefore, be it", which is the lead-in to the first resolved clause. The first resolved clause begins with one of the 4 alternatives shown in Section 80-15, subdivision (b)(2). The other resolved clauses begin with "RESOLVED, That". (Note that "that" is not capitalized in the first resolved clause but is capitalized in each subsequent resolved clause.) Each resolved clause except the last ends with "; and be it further". The last resolved clause ends with a period. An example of the basic structure of a resolution follows:

XXXX RESOLUTION

WHEREAS, Xxxx xxxx; and

WHEREAS, Xxxx xxxx; and

WHEREAS, Xxxx xxxx; therefore, be it

RESOLVED BY THE XXXX OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, (THE XXXX CONCURRING HEREIN,) that xxxx xxxx; and be it further

RESOLVED, That xxxx xxxx; and be it further

RESOLVED, That xxxx xxxx.

Occasionally a resolution does not contain any whereas clauses. In that case, the resolution should begin with "BE IT RESOLVED, BY THE ..." or simply "RESOLVED, BY THE ...".

SECTION 80-25. CREATING LEGISLATIVE COMMISSIONS.

One or both houses may create a commission by resolution. Sometimes the commission is called a special committee, a board, or a task force or is given some other title, but it all amounts to the same thing.

A commission created by resolution is subject to the same limitations as the resolution creating it. It is temporary, its actions do not have the force of law, and its existence expires no later than the end of the General Assembly that created it.

Commissions generally serve only an advisory function with respect to a specific task or a specific problem. Although a commission may be created by the House or the Senate alone, it can also be created by joint resolution.

An important distinction between commissions created by resolution and committees or boards created by statute is that the General Assembly may freely determine how and by whom the members of a commission created by resolution are appointed, but it is severely limited in making those decisions with respect to committees created by statute when the committees have any executive powers and are more than merely advisory committees. See Section 20-65 of this Manual. Although the legislature has no power to appoint members to executive branch committees, a commission created by resolution is totally a creature of the legislature, and the legislature may do as it pleases without the Governor's involvement.

The initial whereas clause should generally indicate the problem that needs to be studied or the task that needs to be performed. It might also indicate that a commission is going to be appointed for that purpose. The ensuing whereas clauses should explain or give the background of the problem or the task.

The initial resolved clause should create the commission. There are many other matters that may need to be taken care of in the initial or the following resolved clauses: the name of the commission; the number of members; who appoints the members; who the officers are or how they are selected; where, when, and how often the commission meets; whether the commission conducts public hearings; whether it receives staff assistance; whether it may employ personnel; what expenses or costs are to be paid; where the money comes from; whether it makes a report or recommendations, and if so, to whom and when; and the duration of the commission. Certainly, there may be many other considerations depending on the nature and the task of the commission.

An example of a resolution creating a commission (in this case, SR64 of the 91st G.A., which creates a task force) follows:

SENATE RESOLUTION

WHEREAS, The State is in need of substantial technological and economic development; and

WHEREAS, The development of technology-intensive industrial sectors of the Illinois economy offers the best opportunity for long-term economic vitality, for the expansion of jobs, for the improvement of productivity and a quality standard of living, and for providing the greatest number of our citizens with genuine opportunity; and

WHEREAS, Significant functions of government are to increase opportunities for gainful employment, to encourage the flow of private capital for investment in technology-intensive enterprises, and to otherwise improve the prosperity, health, and general welfare of the inhabitants of the State; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that there is created the High-Technology Task Force consisting of 5 members appointed as follows: 3 members of the Senate appointed by the President of the Senate, one of whom shall be designated the chairperson by the President of the Senate, and 2 members of the Senate appointed by the Minority Leader of the Senate, all of whom shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses from funds appropriated for that purpose; and be it further

RESOLVED, That the Task Force shall study various issues relating to the development of high-technology in Illinois and the needs of small businesses for the commercialization of new high-technology; the Task Force shall examine, among any other issues it chooses to investigate with respect to biotechnology and information technology, the following issues: (1) the public and private collaboration in technology-based economic development, (2) the relationship between publicly funded research and development and the competitiveness of Illinois industries, (3) the opportunities for employment in technology-intensive business and industry, (4) the existing State resources and programs that assist in the development of high-technology, and (5) the status of technology transfer in Illinois; and be it further

RESOLVED, That the Task Force shall receive the assistance of legislative staff, may employ skilled experts with the approval of the President of the Senate, and shall report its findings to the General Assembly on or before December 1, 1999.

A "home", in the context of creating a commission, is a State agency or entity, other than the legislature, that will provide administrative and other support and, if appropriate, pay any expenses of the commission. An example of a commission having a home follows:

RESOLVED, That the Department of XXX shall provide administrative and other support to the task force; and be it further

If the commission members are going to be reimbursed for travel expenses, then you should use language such as the following:

RESOLVED, That the members of the task force shall be reimbursed for their travel expenses from appropriations to the Department of XXX available for that purpose and subject to the rules of the appropriate travel control board; and be it further

Occasionally, a commission is not able to complete its work before the end of the General Assembly that authorized its creation. In that case, the subsequent General Assembly may provide by resolution for a continuation of the commission's activities, as in the following example (here, SR139 of the 94th G.A., which extends a task force). Note the essential elements of such a resolution: (i) a description of the action creating the commission; (ii) the necessity of the commission's continued work; (iii) the commission's extension; (iv) the commission's new reporting date; and (v) authorization of the commission's continued operation pursuant to its enabling resolution.

SENATE RESOLUTION

WHEREAS, During the 93rd General Assembly, the Senate Task Force on Illinois Alcoholic Beverage Laws was established pursuant to Senate Resolution 645 for the purpose of examining whether Illinois laws regulating the importation of alcoholic beverages may be in jeopardy of being held invalid due to preferential treatment granted toward Illinois wine makers; and

WHEREAS, Further work is needed on these issues; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FOURTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that the Senate Task Force on Illinois Alcoholic Beverage Laws is extended; and be it further

RESOLVED, That the Senate Task Force on Illinois Alcoholic Beverage Laws shall submit a report, as established in its authorizing resolution, on or before August 15, 2005; and be it further

RESOLVED, That with this reporting extension, the Senate Task Force on Illinois Alcoholic Beverage Laws shall continue to operate pursuant to its enabling resolution.

SECTION 80-30. URGING ACTION.

One or both houses may adopt a resolution urging some other branch of government or entity to take a specific action or study a particular problem. Resolutions of this type may be directed to the United States Congress, the President of the United States, the Governor, the director of a code department, one or more units of local government, the Auditor General, or even a private individual or entity.

A resolution urging action should indicate the problem generally in the first whereas clause. It is also helpful to indicate to whom the resolution will be directed in the first whereas clause. The following whereas clauses should give the background of the problem. The last whereas clause should express the concern or the opinion of the legislature.

The first resolved clause should urge the official or other entity to whom the resolution is directed to take specific action or study a particular problem. The final resolved clause should be a presentation clause indicating to whom copies of the resolution should be delivered. In resolutions urging action, it is customary to "deliver" rather than "present" copies of the resolution.

An example of a joint resolution urging the United States Congress to take action (in this case, SJR 39 of the 91st G.A.) follows:

SENATE JOINT RESOLUTION

WHEREAS, The Older Americans Act promotes the dignity and value of every older person age 60 and over (numbering 2,000,000 in Illinois) through an Aging Network led by the Illinois Department on Aging, 13 area agencies on aging, 233 community based senior service agencies, and 63 nutrition services agencies throughout Illinois; and

WHEREAS, The Older Americans Act is a successful federal program, with the U.S. Administration on Aging offering leadership in Washington, D.C., the Illinois Department on Aging (the first state department on aging in the nation) at the State level, the area agencies on aging in 13 regions designated by the State covering all of Illinois, and community based senior service agencies providing services in every community; and

WHEREAS, The Older Americans Act programs target resources and services to those in greatest economic and social need, promote the dignity and contributions of our senior citizens, support transportation services, provide home care, assist families and individuals with case management,

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guide those challenged by the legal system through legal assistance, provide for senior community service employment, offer information and assistance, establish multi-purpose senior centers as focal points on aging, serve congregate luncheon and home delivered meals, provide health promotion and disease prevention activities, involve older persons in nutrition education, reach out to families with respite services for caregivers and small repair and home modifications, provide opportunities, education, and services, connect people in shared housing, and advocate to public and private policy makers on the issues of importance to older persons; and

WHEREAS, The success of this aging network over the past 31 years is marked by the delivery of significant service to older persons in their own homes and community with the following services examples of that success:

(1) 374,538 recipients of access services, including 235,148 Information and Assistance Services clients and 68,493 recipients of Case Management Services;

(2) 53,450 recipients of in-home services, including 6,460,533 home delivered meals to 41,305 elders;

(3) 185,520 recipients of community services, including 3,636,855 meals to 79,012 congregate meal participants at 647 nutrition sites and services delivered from 170 Senior Centers;

(4) 760 recipients of employment services, including 760 senior community service employment program participants; and

(5) 98,600 recipients of nursing home ombudsman services; and

WHEREAS, The organizations serving older persons employ professionals dedicated to offering the highest level of service and employ caring workers who every day provide in-home care, rides, educational and social activities, shopping assistance, advice, and hope to those in greatest isolation and need; and

WHEREAS, The organizations serving older persons involve a multi-generational corps of volunteers who contribute to the governance, planning, and delivery of services to older persons in their own communities through participation on boards and advisory councils and in the provision of clerical support, programming, and direct delivery of service to seniors; and

WHEREAS, The Older Americans Act programs in Illinois leverage local funding for aging services and encourage contributions from older persons; and

WHEREAS, The Older Americans Act programs are the foundation for the Illinois Community Care Program, which reaches out to those with the lowest incomes and greatest frailty to provide alternatives to long term care, and the Illinois Elder Abuse and Neglect Interventions Program, which assists families in the most difficult of domestic situations with investigation and practical interventions; and

WHEREAS, The Congress of the United States has not reauthorized the Older Americans Act since 1995 and only extends the program each year through level appropriations; and

WHEREAS, Expansion of the Older Americans Act is proposed in reauthorization legislation this year to offer family caregiver support, increased numbers of home delivered meals, improved promotion of elder rights, and consolidation of several programs and sub-titles of the law; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that we urge the Congress of the United States of America to reauthorize the Older Americans Act this year; and be it further

RESOLVED, That suitable copies of this resolution be delivered to the President pro tempore of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Illinois congressional delegation.

An example of a resolution urging the executive branch to take action (in this case, HR 584 of the 91st G.A.) follows:

HOUSE RESOLUTION

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we urge the Director of Commerce and Community Affairs, in conjunction with other State agencies, to develop, within existing resources, a plan to maximize the State's opportunities to participate in the federal empowerment zone and enterprise communities initiative established under Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code, and any subsequently enacted federal law encompassing awards of empowerment zones and enterprise communities; and be it further

RESOLVED, That the plan also include the feasibility of providing special consideration or bonus points, or both, for applications for State grants or other State financial assistance from communities that have adopted comprehensive community development plans as defined by the federal empowerment zone and enterprise communities program; and be it further

RESOLVED, That the plan be submitted to the Governor and the General Assembly as expeditiously as possible; and be it further

RESOLVED, That a copy of this resolution be presented to the Director of Commerce and Community Affairs.

SECTION 80-35. MEMORIALS; DEATH RESOLUTIONS.

Certain death resolutions are authorized under Senate Rule 3-6(a) and House Rule 16(c) (97th G.A.).

Probably the single most important thing to remember about a death resolution is that bereaved family members are going to read it carefully. Therefore, accuracy in spelling names and stating facts is just as critical as using appropriate phrases in eulogizing the deceased. Although a properly drafted death resolution comforts the family members and gives them a sense of pride that the General Assembly should honor the memory of their loved one, a mistake in a death resolution can hurt people's feelings. Therefore, take great care to avoid mistakes.

The first whereas clause of a death resolution should state the name of the deceased and the date of death. The remaining whereas clauses should give the deceased's biographical information, with appropriate phrases, in chronological order as much as possible. The first resolved clause should express the sorrow of the House, Senate, or both. The final resolved clause should be a presentation clause.

A death resolution commonly names the deceased's survivors in a whereas clause. If any of the deceased's survivors are married, it is usually best to follow the format of the obituary or other source material when listing such a survivor and his or her spouse. Examples of a commonly used format follows:

her daughter Jane (Steve) Doe
her daughter Jane, and husband Steve, Doe

Many obituaries list survivors with a sentence beginning "Jane Doe is survived by (names)". Other obituaries mention survivors in a format such as "Jane Doe was the wife of Steve; the mother of Tom and Jill; the grandmother of Mike, Willie, and Lucy; and the aunt of Joe.". Generally, it is best to use the format in the obituary rather than trying to make the names fit into a particular style.

An example of a death resolution for a prominent public figure, in which it is common to state accomplishments rather than to list the standard biographical data, follows:

HOUSE JOINT RESOLUTION

WHEREAS, The Illinois General Assembly joins with the entire free world in mourning the loss of one of the truly great men of human history, Sir Winston Churchill; and

WHEREAS, In the dark days immediately following Dunkirk, when the British Lion stood at bay against the dread Nazi Luftwaffe, the defiant voice of Sir Winston Churchill, in his finest hour, not only inspired his countrymen to deeds of unprecedented valor and heroic resistance, but stirred the hearts of freedom-loving people throughout the world and kindled the spark that burst into the flame that made inevitable the ultimate victory of the allied powers over the Nazi tyranny; and

WHEREAS, Our recognition of the tremendous contribution to the cause of freedom made by Sir Winston Churchill and of the incalculable debt owed him by the free world is appropriately expressed by a paraphrase of his own words: "Never have so many owed so much to one man"; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that we express our profound sorrow at the death of Sir Winston Churchill, that we join with his countrymen and with freedom-loving people everywhere in mourning the loss of this great champion of human liberty, and that to his bereaved family we extend our heartfelt sympathy; and be it further

RESOLVED, That a suitable copy of this resolution be presented to his son, the Honorable Randolph Churchill.

SECTION 80-40. AMENDMENTS TO RESOLUTIONS.

Resolutions, like bills, are printed with page and line numbers. A resolution may be amended in the same manner as an amendment to a bill by referring to page and line numbers and indicating matter to be deleted and matter to be inserted. See Chapter 50 (Amendments) of this Manual.

Because amendments to resolutions are much less common than amendments to bills, you must take care to ensure that the final draft reads, for example, "Amend House *Resolution XXXX*" and not "Amend House *Bill XXXX*".

If you are amending a resolution filed during a special session of the General Assembly, the amendment's heading and beginning clause must so identify the resolution, following the examples set forth in Sections 50-30 and 50-35 of this Manual.

SECTION 80-45. SYNOPSIS.

Prepare a synopsis for each resolution. The synopsis is used by the LRB in its digest.

A synopsis for a resolution seldom needs to be more than one sentence. The sentence should be structured as follows or varied to fit the particular resolution:

- (1) Begin with an appropriate verb in the present tense, such as "urges", "creates", "mourns", or "memorializes".
- (2) Identify the person, entity, or occurrence.
- (3) Give a geographic location, if available and appropriate.
- (4) Provide further information, if necessary, that will indicate the purpose of the resolution, such as "to investigate ABC" or "to address the problem of XYZ".
- (5) End with a period.

Although a synopsis should be short, it still should be complete. Include the town where the deceased person lived or where the entity is located. Include persons' first names. Include whatever else is necessary to specifically identify the person, business, event, or other subject that is the basis for the resolution.

Some examples of resolution synopses are as follows:

Mourns the death of John Jones of Anytown.

Creates the High-Technology Task Force to study issues relating to the development of high-technology in Illinois and the needs of small businesses for the commercialization of new high-technology.

Urges the Director of Commerce and Economic Opportunity to develop a plan to maximize the State's opportunities to participate in the federal empowerment zone and enterprise communities' initiative and to report to the Governor and General Assembly as expeditiously as possible.

SECTION 80-47. ABR.

Prepare an ABR for each resolution. An ABR is an abbreviated synopsis that is used by the Legislative Reference Bureau in its Legislative Synopsis and Digest and by the Legislative Information System in its computer digest. An ABR is limited to a total of 30 characters and spaces. Each letter is capitalized. Abbreviations do not end in a period. An ABR may contain punctuation marks such as a hyphen, a slash, a colon, a percent sign, or a dollar sign. Examples follow:

MEMORIAL JOHN JONES (for a death resolution)

CONGRATS K OF C-ANYTOWN (for a congratulatory resolution in the House; don't use CONGRATS in the ABR of a congratulatory resolution in the Senate)

HIGH-TECHNOLOGY TASK FORCE

DCEO-EMPOWERMNT ZONE INITIATIV

URGE CONGRESS-TRUCK SIZE LIMIT

ROADSIDE BEAUTY MONTH-MAY 2004

Cross-reference: Section 40-25, concerning an ABR for a bill.

SECTION 80-50. STYLE AND LANGUAGE.

(a) SPELLING. You may misspell "misspell" and, unfortunately, hardly anyone will notice it; but if you misspell a person's name in a resolution, that person is going to be disappointed and possibly even hurt. The resolution means a lot to the person who receives it. A misspelled name detracts from the pride a person should feel when honored by the General Assembly, so always verify the spelling of each name and avoid the just wrath of the legislator who requested the resolution.

(b) FORMAL TONE. The General Assembly is one of the 3 branches of government in the State of Illinois. It is an august body by virtue of its status under the Illinois Constitution. Thus, when it speaks to the world as it does in a resolution, it should speak in a formal tone befitting its status and responsibility. Moreover, a common citizen who achieves some milestone in his or her life expects to be honored by the General Assembly in a dignified manner, not in a familiar or frivolous manner. Consequently, draft all resolutions in a formal, dignified tone, unless you are given specific instructions to the contrary. Refer to people who are adults as Mr., Mrs., Miss, Ms., or Dr. as appropriate. If in doubt about what to call a woman, call her Ms. X. Never refer to a person by only his or her first name. Throughout the resolution, maintain an appropriate tone by choosing the correct words and phrases.

(c) PARAGRAPH STRUCTURE. Each whereas clause and each resolved clause is a separate paragraph and should be organized around a single unifying theme or subject. For example, if a whereas clause recites the extensive educational background of a person, do not mix facts about that person's marriage or family or career in the same whereas clause. This does not mean that a person's educational background may never be given in the same whereas clause as, for example, his or her marriage. If a person's education ended when he graduated from high school and he then married his high school sweetheart, the 2 would fit together nicely in the same whereas clause.

Although each whereas clause should have a single unifying theme or subject, it is also a good idea to avoid a long series of short whereas clauses. One way to avoid this problem is to organize the whereas clauses in chronological order. Things tend to fit together better, even when dissimilar, if they are stated chronologically.

(d) ACTIVE VOICE. It is almost always better to use the active voice in resolutions, rather than the passive voice.

Active voice: John Jones earned a bachelor's degree in economics from Oxford University in 1968.

Passive voice: A bachelor's degree in economics was awarded by Oxford University to John Jones in 1968.

Both examples convey the same information, yet for purposes of a resolution the example in the active voice is far superior. In the example in the active voice, John Jones does something; in the example in the passive voice, something is done to John Jones. Biographical information presented in a resolution is always going to be something for which the person is proud to take responsibility. Expressing it in the active voice places the responsibility and pride for having earned a degree from Oxford on John Jones. Expressing it in the passive voice shifts the emphasis to Oxford for having awarded the degree and detracts from the fact that it took hard work and determination for John Jones to achieve the degree. Because a resolution typically praises a person for his or her achievements, state those achievements in the active voice to emphasize that the person accomplished something, rather than having something done to him or her.

(e) TENSE. Resolutions are usually presented after the fact and should, thus, be drafted in the past tense. Even when the event is upcoming at the time the resolution is requested, by the time it is drafted, introduced, and approved by the House or Senate or both, the event is usually long past. There are times, however, when the resolution will be presented before the fact, in which case references to the event being celebrated should be in the future tense, or when it will be presented at the event, in which case references to the event being celebrated should be in the present tense. It is generally safe to assume that the resolution will be presented after the fact, unless the legislator specifically directs otherwise or it is obvious from the context that the resolution will be presented before or at the event; in any doubtful situation, check with the legislator.

(f) PUNCTUATION; OTHER MATTERS OF STYLE AND LANGUAGE. The same standards for clarity, conciseness, grammar, and punctuation that apply to drafting bills also apply to drafting resolutions. See Chapter 90 (Style and Language) and Chapter 95 (Punctuation) of this Manual.

(g) PREDRAFTS. Sometimes a request for a resolution is accompanied by a predraft, a draft written in resolution form. It is fine to use that predraft as the resolution text. Don't make changes just to be making changes.

SECTION 80-55. STOCK PHRASES AND CLAUSES.

There is nothing at all wrong with using stock phrases and clauses in resolutions, so long as they are appropriate. Although it may be somewhat boring for you to continually use the same phrases and clauses, the person who receives a resolution will seldom, if ever, receive more than one resolution in his or her lifetime, particularly resolutions of the same general type; even if he or she did, if the stock language is appropriate, it should not matter that it is repeated. Moreover, having a fund of stock language to draw from improves efficiency in drafting resolutions and helps to standardize their quality.

(a) PUBLIC LIFE. The following examples are characteristic of a person in public life:

outstanding contributions to society and civic life
 served his profession long and well
 devotion to the needs of others
 noble contribution
 active and energetic civic leader
 distinguished service
 unselfish service

enthusiastic support of community activities
will long be remembered
helped the poor and oppressed
served with honor and distinction
exemplified the highest standards
exerted a profound influence
exemplified the finest moral and civic leadership
many years of constructive influence

(b) PERSONAL QUALITIES. The following examples are characteristic of personal qualities:

breadth of vision
considerate and thoughtful nature
spontaneous enthusiasm
warm personality
kind generosity
inspiring leadership
keen judgment
her personality left an indelible impression
steadfast devotion to principle
untiring industry
faithful zeal
a loving and guiding influence
inspiration to her family and countless friends
an active member of the community, Mr. X contributes his time and talent to
her dedication to numerous civic and charitable organizations has richly benefited her fellow citizens
he served his country valiantly during World War II as a member of the United States Marines

(c) SYMPATHY. The following examples are characteristic expressions of sympathy:

sense of personal loss
sadly missed by family and countless friends
extend our sincere sympathy
learned with great sadness of the death
loss keenly felt
this body joins in mourning the loss of
learned with regret of the recent death of
his passing is a grievous loss to his family and community
extend sympathy to his family in their hour of sorrow
express our profound respect
mourn the loss of a valuable citizen
we express our deep sense of loss at the passing of
her warm and caring nature will be deeply missed by all who were fortunate to know her
she leaves a legacy of community involvement and civic concern that will long inspire the citizens of this State
skill and determination were his hallmarks, and his every endeavor was characterized by a commitment to excellence
through his leadership and compassion, he personified the nobility of public service

CHAPTER 85. CONSTITUTIONAL JOINT RESOLUTIONS.

- 85-5. GENERALLY.
- 85-10. EXAMPLES.
- 85-15. ARGUMENTS IN FAVOR OR AGAINST.

SECTION 85-5. GENERALLY.

As noted in Section 1-20 of this Manual, Article XIV of the Illinois Constitution allows the General Assembly to initiate an amendment to the Illinois Constitution. The General Assembly may also initiate a referendum on the question of calling an Illinois Constitutional Convention, and it may initiate various actions concerning the United States Constitution. Each of these initiatives is taken by means of a joint resolution of both houses.

A constitutional provision or amendment operates prospectively from its effective date unless its language clearly indicates an intent that it apply to pending matters. *People v. Dean*, 175 Ill.2d 244 (1997).

SECTION 85-10. EXAMPLES.

By far the most common constitutional joint resolution is one to amend the Illinois Constitution. Underscoring and striking through are used to indicate changes, and the joint resolution may be amended in the same manner as a bill. An example of a joint resolution follows:

HOUSE JOINT RESOLUTION
CONSTITUTIONAL AMENDMENT

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the general election next occurring at least 6 months after the adoption of this resolution a proposition to amend Section 21 of Article I of the Illinois Constitution as follows:

ARTICLE I

BILL OF RIGHTS

(ILCON Art. I, Sec. 21)

SECTION 21. QUARTERING OF SOLDIERS

No soldier ~~in time of peace~~ shall be quartered in a house either in time of peace without the consent of the owner or ~~or~~ in time of war except as provided by law.

(Source: Illinois Constitution.)

SCHEDULE

This Constitutional Amendment takes effect upon being declared adopted in accordance with Section 7 of the Illinois Constitutional Amendment Act.

A synopsis for the last example follows:

SYNOPSIS AS INTRODUCED:

ILCON, Art. I, Sec. 21

Proposes to amend the Bill of Rights Article of the Illinois Constitution concerning the quartering of soldiers. Makes a grammatical change to correct a faulty parallelism without making substantive changes. Effective upon being declared adopted in accordance with Section 7 of the Illinois Constitutional Amendment Act.

In a joint resolution to add a new Section to the Illinois Constitution, the entire text of the new Section is underscored, and the citation of the new Section in the resolution on the line above the Section number and Section heading and in the synopsis appears as "ILCON Art. A, Sec. B new".

In a joint resolution to repeal a Section of the Illinois Constitution, the repealer may be expressed in a single sentence as in the case of repealing a Section of an Act. (See Section 30-5 of this Manual.) Occasionally it may be advantageous to set forth the text being repealed and show it stricken as a means of explaining what is being repealed. If the draft shows the text of a repealed Section as stricken, the Section heading may be retained and changed as in the following example:

(ILCON Art. V, Sec. 4. rep.)
SECTION 4. JOINT ELECTION (REPEALED)

Section 7.1 of the Illinois Constitutional Amendment Act (5 ILCS 20/7.1) provides as follows:

Sec. 7.1. Effective date of amendments. An amendment to the constitution may include a schedule specifying when the amendment takes effect. An amendment to the constitution that includes a schedule shall, if adopted, take effect in accordance with the schedule. An amendment to the constitution that does not include a schedule takes effect upon being declared adopted in accordance with Section 7.

Even though the statutes thus supply an effective date for an adopted constitutional amendment, the resolution proposing the amendment should always include a schedule specifying the effective date to eliminate confusion.

An ABR is supplied for a constitutional joint resolution. An ABR for the preceding resolution concerning Section 21 of Article I of the Illinois Constitution follows:

CONAMEND-QUARTERING SOLDIERS

SECTION 85-15. ARGUMENTS IN FAVOR OR AGAINST.

If the General Assembly adopts a joint resolution to submit to the electors a proposition to amend the Illinois Constitution, Section 2 of the Illinois Constitutional Amendment Act (5 ILCS 20/2) requires the General Assembly to prepare a brief explanation of the amendment, a brief argument in favor of the amendment, and the form in which the amendment will appear on the ballot. The minority of the General Assembly (or in the case of a proposition to amend Article IV of the Constitution initiated by petition of the electors, members of the General Assembly opposing the proposed amendment) must prepare a brief argument against the proposed amendment. If there is no such minority or if there are no members opposed to the proposed amendment, then the General Assembly must designate someone to prepare the argument against the proposed amendment.

In order to comply with these statutory requirements, the General Assembly adopts a joint resolution creating a joint committee to direct the preparation of the arguments and other matters. An example of a joint resolution adopted after the General Assembly has adopted a joint resolution proposing to amend the Constitution follows:

SENATE JOINT RESOLUTION

WHEREAS, The 95th General Assembly of the State of Illinois has adopted House Joint Resolution Constitutional Amendment 9000, submitting a proposition to amend the Illinois Constitution to the voters of Illinois at the November 2008 general election; and

WHEREAS, The Illinois Constitutional Amendment Act (5 ILCS 20/) requires the General Assembly to prepare a brief explanation of the amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on the ballot and also requires that this information be submitted to the Attorney General and filed with the office of the Secretary of State for publication and distribution to the electorate; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that the Joint Committee on the Amendment on ABC (subject of the proposed amendment) is created; and be it further

RESOLVED, That the Joint Committee shall consist of 8 legislative members, 2 each appointed by the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives; and be it further

RESOLVED, That the President of the Senate and the Speaker of the House shall each designate one member to serve as co-chairs of the Joint Committee; and be it further

RESOLVED, That the Joint Committee, pursuant to the Illinois Constitutional Amendment Act, shall direct the preparation of a brief explanation of the amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on its separate ballot as provided by Section 16-6 of the Election Code (10 ILCS 5/16-6); and be it further

RESOLVED, That the Joint Committee shall file a report with the Senate and the House of Representatives prior to the adjournment of the Regular Session of the 95th General Assembly of the State of Illinois; and be it further

RESOLVED, That the report on the amendment shall contain: (i) a brief explanation of the amendment; (ii) a brief argument in favor of the amendment; (iii) a brief argument against the amendment; and (iv) the form in which the amendment will appear on the ballot; and be it further

RESOLVED, That the 2 houses shall adopt the report on the amendment by a vote of a majority of the members elected to the 2 houses; after resolving any disputes as to the contents of the report, the report and

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the proposed amendment shall then be submitted to the Attorney General and filed in the office of the Secretary of State.

An example of a joint resolution adopted after an amendment is proposed by petition of the electors follows:

HOUSE JOINT RESOLUTION

WHEREAS, The electors of this State have by petition proposed an amendment to Article IV of the Illinois Constitution as provided in Section 3 of Article XIV of the Illinois Constitution; and

WHEREAS, The Illinois Constitutional Amendment Act (5 ILCS 20/) requires the members of the General Assembly opposing the amendment or, if there are none, anyone designated by the General Assembly to prepare a brief argument against the amendment and also requires that this information be submitted to the Attorney General and filed with the office of the Secretary of State for publication and distribution to the electorate; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that the Joint Committee on the Amendment on XYZ (subject of the proposed amendment) is created; and be it further

RESOLVED, That the Joint Committee shall consist of 8 legislative members, 2 each appointed by the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives; and be it further

RESOLVED, That the President of the Senate and the Speaker of the House shall each designate one member to serve as co-chairs of the Joint Committee; and be it further

RESOLVED, That the Joint Committee, pursuant to the Illinois Constitutional Amendment Act, shall direct the preparation of the argument against the amendment; and be it further

RESOLVED, That the Joint Committee shall file a report containing a brief argument against the amendment with the Senate and the House of Representatives prior to the adjournment of the regular session of the 95th General Assembly; and be it further

RESOLVED, That the 2 houses shall adopt the report on the amendment by a vote of a majority of the members elected to the 2 houses; after resolving any disputes as to the contents of the report, the report shall then be submitted to the Attorney General and filed in the office of the Secretary of State.

Following is an example of a joint resolution containing the information prepared by a joint committee concerning a proposed constitutional amendment (in this case, SJR 182 of the 88th G.A.):

SENATE JOINT RESOLUTION

WHEREAS, The 88th General Assembly of the State of Illinois has submitted House Joint Resolution Constitutional Amendment 35, a proposition to amend the Illinois Constitution, to the voters of Illinois at the November 1994 general election; and

WHEREAS, The Illinois Constitutional Amendment Act requires the General Assembly to prepare a brief explanation of the proposed amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on the ballot, and also requires that the information be published and distributed to the electorate; and

WHEREAS, Senate Joint Resolution 170 created a Joint Committee on the Amendment on Effective Dates to prepare the foregoing information; therefore, be it

RESOLVED, BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that the present and proposed forms of Section 10 of Article IV shall be published as follows:

"PROPOSED AMENDMENT TO SECTION 10 OF ARTICLE IV (The Legislature)
ARTICLE IV
THE LEGISLATURE
(Present Form)

SECTION 10. EFFECTIVE DATE OF LAWS

The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

ARTICLE IV
THE LEGISLATURE
(Proposed Amendment)

(Proposed changes in the existing constitutional provision are indicated by underscoring all new matter and by crossing with a line all matter which is to be deleted.)

SECTION 10. EFFECTIVE DATE OF LAWS

The General Assembly shall provide by law for a uniform effective date for laws passed prior to June ~~July~~ 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June ~~July~~ 1. A bill passed after May 31 ~~June 30~~ shall not become effective prior to June ~~July~~ 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date."; and be it further

RESOLVED, That the brief explanation of the proposed amendment shall read as follows:

"EXPLANATION OF PROPOSED AMENDMENT

The proposed amendment, which takes effect upon approval by the voters, amends the Effective Date of Laws section of the 1970 Illinois Constitution. This section of the Constitution details when bills shall take effect and by what vote they must pass the General Assembly if they are to take effect earlier than scheduled.

Currently, any bill passed after June 30 cannot take effect before July 1 of the following year unless the bill passes the legislature by a three-fifths vote. The proposed amendment changes the date when the three-fifths vote requirement takes effect from July 1 to June 1. As a result of this amendment, any bill passed after May 31 will not take effect until June 1 of the following year unless the bill passes the legislature by a three-fifths vote."; and be it further

RESOLVED, That the brief argument in favor of the proposed amendment shall read as follows:

"ARGUMENT IN FAVOR OF THE PROPOSED AMENDMENT

THIS AMENDMENT MAY SHORTEN THE LEGISLATIVE SESSION WHICH MAY SAVE TAXPAYERS MONEY.

This amendment may shorten the legislative session by more than one month. Legislators receive expenses for each day that the legislature is in session. By shortening the number of days the General Assembly is in session, this amendment could save the taxpayers thousands of dollars. Can we, as taxpayers, really afford not to pass this amendment?

THIS AMENDMENT MAY ENABLE SCHOOL DISTRICTS, LOCAL GOVERNMENTS, STATE AGENCIES, AND ANYONE WHO RELIES ON STATE FUNDING TO KNOW HOW MUCH MONEY THEY WILL RECEIVE FROM THE STATE OF ILLINOIS ONE MONTH PRIOR TO THE BEGINNING OF THE NEW FISCAL YEAR.

In some years, the General Assembly has not enacted a new budget until after the beginning of the next fiscal year, bringing the State and all who depend on State funding to a standstill until a new budget is in place. When this happens, State employees and vendors who do business with the State may not be paid in a timely fashion and those who receive State funding, like school districts and local governments, must budget with uncertainty for the next fiscal year. Without this change to the Illinois Constitution, the General Assembly may continue to postpone negotiating on a budget until July or later. Should the school districts be forced to start the new school year with an estimated budget?

SHORTENING THE LEGISLATIVE SESSION ENCOURAGES MORE CITIZENS TO BECOME ACTIVE IN THE ILLINOIS LEGISLATURE.

Because of the time constraints associated with the schedule of the Illinois General Assembly, average citizens are often unwilling to serve in the legislature. Average citizens may not want to give up their full-time employment and spend considerable time away from their families in order to serve in the Illinois General Assembly. This amendment may reduce the time that the General Assembly is in session; and in doing so,

this amendment may make service in the legislature more attractive to Illinois citizens.

SUMMARY: Voting "yes" is a way to save taxpayers money. Voting "yes" is a way that citizens can encourage the General Assembly to pass a budget before school districts and local governments start the new fiscal (budget) year. Exercise your right as a citizen and vote "yes" for this amendment."; and be it further

RESOLVED, That the brief argument against the amendment shall read as follows:

"ARGUMENT AGAINST THE PROPOSED AMENDMENT

IT IS THE BEGINNING OF THE FISCAL (BUDGET) YEAR, JULY 1, AND NOT THE EFFECTIVE DATE PROVISION, THAT ENCOURAGES THE LEGISLATURE TO CONCLUDE ITS BUSINESS.

If a budget is not adopted by July 1, the State is unable to pay its bills, issue the payroll, or meet any of its financial responsibilities. Changing the effective date provision to one month earlier than the date of the beginning of the fiscal year does not absolutely guarantee that the legislature will pass the budget and conclude its business on May 31.

UNDER THE CURRENT ILLINOIS CONSTITUTION, THE EFFECTIVE DATE PROVISION DOES NOT GUARANTEE THAT THE LEGISLATURE WILL BE IN SESSION FOR FEWER DAYS.

Although the intent of the amendment appears to be to shorten the legislative session, it does not fully guarantee that session days will not be scheduled earlier in the session. Such shifting of the schedule could possibly result in no reduction of session days.

THE EFFECTIVE DATE AMENDMENT MAY NOT REDUCE THE EXPENSES FOR THE OPERATION OF THE LEGISLATURE.

Members of the legislature receive reimbursement for expenses during session days. Because this amendment does not guarantee fewer session days, there is no guarantee that expenses of the legislature will be reduced.

SUMMARY: Voting "No" for this amendment means you oppose the legislature's attempt to pass the budget and conclude its work one month earlier, May 31, instead of June 30."; and be it further

RESOLVED, That the proposition shall appear on the ballot in the following form:

"PROPOSED AMENDMENT TO
SECTION 10 OF ARTICLE IV
(The Legislature)

Explanation of Proposed Amendment

The proposed amendment, which takes effect upon approval by the voters, amends the Effective Date of Laws section of the 1970 Illinois Constitution. This section of the Constitution details when bills shall

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take effect and by what vote they must pass the General Assembly if they are to take effect earlier than scheduled.

Currently, any bill passed after June 30 cannot take effect before July 1 of the following year unless the bill passes the legislature by a three-fifths vote. The proposed amendment changes the date when the three-fifths vote requirement takes effect from July 1 to June 1. As a result of this amendment, any bill passed after May 31 will not take effect until June 1 of the following year unless the bill passes the legislature by a three-fifths vote.

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-----  
For the proposed amendment                                YES  
to Section 10 of Article IV -- The -----  
Legislature -- of the Constitution                        NO  
-----";
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and be it further

RESOLVED, That this resolution and House Joint Resolution Constitutional Amendment 35 be submitted to the Attorney General and filed in the office of the Secretary of State so that they may comply with the requirements of the Constitution and laws of the State of Illinois.

CHAPTER 87. RESOLUTIONS DISAPPROVING EXECUTIVE AGENCY REORGANIZATION.

87-5. GENERALLY.

87-10. EXAMPLES.

SECTION 87-5. GENERALLY.

As noted in Section 70-40 of this Manual, Article V, Section 11 of the Illinois Constitution allows either house of the General Assembly to disapprove an executive order that reassigns functions among or reorganizes executive agencies that are directly responsible to the Governor. The Constitution provides that if the reassignment or reorganization would contravene a statute, the executive order must be delivered to the General Assembly. The Constitution specifies the legislative session during which the General Assembly shall consider the executive order and the time period within which the General Assembly must act to disapprove the executive order. Ill. Const., art. V, sec. 11. Procedures are set forth in the Executive Reorganization Implementation Act, 15 ILCS 15/.

Cross reference: Section 25-95 concerning legislative changes to modify an executive order.

SECTION 87-10. EXAMPLES.

Legislative action to disapprove an executive order that reassigns functions among or reorganizes executive agencies is taken by means of a resolution in either house. An example follows:

HOUSE RESOLUTION

WHEREAS, Article V, Section 11 of the Illinois Constitution authorizes the Governor to reorganize executive agencies that are directly responsible to the Governor; and

WHEREAS, Article V, Section 11 also provides that if the proposed reorganization would contravene a statute, it may be disapproved within 60 days by either house of the General Assembly by record vote of a majority of the members elected; and

WHEREAS, The Governor has issued Executive Order Number 75 (1993), which reorganizes certain divisions of the Department of Energy and Natural Resources; and

WHEREAS, The proposed reorganization would contravene Sections 6 and 8 of the Natural Resources Act (20 ILCS 1105/6 and 1105/8); and

WHEREAS, Executive Order Number 75 (1993) was delivered to the Clerk of the House on March 11, 1993; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we disapprove Executive Order Number 75 (1993); and be it further

RESOLVED, That a copy of this resolution be delivered to the Governor of the State of Illinois and the President of the Illinois State Senate.

For another example, see HR1188 of the 95th General Assembly.

A synopsis for the example follows:

Disapproves Executive Order Number 75 (1993), which reorganizes certain divisions of the Department of Energy and Natural Resources.

Special circumstances may require departures from the typical language. For example, SR247 of the 97th General Assembly disapproves 3 executive orders and includes disapproval language that is specific to the circumstances under which those executive orders were issued.

If a requester wants to prevent a portion of an executive order that reassigns functions among or reorganizes executive agencies from taking effect, but does not want the rest of the executive order to be disapproved, the answer may be a bill, not a resolution. Subsections (a) through (e) of 15 ILCS 15/5.5 superseded portions of executive orders that otherwise took effect.

CHAPTER 88. RESOLUTIONS CONCERNING LEGISLATIVE PROCEEDINGS.

88-5. LEGISLATIVE INVESTIGATIONS.

- (a) GENERALLY.
- (b) EXAMPLE.

88-10. CLOSED MEETINGS.

- (c) GENERALLY.
- (d) EXAMPLE.

SECTION 88-5. LEGISLATIVE INVESTIGATIONS.

(a) GENERALLY. The General Assembly has the inherent power to conduct legislative investigations in order to acquire the expertise necessary to legislate knowledgeably and effectively. *McGrain v. Dougherty*, 273 U.S. 135 (1927); *Greenfield v. Russell*, 292 Ill. 392 (1920). Section 14 of Article IV of the Illinois Constitution, Ill. Const., art. IV, sec. 14, specifically grants to the House of Representatives "the sole power to conduct legislative investigations to determine the existence of cause for impeachment".

Subsection (c) of Section 7 of Article IV of the Illinois Constitution, Ill. Const., art. IV, sec. 7, authorizes legislative subpoenas:

(c) Either house or any committee thereof as provided by law may compel by subpoena the attendance and testimony of witnesses and the production of books, records and papers.

Section 6 of the General Assembly Organization Act, 25 ILCS 5/6, similarly authorizes subpoenas to compel testimony or the production of documents before either house, a committee of either house, or a joint committee of both houses. The Act also grants certain administrative and police powers in connection with the issuance of subpoenas.

While the General Assembly has the inherent power to conduct investigations, a legislative committee or subcommittee may not conduct an investigation on its own initiative. The General Assembly must properly delegate its power to the committee or subcommittee. The Illinois Constitution and the General Assembly Organization Act provide the means whereby the power to conduct legislative investigations can be implemented effectively once it is properly undertaken by either house or properly delegated to a committee. The delegation of power to conduct investigations must be more specific and definite than the mere designation of standing or other committees in the rules adopted by one house or the other. See *Murphy v. Collins*, 20 Ill.App.3d 181 (1st Dist. 1974). A house must adopt a resolution specifically authorizing a committee to conduct an investigation and to issue subpoenas and take other actions appropriate to conducting the investigation.

(b) EXAMPLE. An example of a resolution specifically authorizing a committee to conduct an investigation and to issue subpoenas and take other actions appropriate to conducting the investigation follows:

HOUSE RESOLUTION

WHEREAS, Allegations have been raised regarding the conduct of (insert name of person and office); and

WHEREAS, Section 14 of Article IV of the Constitution provides that the House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers; therefore, be it

CH. 88 RESOLUTIONS CONCERNING LEGISLATIVE PROCEEDINGS

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that a Special Investigative Committee be created for the purpose of investigating the conduct of (insert name of person and office) and making a recommendation as to whether cause exists for his (or her) impeachment; and be it further

RESOLVED, That the Special Investigative Committee shall consist of 10 legislative members, with 5 members of the House of Representatives appointed by the Speaker of the House of Representatives and 5 members of the House of Representatives appointed by the Minority Leader of the House of Representatives; and be it further

RESOLVED, That the Speaker of the House of Representatives and the Minority Leader of the House of Representatives shall each designate one appointee to serve as a co-chairperson; and be it further

RESOLVED, That the appointments of the members and the designation of the co-chairpersons of the Special Investigative Committee shall be transmitted by the appointing authority in writing to the Clerk of the House of Representatives; and be it further

RESOLVED, That the Special Investigative Committee is empowered to meet, upon the proper appointment of a majority of the members, in accordance with the House Rules; that all meetings shall be public; that advance notice of all meetings shall be given to the public; and that the Special Investigative Committee may gather evidence and hear testimony at any location within the State of Illinois designated by the co-chairpersons; and be it further

RESOLVED, That the Special Investigative Committee is empowered to adopt rules to govern the proceedings before it and shall be guided by the rules of evidence of this State in order to ensure a fair hearing, a thorough investigation, and the provision of due process; that the Special Investigative Committee shall have the power (i) to administer oaths and to compel the attendance and testimony of persons and the production of papers, documents, and other evidence, under oath, by subpoena signed by the Speaker of the House of Representatives and attested by the Clerk of the House of Representatives when the testimony, documents, or evidence is necessary for or incident to any inquiry relevant to the business or purposes of the Special Investigative Committee and (ii) to punish any person for the neglect, refusal to appear, or failure to produce papers or documents or provide evidence commanded by subpoena or who, upon appearance, either with or without subpoena, refuses to be sworn or testify or produce papers, documents, or evidence demanded of him or her; and be it further

RESOLVED, That, upon the completion of the investigation, the Special Investigative Committee shall submit a final report and its recommendations to the House of Representatives by filing a copy with the Clerk of the House of Representatives on or before (insert date).

SECTION 88-10. CLOSED MEETINGS.

(a) GENERALLY. The General Assembly and its committees are "public bodies" that are subject to the Open Meetings Act. 5 ILCS 120/1.02. The Illinois Constitution also provides that the sessions of the General Assembly and the meetings of its committees and commissions must be open to the public. Ill. Const., art. IV, sec. 5, subsec. (c). The Constitution, however, goes on to provide that "[s]essions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires". Ill. Const., art. IV, sec. 5, subsec. (c). A house may adopt a resolution providing that the house or a committee of the house will convene in closed session.

(b) EXAMPLE. An example of a resolution authorizing a committee to convene in closed session follows:

SENATE JOINT RESOLUTION

RESOLVED, BY THE SENATE OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that the General Assembly, pursuant to subsection (c) of Section 5 of Article IV of the Illinois Constitution, hereby determines that the public interest requires that the Pension Laws Commission, a legislative commission, convene in closed session for the purpose of reviewing personnel matters; and, therefore, the General Assembly hereby authorizes the Pension Laws Commission to convene in closed session for the purpose of reviewing personnel matters during no more than 3 scheduled meetings, after reasonable public notice as required by subsection (a) of Section 7 of Article IV of the Illinois Constitution, to be held during the period (insert beginning and closing dates); and be it further

RESOLVED, that a copy of this resolution be delivered to each member of the Pension Laws Commission.

CHAPTER 89. APPOINTMENT MESSAGES.

89-5. GENERALLY.

89-10. REQUIRED INFORMATION.

(a) APPOINTING OFFICER; APPOINTING AUTHORITY.

(b) TITLE OF OFFICE.

(c) AGENCY OR OTHER BODY.

(d) START DATE; END DATE.

(e) RESIDENTIAL ADDRESS.

(f) COMPENSATION.

(g) NOMINEE'S SENATOR.

(h) MOST RECENT HOLDER OF OFFICE.

(i) SUPERSEDED APPOINTMENT MESSAGE.

89-15. SYNOPSIS.

89-20. ABR.

SECTION 89-5. GENERALLY.

Under Senate Rule 10-2 (97th G.A), only the Legislative Reference Bureau may draft appointment messages for introduction in the Illinois Senate. Subsection (j) of Senate Rule 10-2 (97th G.A) sets forth the form of appointment messages. An example follows:

1 APPOINTMENT MESSAGE

2 To the Honorable Members of the Senate, Ninety-Seventh General
3 Assembly:

4 I, Pat Quinn, Governor, am nominating and, by and with the
5 advice and consent of the Senate, appointing the following
6 named individual to the office enumerated below. The advice and
7 consent of this Honorable Body is respectfully requested.

8 Title of Office: Member

9 Agency or Other Body: Illinois Housing Development Authority

10 Start Date: January 13, 2014

11 End Date: January 8, 2018

12 Name: John Smith

13 Residence: 200 Main St., Apt. 12, Chicago, IL 60606

14 Annual Compensation: Expenses

15 Per diem: Not Applicable

16 Nominee's Senator: Senator Robert Jones

17 Most Recent Holder of Office: Jane Doe

18 Superseded Appointment Message: Appointment Message 800 of the
19 97th General Assembly

SECTION 89-10. REQUIRED INFORMATION.

(a) APPOINTING OFFICER; APPOINTING AUTHORITY. In the second paragraph of an appointment message, the drafter must insert the name of the appointing officer, including his or her officer, or the name of the appointing authority. In the example in Section 89-5, the appointing officer is the Governor. The Governor has the sole power to appoint the heads of State departments listed in Section 5-15 of the Departments of State Government Law of the Civil Administrative Code of Illinois, 20 ILCS 5/5-15, and the power to appoint members of various statutory committees, task forces, and boards.

Most of the appointments to statutory committees, task forces, and boards that require the advice and consent of the Illinois Senate are made by constitutional officers. However, a very limited number of appointments that are subject to the advice and consent of the Illinois Senate are made by other entities. For example, the Director of the Illinois Power Agency is appointed by the Executive Ethics Commission.

(b) TITLE OF OFFICE. The title of the office for which the appointment is being made should match the title that is given to the position in the statutes. "Director" or "Secretary" should be used for the head of a department of State government, see Section 5-20 of the Departments of State Government Law of the Civil Administrative Code of Illinois, 20 ILCS 5/5-20.

Statutes creating committees, task forces, and boards vary on how they refer to their membership; the majority have "members", while others have "directors" or "trustees". The drafter should refer to the statute or the Legislative Research Unit publication entitled *Detailed Organization Report* (updated quarterly, and available on LRU's web site) for the title that should be used for a specific committee, task force, or board.

(c) AGENCY OR OTHER BODY. The name of the agency, board, commission, or other body to which the nomination is being made should match the name that is given to the entity in the statutes. While some entities may use a variation on the name that is contained in the statutes or use a popular name assigned it by officials, the name given to that entity in the statute should be used in an appointment message, as that is what authorizes the creation of the entity and the payment of salaries or reimbursement of expenses for the position. In addition to the statute, another useful resource is the Legislative Research Unit publication entitled *Detailed Organization Report* (updated quarterly, and available on LRU's web site) for the title that should be used for a specific committee, task force, or board.

(d) START DATE; END DATE. The requester must supply the drafter with the starting and ending dates for the appointment. The end date should correspond with the terms of office as stated in the statute, but many times a start date occurs after the term of office for the title has begun. There are some titles that are open-ended. If so, the end date field of the form should state "Not Applicable". The drafter may consult the Legislative Research Unit publication entitled *Detailed Organization Report* (updated quarterly, and available on LRU's web site) to see the terms of office for a title and to see the start and end dates of persons who currently hold those titles.

(e) RESIDENTIAL ADDRESS. The requester must supply the drafter with the residential address of the nominee. The address may not be a post office box or a business address. LRB simply does a quick check of the address on the United States Postal Service web site to verify the address.

If a requester asks that a residential address be withheld for security reasons, such as the nominee is a member of the judiciary or the nomination is for a title in a sensitive position in law enforcement, the drafter should consult with the Executive Director or Deputy Director of LRB.

(f) COMPENSATION. The requester should supply the type of compensation, if any, the nominee will receive for the appointment. The authorizing statute may contain specific information as to the compensation. The drafter may consult the Legislative Research Unit publication entitled *Detailed Organization Report* to verify the compensation related to a particular title.

If the nominee will receive a specific dollar amount for annual compensation, then that dollar amount should be stated as annual compensation. If the nominee will merely receive reimbursement for expenses, "Expenses" should be stated as annual compensation. If the nominee receives a per diem for his or her service, the dollar amount of the per diem should be stated in that field. If either annual compensation or per diem is not appropriate for the title, "Not Applicable" should be entered in the appropriate field.

(g) NOMINEE’S SENATOR. The requester usually supplies the name of the nominee’s Senator. The drafter should always check that information using the District/Official Search on the Illinois State Board of Elections’ web site. The drafter can use either the address or the full nine digit Zip Code to access this information from this web site.

(h) MOST RECENT HOLDER OF OFFICE. The requester must supply the name of the most recent holder of office for which the nomination is being made. This may be complicated when the nomination is for a committee, task force, or board that has multiple members that may be nominated by the same person. For example, the Governor appoints all nine members of the Illinois Housing Development Authority. It is important to identify which position the appointee is filling, as the terms of the members may vary.

If the person who is currently being appointed was the last office holder, then the drafter should enter "Reappointment".

If no person has previously filled the position, which may be the case if it is a newly created entity, then the drafter should enter "Original Appointment".

LRB checks the information supplied with the Legislative Research Unit publication entitled *Detailed Organization Report* (updated quarterly, and available on LRU’s web site), which lists the current office holders for various State entities, their addresses, and their terms.

(i) SUPERSEDED APPOINTMENT MESSAGE. An appointment message may not be amended. An appointing officer or authority may request a new appointment message that supersedes a prior appointment message if (i) there is an error in the message or it was ruled not to conform to Senate Rule 10-2, (ii) the appointing officer or authority has filed an appointment message with the Senate nominating a different nominee for the position, or (iii) the appointing officer or authority has filed an appointment message with the Senate nominating the nominee for a different position. The requester should indicate that the appointment message supersedes a previously filed appointment message.

Subsection (e) of Senate Rule 10-2 (97th G.A) provides as follows:

The filing of a superseding Appointment Message shall automatically table the Appointment Message that it supersedes, and that superseded Appointment Message shall have no further legal effect.

SECTION 89-15. SYNOPSIS.

The following is the standard form for the synopsis of an appointment message:

Nominates to be of

Other examples follow:

Nominates John Smith to be a member of the Illinois Housing Development Authority.

Nominates Jane Doe to be the Director of the Department on Aging.

SECTION 89-20. ABR. The following is the standard form for the ABR of an appointment message:

APPOINT-JOHN T. SMITH

The Senate has indicated that the full name of the nominee is preferred for the ABR of an appointment message. They do not want the name to be abbreviated to accommodate room in the ABR for an indication of the position for which the nomination is being made.

If the full name of the nominee exceeds the 30-character limit for an ABR, the drafter should consider the following, in order: (i) remove any nicknames, (ii) remove a middle name or initial, (iii) provide only the initial of the nominee's first name, or (iv) remove the first name. For example, if the nominee's full name, as supplied by the requester, is "Elizabeth M. (Beth) Jackson-Walker", the ABR for that appointment message should be as follows:

APPOINT-E. JACKSON-WALKER

CHAPTER 90. STYLE AND LANGUAGE.

90-5. GENERALLY.

90-10. CLARITY.

(a) LAWYERISMS.

(b) CONSISTENCY.

(1) SYNONYMS.

(2) TENSE.

(3) MOOD.

(4) VOICE.

(5) PERSON.

(6) NUMBER; SINGULAR OR PLURAL.

(7) SUBJECT-VERB AGREEMENT.

(8) LISTS.

(c) DIRECTNESS.

(1) CONCRETE WORDS.

(2) FAMILIAR WORDS.

(3) POSITIVE STATEMENTS.

(4) WORD ASSOCIATION.

(d) PARTICULAR PROBLEMS.

(1) GENDER.

(2) PROVISOS.

(3) INCLUSIVENESS.

(4) "MISSING OR DOUBLE MIDDLE".

(5) TIME PERIOD BEFORE OR AFTER.

(6) ADOPTION OF RULES BY AN AGENCY.

90-15. CONCISENESS.

(a) SHORT SENTENCES AND SECTIONS.

(b) VERBOSITY.

90-20. GRAMMAR.

(a) GENERALLY.

(b) CAPITALIZATION.

(c) NUMBERS; FIGURES OR WORDS.

(d) DATES

(e) PROPERTY DESCRIPTIONS.

90-25. SPACING.

90-30. GLOSSARY.

SECTION 90-5. GENERALLY.

The style and language of statutes tends to be dull rather than lively, but this is as it should be. Statutes need not be exciting, entertaining, or aesthetically pleasing, but they should be clear, concise, and grammatically correct. The words are worth repeating: clear, concise, and grammatically correct.

Be especially careful when proofreading. Remember that your brain reads words as a whole, focusing on the first and last letters. If you've thought about the language to use in a draft, you'll be expecting to see that language when you proofread the document. Your brain may trick you into thinking that something is correct even though it is spelled or otherwise written incorrectly.

This Chapter discusses several style and language problems, but there are many others that are encountered in drafting bills. LRB has many good reference books that give advice on particular problems.

SECTION 90-10. CLARITY.

(a) LAWYERISMS. You can do a lot to improve the readability of statutes by using the following only when they truly are the best way to express what you are trying to say:

above (as an adjective)
 afore-mentioned
 aforesaid
 before-mentioned
 herein
 hereinafter
 hereinbefore
 hereunder
 provided that
 said (as a substitute for "the", "that", or "those")
 same (as a substitute for "it", "he", "him", etc.)
 such (as a substitute for "the", "that", or "those")
 thereof
 to-wit
 whatsoever
 whensoever
 wheresoever

Improper or careless use of a word like "herein" or "hereunder" creates ambiguity. Does it mean, for example, "in this Section" or does it mean "in the Act or Article in which this Section appears"? Be specific and state the intended meaning. See, for example, *Burgess v. Board of Fire and Police Commissioners*, 275 Ill.App.3d 315 (1st Dist. 1995).

You can further improve readability by considering whether the following ideas might be more clearly expressed by using the simpler alternative:

| Complex | Simple |
|-------------------------|---------------------------|
| a sufficient number of | enough |
| accorded | given |
| afforded | given |
| an adequate number of | enough |
| and/or | or or both |
| attains the age of | becomes years of age |
| by means of | by |
| cause it to be done | have it done |
| commence | begin, start |
| does not operate to | does not |
| during such time as | while |
| during the course of | during |
| effectuate | carry out |
| endeavor (as a verb) | try |
| for the reason that | because |
| for the duration of | during |
| forthwith | immediately |
| in case | if |

| | |
|--|--|
| in cases in which | when, where (say "whenever" or "wherever" only when you need to emphasize the exhaustive or recurring applicability of the rule) |
| in lieu of | instead of |
| in order to | to |
| in the event that | if |
| in the interests of | for |
| interrogate | question |
| is authorized | may |
| is empowered | may |
| it is directed | must |
| it is the duty | must |
| it shall be lawful | may |
| necessitate | require |
| occasion (as a verb) | cause |
| on the part of | by |
| or, in the alternative | or |
| previous to | before |
| prior | earlier |
| prior to | before |
| pursuant to | under |
| render (in the sense of "cause to be") | make |
| retain | keep |
| subsequent to | after |
| until such time as | until |
| utilize | use |
| with the object of | to |

(b) CONSISTENCY.

(1) SYNONYMS. Although variation is often recommended to enliven standard prose, variation without purpose in statutory prose can lead to confusion. Using synonyms to express the same concept is confusing. Using the same word to refer to different concepts is confusing. Thus, consistent use of words and phrases in statutes is a great virtue.

(2) TENSE. A statute speaks continuously. Therefore, use the present tense except when it is necessary to express a time relationship. Using the present tense also speaks at any future time. 5 ILCS 70/1.02.

Examples follow:

Murder is a Class X felony. (Not: Murder shall be a Class X felony.)

"Secretary" means the Secretary of State. (Not: "Secretary" shall mean the Secretary of State.)

A person who has been convicted of embezzlement is ineligible for appointment as Commissioner of Banks and Trust Companies. (Not: "shall be ineligible...")

(3) MOOD. Generally, statutes should be in the indicative mood, but commands should be in the imperative mood. Avoid the subjunctive mood.

Examples follow:

If the balance in the fund is less than \$5,000, the State Treasurer must notify the Comptroller. (Not: If it be determined that the balance in the fund is less than \$5,000, the State Treasurer notifies the Comptroller.)

The State Capitol Building is the property of the State. (Not: ... shall be the property)

(4) VOICE. Use the active voice instead of the passive.

An example follows:

The Governor must appoint the members of the board. (Not: The members of the board shall be appointed by the Governor.)

Cross reference: Section 80-55, subsection (d), concerning use of voice in resolutions.

(5) PERSON. Use the third person.

An example follows:

A person may not roller skate in the rotunda. (Not: You may not roller skate in the rotunda.)

(6) NUMBER; SINGULAR OR PLURAL. If possible, use the singular rather than the plural. By statutory rule the singular includes the plural, and the plural includes the singular. 5 ILCS 70/1.03.

Examples follow:

A person may not.... (Not: Persons may not....)

The sheriff must serve each defendant. (Not: The sheriff must serve the defendant or defendants.)

(7) SUBJECT-VERB AGREEMENT. Make sure that in each sentence the verb agrees with its subject in person and number. Agreement in person isn't usually a problem in legislative drafting, but agreement in number (singular or plural) can sometimes be tricky. First identify the subject. If the subject is 2 words or phrases joined by "and", always use a plural verb, as in the following example:

Both the committee members and the chairperson are subject to.....

On the other hand, if the subject is 2 words or phrases (one singular and the other plural) joined by "or" or "nor", make the verb agree with the nearer one as in the following examples:

Neither the committee members nor the chairperson *is* liable....

Neither the chairperson nor the committee members *are* liable...

The first example is grammatically correct but may sound awkward to some. In that case you can probably rearrange the subject words to achieve a grammatically correct result that may be more pleasing to the ear, as in the second example.

(8) LISTS. Whether a list of items appears in the form of a sentence or an outline (see Section 15-20 of this Manual), the items in the list should be consistent with each other in terms of the matters presented in paragraphs (1) through (6).

(c) DIRECTNESS.

(1) CONCRETE WORDS. Abstract words are fuzzy and often open to interpretation. Concrete words are more precise.

An example follows:

The court must consider the defendant's net income and net assets when assessing a fine. (Not: The court must consider the financial aspect as a factor when assessing a fine.)

There are times, however, when vagueness is preferred to allow latitude. The last example may be too restrictive and the following example, although less precise, better:

The court must consider the defendant's ability to pay when assessing a fine.

(2) FAMILIAR WORDS. Consider whether your idea would be more clearly expressed and more easily understood if the following multisyllable words were replaced with the alternative wordings as follows:

| Multisyllable | ALTERNATIVE |
|----------------------|---|
| annually | each calendar year, in March of each year, or every 12 months beginning with the month the certificate is granted |
| biannually | every 6 months, each January and July, or twice a year |
| biennially | every 2 years |
| semiannually | every 6 months, each January and July, or twice a year |

Likewise, consider whether it might more clearly express your idea if you use common words instead of Latin abbreviations. For example, say "Sections A through Z" or "X ILCS Y/A through Y/Z" or "Section A and following" instead of "Section A *et seq.*" or "X ILCS Y/A *et seq.*". Stating the inclusive numbers is more precise than using an open-ended abbreviation. Other examples follow:

| ABBREVIATION | ALTERNATIVE |
|---------------------|--------------------------|
| e.g. | for example |
| i.e. | that is |
| etc. | and so on |
| | and so forth |
| | and the like |
| | and other similar things |

(3) POSITIVE STATEMENTS. If something can be said either positively or negatively, say it positively.

An example follows:

This Act applies to each county with a population over 500,000. (Not: This Act does not apply to any county with a population under 500,001.)

(4) WORD ASSOCIATION. Keep the subject close to the verb, the verb close to the object, and modifiers close to the word modified. Examples follow:

After considering the funds projected to be available and the expenses projected to be incurred, the board must determine a tax rate. (Not: The board must, after considering the funds projected to be available and the expenses projected to be incurred, determine a tax rate.)

A victim of rape must be awarded statutory civil damages of \$50,000 from the assailant in addition to actual damages. (Not: A victim of rape must be awarded, in addition to actual damages from the assailant, statutory civil damages of \$50,000.)

The treasurer must file with the clerk all reports made under the rules. (Not: The treasurer must file all reports made under the rules with the clerk.)

Don't use pronoun references that are unclear. An example follows:

For the purpose of maintaining a county highway or State highway and upon the approval of the Department, a county may use motor fuel tax money allotted to the county. (Not: "... allotted to it". Does "it" refer to the county or to the Department?)

If you use more than one modifying phrase in a sentence, link the phrases together in a chain. Better yet, eliminate "that" plus a form of the verb "be" if possible. Don't "nest" one modifying phrase inside another. An example follows:

The Director shall consider the recommendations made by the previously appointed committee. (Better than: "... recommendations that have been made by the committee that was previously appointed.") (Not: "... recommendations that the committee that was previously appointed made.")

Cross reference: Section 90-30 concerning "either, any", "only", "that, which", and "who, whom".

(d) PARTICULAR PROBLEMS.

(1) GENDER. Section 1.04 of the Statute on Statute, 5 ILCS 70/1.04, says:

Words importing the masculine gender may be applied to females.

For most of this State's history, the use of masculine pronouns (he, him, his, himself) in the statutes was customary. In recent years, however, gender neutrality (he or she, him or her, his or her or his or hers, himself or

herself) has become customary. Pronouns in new language should be gender neutral (even if the statute being amended uses only masculine pronouns).

The gender neutral option, such as "he or she", works well most of the time. Sometimes, however, gender neutral pronouns are confusing or awkward. If a sentence includes references to more than one person, it may be unclear to whom "he or she" refers. Multiple references to "he or she" in the same sentence may disrupt the flow of the sentence. If such a problem arises, there are a number of possible solutions:

- The pronoun can be replaced by the appropriate noun. For example:

An employer may not discriminate against an employee because he or she has sought relief under this Act.

can be changed to:

An employer may not discriminate against an employee because the employee has sought relief under this Act.

- If it is appropriate in the context, the pronoun can be replaced by a word that doesn't have a gender. For example, if a statute is discussing the requirements for filing an objection, the sentence:

A person must file his or her objection within 30 days after the hearing.

can be changed to:

A person must file an objection within 30 days after the hearing.

- If it is appropriate to make the noun plural, the pronoun "them", "they" or "their" may be used. For example, "a member must submit his expense voucher" can be changed to "members must submit their expense vouchers".

Using "they", "them", or "their" with a singular noun is never acceptable. An example follows:

A person must file their objection within 30 days after the hearing.

Since "they", "them", and "their" are gender neutral, some people use them with a singular noun as a misguided way to achieve gender neutrality. **Using "they", "them", or "their" with a singular noun is never acceptable.**

The gender neutral forms of many terms are preferred in new language, such as "worker" instead of "workman" and "firefighter" instead of "fireman". It is necessary, however, to consider the context. If you are amending an existing Act in which "fireman" is a defined term or "fireman" is used consistently throughout the Act, you should use "fireman". It is also necessary to consider whether a particular gender neutral term is consistent with the statutes as a whole. On the one hand, "chairperson" and "chair" are commonly used in the statutes instead of "chairman". On the other hand, "alderperson" does not appear anywhere in the statutes and it has not even appeared in proposed legislation since the 88th General Assembly, so you should avoid it unless you are instructed to use it. (Gender neutrality varies by state. "Alderpersion" is common in the Wisconsin statutes, although they still use the adjective "aldermanic".)

(2) PROVISOS. Avoid provisos tacked on at the end of a sentence. A sentence with a proviso is usually too long and difficult to understand. Rearranging the sentence or breaking it up into 2 or more sentences will express the concepts and the exception more clearly.

(3) INCLUSIVENESS. If the intention is, for example, to include Sections 1, 2, 3, 4, and 5, say "Sections 1 through 5". Do not say "Sections 1 to 5", which arguably means all Sections from 1 to, but not including, 5.

(4) "MISSING OR DOUBLE MIDDLE". Do not leave a "missing middle" in provisions containing a cutoff in population, geographic area, age, time, or other matters. Examples follow:

Municipalities with fewer than 10,000 inhabitants must do ABC. Municipalities with 10,000 or more inhabitants must do XYZ. (Not: Municipalities with more than 10,000 inhabitants....)

Applications received before January 1, 2008 must be approved. (Not: Applications received until Dec. 31, 2007....) Applications received on or after January 1, 2008 may be approved if ABC. (Not: Applications received after January 1, 2008....)

Likewise, do not double the middle (that is, include it twice). An example follows:

Vehicles weighing 20 tons or more must ABC. Vehicles weighing less than 20 tons need not ABC. (Not: Vehicles weighing 20 tons or less...)

(5) TIME PERIOD BEFORE OR AFTER. Specify whether you mean a period of time before a certain date or a period of time after that date or both. An example follows:

The Director must approve or deny an application within 10 days after receiving it.

Do not say "within 10 days of receiving it". "Of" could mean before or after or both.

(6) ADOPTION OF RULES BY AN AGENCY. Statutes often authorize or direct an agency to adopt rules to implement a statute or otherwise regulate some activity. The Illinois Administrative Procedure Act, 5 ILCS 100/, governs the adoption of rules by State agencies, boards, commissions, authorities, and other entities. (See Section 1-20 of the Act, 5 ILCS 100/1-20, for the definition of those "agencies" that are subject to the Act.) Because the Act refers to agencies "adopting rules", your drafts should generally do the same. For example, never authorize an agency that is subject to the Illinois Administrative Procedure Act to "promulgate regulations".

SECTION 90-15. CONCISENESS.

(a) SHORT SENTENCES AND SECTIONS. Short sentences and Sections are usually better, provided they accurately reflect the requester's intentions. Brevity is welcome where appropriate, but it is second in importance to clarity. Always take time to make your draft clear; where possible, make it concise as well.

(b) VERBOSITY. While longer phrases are often needed for precision, there is a risk of confusion if they are used where they are not needed. Consider whether your idea would be more clearly expressed and more easily understood if the following phrases were replaced with these alternative words and shorter phrases:

| Longer Phrase | Alternative |
|--------------------------|--------------------|
| alter or change | change |
| at that point in time | then |
| authorize and empower | authorize |
| because of the fact that | because |
| by means of | by |

| | |
|---|-------------------------|
| by reason of | because of |
| by virtue of | by, under |
| cease and desist | stop |
| despite the fact that | although, even though |
| during the time that | during, while |
| each and all | every |
| for the period of | for |
| for the purpose of | to |
| for the reason that | because |
| force and effect | effect |
| full and complete | complete |
| in connection with | with, about, concerning |
| in favor of | for |
| in many cases | often |
| in order to | to |
| in relation to | about, concerning |
| in some instances | sometimes |
| in terms of | in |
| in the event that | if |
| in the majority of instances | usually |
| in the nature of | like |
| inasmuch as | since |
| null and void | void |
| on the basis of | by, from |
| order and direct | order, direct |
| prior to | before |
| required in the case of | required when |
| subsequent to | after |
| the question as to whether, the question | whether |
| until such time as | until |
| with a view to | to |
| with reference to | about, concerning |
| with regard to | about, concerning |
| with respect to | on, about |

SECTION 90-20. GRAMMAR.

(a) **GENERALLY.** A good book on grammar is one of a bill drafter's best friends. Some special problems are capitalization, numbers, and dates.

(b) **CAPITALIZATION.** Follow the general conventions for capitalization. If in doubt, lower case is usually preferred. Some special examples follow:

State (when referring to the State of Illinois)
statewide
Governor
Director (when referring to a specific director, such as the
Director of Revenue)
Department (when referring to a specific Department, such as the
Department of Revenue)
any department

this Act, this Law, or this Code (when referring to a statute)
 "AN ACT" (as part of the title of a bill)
 "An Act" (when referring to the title of an Act)
 this Section (when referring to a statute)
 Cook County
 Sangamon County and Macon County
 any county
 the counties of DuPage, Kane, Lake, McHenry, and Will
 federal government
 State Treasurer
 State treasury
 State's Attorney

(c) NUMBERS; FIGURES OR WORDS. Generally express numbers as figures. An exception is when the number is the first word of a sentence. Another exception is the number "one", other than in a date, as a dollar amount, or as a percentage. A final exception is vulgar fractions (that is, fractions expressed in the form "x/y"), which are even better stated as percentages, and other hyphenated words containing a number. Examples follow:

5% (Not: five percent)
 Fifty percent (beginning a sentence)
 July 1, 2007
 one year (Not: 1 year)
 \$1,000 (Not: one thousand dollars (\$1,000))
 Two or more municipalities may consolidate
 1% (Not: one percent)
 \$1 (Not: one dollar)
 \$50 (Not: \$50.00)
 three-fourths (Not: 3/4ths or 3/4)
 80% (Better than: four-fifths)

If a number has figures only to the right of a decimal point, insert "0" to the left of the decimal point so that the decimal point's placement is clear. Examples follow:

\$0.50
 0.5%
 Sec. 0.01. Short title.

(Use the last example only in a bill to enact a Uniform Act. See Section 77-10 of this Manual.)

A cardinal number is a number used as counting (1, 2, 3, . . .). An ordinal number shows the order of something (first, second, third, . . .). Using the same rules that we apply to cardinal numbers would sometimes produce some odd-looking results. For example, this looks odd:

A 3rd violation is a Class 4 felony.

This looks better:

A third violation is a Class 4 felony.

On the other hand, sometimes it looks odd to spell out an ordinal number:

The association observed its one hundred and ninety-fifth anniversary.

This looks better:

The association observed its 195th anniversary.

Spell out ordinal numbers from first to tenth and use numbers for ordinal numbers higher than tenth:

The association observed its tenth anniversary.

The association observed its 11th anniversary.

Don't contract "nd" or "rd" to "d" in an ordinal number:

Correct: 22nd year

Avoid: 22d year

(An exception is a citation that uses "d", such as 223 Ill. 2d 318.)

Don't use superscripts with ordinal numbers (use 27th, not 27th).

(d) DATES. Show the day in a date as a cardinal number, not an ordinal number:

Correct: January 1, 2015

Avoid: January 1st, 2015

Do not put a comma after the year unless a comma would otherwise be required:

Correct: An application filed on or after January 1, 2015 must be rejected.

Avoid: An application filed on or after January 1, 2015, must be rejected.

Correct: If an application is filed on or after January 1, 2015, it must be rejected. (The dependent clause ends with "2015" and there should be a comma at the end of the dependent clause.)

Spell the month out:

Correct: January 1, 2015

Avoid: Jan. 1, 2015

(e) PROPERTY DESCRIPTIONS. Occasionally a bill or an amendment includes a legal description of real property. For example, a bill may authorize the Secretary of Transportation to transfer certain real property to a unit of local government upon the payment of a stated amount of money. If the property is described by metes and bounds, the description in the bill or amendment should spell out the words "degree", "minute", and "second" and should not use symbols for those terms.

Cross reference: Section 20-70 concerning descriptions of property and other locations.

SECTION 90-25. SPACING.

For many years, Secs. and Sections were separated in bills by a single carriage return. Thus, Secs. and Sections tended to visually run together making it difficult to spot where they began and ended. The current practice is to insert a double carriage return after the end of each Sec. and Section in a bill and after the end of the introductory clause of each amendatory Section. This makes it easier for you to work with a document and for others to read it.

SECTION 90-30. GLOSSARY.

Your misuse of certain words and phrases can make a statute ambiguous. This Section states rules for using certain words and phrases and gives examples of correct usage.

A, AN, THE, ANY, EACH, EVERY, ALL, SOME, NO

"A" and "an" are indefinite articles. "The" is a definite article. Articles modify nouns. Examples follow:

A person who violates this Section commits a Class A misdemeanor.

Upon conviction, **the** court must sentence **the** defendant to at least 50 hours of community service.

"Any", "each", "every", "all", "some", and "no" are indefinite adjectives. They are overused in legal writing. If the use of a definite or an indefinite article or none at all is sufficiently clear, then there is no need for an indefinite adjective. Examples follow:

Corporations (Not: **All** corporations) may own their own stock.

A person whose license has expired may not drive. (Not: **No** person whose license has expired may drive.)

Use an indefinite adjective only when necessary to resolve doubts concerning the extent of the class to be included or to clarify whether something applies to a single member of the class or to all members. Examples follow:

The Department must make a grant to **each** qualified applicant.

The Department may make a grant to **any** qualified applicant.

ACTION, CAUSE OF ACTION

An "action" is a proceeding in court to enforce a private right, to redress or prevent a private wrong, or to punish a public offense. An action is "brought" or "commenced"; it *does not* "accrue" or "arise". (A complaint is "filed" to commence an action.) A "cause of action" (or "right of action") is a group of facts giving the plaintiff a right to seek redress for a wrongful act or omission of the defendant. A person "has" a cause of action, and a cause of action "accrues" or "arises"; it *is not* "brought", "commenced", or "filed". See item (3) of subsection (b) of Section 35-50 of this Manual. An example follows:

A person who has a **cause of action** (a right to seek redress) under Section 12-7.1 of the Criminal Code of 2012 may commence an **action** (a proceeding in court) by filing a complaint for appropriate relief in the circuit court.

AFFECT, EFFECT

As verbs, "affect" means to influence and "effect" means to bring about. As nouns, "affect" means a mental or physical disposition and "effect" means a result. An example follows:

The Governor's use of the amendatory veto often **affects** (influences) the sponsor of the bill in a way that **effects** (brings about) a twitching **affect** (mental and physical disposition) as an **effect** (result).

AMONG, BETWEEN

"Between" expresses a relationship that is several and individual. An example follows:

Candy given to a Senator by a lobbyist must be divided **between** all Senators.

"Among" expresses a relationship that is collective and vague. An example follows:

The Senators quarreled **among** themselves over the candy.

Ignore the simplistic rule that "between" is for 2 things and "among" is for 3 or more.

AND, OR, AND/OR

As conjunctions, "and" means in addition to and "or" means as an alternative to. They each have more than one sense, however, and failing to make the sense clear can lead to ambiguity.

The following are senses of "and":

(1) Joint. A and B considered together as one unit. An example follows:

The Treasurer **and** Comptroller must **jointly** report on the State's fiscal conditions. (Omitting "jointly" could lead to ambiguity. Could the Treasurer then comply by filing a separate report?)

(2) Several. A and B considered separately. An example follows:

The Treasurer **and** Comptroller must **separately** report on the State's fiscal condition.

(3) Joint or several. A and B considered either together as one unit or separately. This is the sense in which "and" is usually intended and understood. An example follows:

The Treasurer **and** Comptroller must report on the State's fiscal condition. They may file a **joint** report or **separate** reports.

(4) Joint and several. A and B considered together as one unit and separately. An example follows:

The manufacturer **and** distributor are **jointly and severally** liable for damages under this Act.

"Or" has the following senses:

(i) Inclusive. A but not B, B but not A, or both A and B. This is the sense in which "or" is usually intended and understood. It is also the sense in which the abominable monstrosity "**and/or**" is sometimes used. An example follows:

The Department may not issue a license to a person who has been convicted of a felony **or** a Class A misdemeanor **or both**.

(ii) Exclusive. A but not B, B but not A, but not A and B. An example follows:

The Governor must designate the Department of Revenue **or** the Environmental Protection Agency, **but not both**, to adopt rules under this Act. (An alternative: ... must designate **either** ... **or**)

In many instances, the context makes clear which of the senses of "and" or "or" is intended. Additional clarifying words are then not necessary. In every instance, however, consider the various senses of "and" and "or" and avoid ambiguity.

ASSURE, ENSURE, INSURE

"Ensure" means to make certain that something happens.

The Department shall **ensure** that all parties receive notice of the hearing.

"Insure" refers to the business in which insurance companies engage.

A policy issued to **insure** the employees of a public body may provide that the term "employees" includes elected or appointed officials.

"Assure" means to give confidence or to convince.

I **assured** Junior that there were no monsters under his bed.

Please note that "assure" often appears in the statutes where "insure" or "ensure" would seem more appropriate. This is not wrong because, in British English, "assurance" is commonly used to refer to insurance or certainty and that usage was once common in the United States. When drafting new language, however, please use modern American English.

ATTORNEY'S FEES, ATTORNEYS' FEES, ATTORNEY FEES, ATTORNEYS FEES

All 4 of these terms appear in the Illinois Compiled Statutes. "**Attorney's fees**" appears the most frequently and, under Section 1.03 of the Statute on Statutes, 5 ILCS 70/1.03, may extend and be applied to several attorneys if the context warrants. "**Attorneys' fees**" is not wrong and certainly may be used in a context where the reference is clearly to more than one attorney. "**Attorney fees**" appears with some frequency, but it is not preferred; don't use it. "**Attorneys fees**" also appears with some frequency, but it is wrong; don't use it.

BEST INTEREST, BEST INTERESTS

The terms "best interest" and "best interests" are both acceptable. It doesn't matter whether the object of the preposition "of" is singular or plural (for example, "best interest of the children" and "best interests of the children" are both acceptable).

If your draft amends an existing Act, consider whether the Act already uses one of the alternatives consistently or as a defined term. Some Acts use both. For example, the Illinois Marriage and Dissolution of Marriage Act use both "best interest" and "best interests". In that Act, consider whether the Section, paragraph, or sentence that your draft amends uses one of the alternatives consistently.

BI-, SEMI-

"Bi-" is commonly prefixed to a word expressing a unit of time to create an adjective (for example, biweekly, biannual). Depending on the unit of time used, the resulting adjective may mean either "every 2" units of time or "twice during every" unit of time. "Semi-", when used in the same manner, creates an adjective meaning "twice during every" unit of time. To avoid possible confusion resulting from using these prefixes, consider whether it would be clearer to instead state the specific frequency desired. Examples follow:

twice a month
every 2 weeks

Cross reference: Section 90-10, subsection (c), paragraph (2) for additional examples.

BUSINESS DAY, CALENDAR DAY, AND WORKING DAY

When providing that an action must take place within a particular period of time, the statutes often specify a period of, for example, 5 "business days" or 10 "working days" without defining those terms. Note, however, that what might reasonably be considered a "business day" or "working day" may depend on the statute's context. Especially if a penalty may be imposed depending on the interpretation of the term (for example, if a monetary penalty may be imposed if a certain act is not performed within 5 "business days"), all affected parties are entitled to know what the term means. Better practice is either to include a definition of "business day" or "working day" if you use one of those terms, or to use the unambiguous term "calendar day" and making adjustments to the number of days as needed (since "calendar day" includes weekends and holidays in its count).

The statutes do include a few definitions of "business day", but none of them is generally applicable throughout the statutes. Those definitions include the following:

- (1) "A day on which State offices are open for regular business" (750 ILCS 28/15).
- (2) "Any day on which the facility is open for business" (815 ILCS 615/20).
- (3) "Any calendar day except Sunday or a federal holiday" (815 ILCS 635/5).

Also see 10 ILCS 5/1-3 and 205 ILCS 205/6003 for additional examples.

CAN, MAY

Avoid using "can" in a draft. "Can" indicates capability: to be mentally or physically capable of doing something. "May" expresses authority: a power, privilege, or right to do something. "Can" is often used colloquially, however, to express authority in the sense of "may". "Can" is liable to be ambiguous if used in a draft. If you mean to express mental or physical *capability*, refer, for example, to a person who "is mentally (or physically) capable of" taking a particular action. If you mean to express *authority*, say that a person "may" take a particular action.

COMPLEMENT/COMPLIMENT, COMPLEMENTARY/COMPLIMENTARY

"Compliment" means to say something nice about someone. "Complimentary" means paying someone a compliment ("You are a nice person") or providing something without cost ("The bus service was complimentary").

"Complement", as a verb, means to work or go well together ("The new business complements existing businesses in the area"). As a noun, it means complete ("After the special election, the city council a full complement of aldermen"). "Complementary" is an adjective that describes things that complement or go well with each other ("The new business and the existing businesses are complementary" or "Beans and tortillas have complementary proteins"). There are specialized meanings of "complementary" in math, geometry, and medicine.

COMPOSE, COMPRISE

"Compose" means "make up"; the parts compose the whole. "Comprise" means "is made up of" or "consists of"; the whole comprises the parts. Examples follow:

The committee **comprises** the following members:

The committee **is composed of** (Not: **is comprised of**) the following members:

The following members **compose** the committee:

DIFFER FROM (WITH)

"Differ from" implies a contrast; "differ with" implies a disputed opinion. Examples follow:

To the extent a specific statute **differs from** a general statute, the specific controls.

Attorneys often **differ with** each other concerning the meaning of a statute.

DIFFERENT FROM (THAN)

"Different from" implies a contrast. "Different than" also implies a contrast, but one of degree. Examples follow:

Apples are **different from** oranges.

The number of Senators is **different than** the number of Representatives.

DISINTERESTED, UNINTERESTED

"Disinterested" means impartial; "uninterested" means not concerned. An example follows:

An arbitrator should be a **disinterested** person, but never **uninterested** in the dispute to be resolved.

DISPERSE, DISBURSE

"Disperse", "dispersal", and "dispersing" refer to the spreading or breaking up of something. "Disburse", "disbursement", and "disbursing" refer to the payment or distribution of money ("burse" being the archaic version of the modern "purse"). Examples follow:

The **dispersal** of microorganisms depends upon their ability to survive in the atmosphere.

The Department must **disburse** moneys to qualified applicants.

EITHER, ANY

Use "either" if there are only 2 alternatives; use "any" if there are 3 or more alternatives. Examples follow:

The court must grant the relief on the request of **either** the petitioner or the petitioner's attorney.

The court may continue a hearing for **any** of the following reasons:

- (1)
- (2)
- (3)

"Either", when used with "or", is frequently misplaced in a sentence. It should be placed so that the word or phrase immediately preceding "either" makes sense when read with (i) the word or phrase immediately following "either" and (ii) the word or phrase immediately following "or". Examples follow:

The board must **either** approve **or** deny the request within 10 days.
("must approve"; "must deny")

The court must grant the relief on the request of **either** the petitioner **or** the petitioner's attorney. ("request of the petitioner"; "request of the petitioner's attorney")

If the last example read "shall grant the relief **either** on the request of the petitioner **or** the petitioner's attorney", the alternative "grant the relief the petitioner's attorney" would not make sense.

ENTERING INTO A CONTRACT

A person or entity enters *into* a contract, agreement, or other obligation. The statutes contain some examples of language authorizing a person or entity to "enter" a contract or agreement, omitting the word "into". This is wrong. Always include the word "into".

EXISTING, CURRENT, CURRENTLY, PRESENT, PRESENTLY, NOW

A statute speaks at the moment it is read, which may be on November 15, 1998, March 15, 2005, or some other date. Therefore, use of the word "existing" in a statute usually requires a temporal reference. Consider the following examples:

Correct: A facility existing on January 1, 2014 [or on the effective date of this amendatory Act of the 98th General Assembly] is exempt from licensure under this Act. (A typical "grandfather" clause: only facilities existing on a particular date-regardless of the date on which the statute is read-are exempt.)

Wrong: An existing facility is exempt from licensure under this Act. (Every facility existing on any date the statute is read is exempt.)

Similarly consider whether a temporal reference is required when using "current", "currently", "present", "presently", or "now" in a statute.

FOREGO, FORGO

The word "forego" appears several times in the statutes. Unfortunately, as of this writing, every one of them is arguably wrong. "Forego" means to precede or go before something else. "Forgo" means to decline or go without something ("He decided to accept arbitration and forgo his right to sue"). "Forego" is sometimes used as a variant of "forgo", which accounts for its appearances in the statutes, but you should use "forgo" when it is the appropriate word.

"Foregoing" is the adjective form of "forego".

In predrafts, you may see "forego" misused by people who are unaware that "forgo" is a word. If they are insistent about using "forego" incorrectly, a dictionary may help convince them that "forgo" is the word they want.

HEREAFTER, HEREINAFTER

They look similar, but "hereafter" and "hereinafter" are not synonyms. "Hereafter" means "in the future" or "from now on". "Hereinafter" means "later in this document". "Hereafter" refers to time and "hereinafter" refers to location. You will sometimes see them misused in the statutes and in predrafts. Both terms should generally be avoided because they are misunderstood, they are lawyerisms, and they are often vague. If you have to use them, please use them correctly.

IF, WHETHER

Use "if" to introduce the clause that expresses the condition in a conditional sentence. Use "whether" to express an alternative or possibility that is not conditional. Examples follow:

The clerk must notify an applicant **if** his or her application is approved. (Notice is required only if the application is approved.)

The clerk must notify each applicant **whether** his or her application is approved. (Notice is required in all cases, whether or not an application is approved.)

IN, INTO

"In" expresses a position within certain boundaries. "Into" expresses movement from one side of a boundary to the other. Examples follow:

Sally walked **into** the room and then spent an hour walking **in** the room.

The defendant must be **in** the courtroom when sentenced.

The bailiff must escort the prisoners **into** the courtroom.

The Department must deposit all income tax receipts **into** the General Revenue Fund.

Money **in** the Income Tax Refund Fund may be appropriated only for the purpose of paying income tax refunds and interest on those refunds.

IN REGARDS TO, WITH REGARDS TO

You may see "in regards to" and "with regards to" in predrafts and reruns. You will also see them in a few places in the statutes. "In regards to" and "with regards to" are wrong. "In regard to" and "with regard to" are correct.

People who use "in regards to" or "with regards to" may think they are OK because "as regards" is correct (but stilted).

While "in regard to" and "with regard to" are correct, they are stilted. In most cases, the sentence can be rewritten using "regarding", "in respect to", or "with respect to".

INCIDENCES, INSTANCES; INCIDENTS

You may see "incidences" in predrafts and reruns. It also appears in the statutes. It is sometimes used correctly, but it is more often used incorrectly.

"Incidence" means rate or frequency of occurrence ("The incidence of smoking among young people is troubling"). The plural "incidences" means rates or frequencies of occurrence, so more than one thing would need to be involved ("The incidences of lung cancer and other diseases related to smoking are troubling").

An "instance" is an example ("For instance, this Manual encourages careful writing") or a request ("The witness was subpoenaed at the instance of the Department"). "Instance" also has specialized meanings in law and computer science.

An "incident" is an occurrence.

If a predraft contains language requiring an agency to investigate incidences of particular types of suspected illegal activity, you may need to ask the requester whether the intent is to require the agency to perform investigations of the suspected illegal activities (in which case "incidences" is not the correct word) or to require the agency to investigate how often the particular types of suspected illegal activity occur (in which case "incidences" is correct).

LESS, FEWER

"Less" denotes degree, amount, or collective quantity (how much); it is generally used with singular nouns. "Fewer" denotes numbers or individual items (how many); it is generally used with plural nouns. Examples follow:

This Section applies to municipalities with **fewer** than 10,000 inhabitants. ("Inhabitants" denotes individuals and is plural.)

This Section applies to townships with a population of **less** than 10,000. ("Population" denotes a collective quantity and is singular.)

The compensation of the weed and thistle commissioner must be not **less** than \$10 per hour.

ONLY

Misplaced modifiers lead to ambiguity. "Only" is misplaced perhaps more often than any other modifier. Place "only" immediately before what it modifies. Examples follow:

The chairperson may vote **only** (Not: **only** vote) when the members' votes are even.

The Department may place traffic-control devices **only** at intersections (not in the middle of the block).

The Department may place **only** traffic-control devices at intersections (place nothing else at intersections).

The Department may **only** place traffic-control devices at intersections (place, but not, for example, operate or maintain).

PRACTICAL, POSSIBLE, PRACTICABLE

"Practical" means realistically capable of being accomplished in the actual circumstances. "Possible" and "practicable" both mean theoretically capable of being accomplished in some set of circumstances. An example follows:

A manned expedition to Mars by the State of Illinois is **practicable** (theoretically possible), but not **practical** (realistic).

The phrases "as soon as possible" and "as soon as practicable" are often used interchangeably for "as soon as practical", forcing the courts to interpret all 3 phrases as meaning the same thing: as soon as it can reasonably be done.

An alternative to the muddle is to avoid all 3 phrases and, instead, require something to be done "immediately" if urgency is needed, "within a reasonable time" if some latitude can be allowed, or within a stated period if appropriate. Examples follow:

Within a reasonable time after the filing of a proposed ordinance, the municipal clerk must make copies available for public inspection.

A defendant must plead or otherwise appear **within 30 days** after being served with summons.

If the fund balance is reduced below \$100,000, the State Treasurer must **immediately** notify the Governor.

PREMISE, PREMISES

"Premises" means a dwelling or other building and the grounds upon which it is located. Because of the "s" at the end of "premises", some people incorrectly think that one dwelling or building is a "premise".

When referring to a dwelling or other building, always use "premises" except for (i) an existing Act where the incorrect use of "premise" is part of an established term, such as "off premise sale retailer" or "on premise consumption retailer" in the Liquor Control Act of 1934 and (ii) a reference to "Premise" in the short title of an Act. (Note that "premise" is not predominant in the Liquor Control Act of 1934; "premise" appears in 5 Sections and "premises" appears in 56 Sections.)

Other uses of "premise" and "premises": "Premise" is a statement from which a conclusion is made ("The program is based upon the premise that reading skills are essential"). In a legal context, "premises" also refers to evidence or statements that are the basis for the conclusions in a document ("The court being fully advised in the premises . . .").

PRINCIPLE, PRINCIPAL

"Principle" means a standard or proposition that serves as a foundation.

The nation is founded upon the principle of freedom.

"Principal" has several meanings. It can refer to one or more persons who head a school or entity.

Anytown High School has a new principal.

The principals of the firm incorporated to avoid personal liability.

It can refer to a person who engages an agent.

The agent acted under the authority of the principal.

It can refer to the amount of a deposit or debt upon which interest is calculated.

If the principal is \$1,000, simple interest at 8% is \$80.

It can refer to someone or something that is more important than other persons or things.

The principal ingredient in this pie is rhubarb.

"Principle" is never an adjective but "principal" may be an adjective.

George Westinghouse was one of the principal promoters of alternating current.

REQUEST FOR PROPOSAL, REQUEST FOR PROPOSALS

The terms "request for proposal" and "request for proposals" are both acceptable.

If your draft amends an existing Act, consider whether the Act already uses one of the alternatives consistently or as a defined term. Some Acts use both. In those Acts, consider whether the Section, paragraph, or sentence that your draft amends uses one of the alternatives consistently.

Both "request for proposal" and "request for proposals" are singular. The plural of "request for proposal" is "requests for proposal". The plural of "request for proposals" is "requests for proposals".

Don't use the abbreviation "RFP" in an Act unless you have defined it in the Act to mean "request for proposal" or "request for proposals".

SHALL, WILL

Use "will" to express simple futurity. Do not use "shall" for that purpose. An example follows:

The clerk must send a notice that the hearing **will** (futurity; Not: **shall**) be held on a specified date.

Do not use "will" to express a duty or obligation. An example follows:

The Director **must** (duty; Not: **will**) file the report with the General Assembly.

SUCH

"Such" is often overused in legal writing as an adjective meaning previously mentioned. While some think the use of "such" adds precision, in practice it often leads to ambiguity with regard to the specific previously mentioned thing it is meant to indicate. A better practice is to use "the", "these", "this", and "those". For example:

An applicant shall pay an application fee of \$10. The (Not: **Such**) applicant may pay the (Not: **such**) fee in cash or by credit card.

A truly confusing misuse of "such" (and one that should be avoided) is to use it as an adjective modifying a noun that has not been previously mentioned.

However, some uses of "such" make sense; in a given context "such" can be the best way to communicate a particular idea. For example:

Fiduciaries such as trustees and executors are often given discretionary powers.

TOWARDS

You may see "towards" in predrafts and reruns. You will also see it in the statutes. In British English, "towards" is used more often than "toward". In American English, "toward" is preferred. There is no need to change "towards" when you see it in the statutes. When drafting new language, however, please use American English.

THAT, WHICH

When applied to things (rather than persons), begin a dependent clause with "that" if the clause is essential to the meaning of the sentence or with "which" if the clause is nonessential. A nonessential clause is one that may be removed from the sentence without destroying its meaning. A nonessential clause should be set off by commas, an essential clause should not. Examples follow:

The Department shall reject an application **that** is not signed by the applicant.

The Supreme Court, **which** is the State's chief judicial body, disciplines attorneys.

"Which" may technically be used to introduce a restrictive clause modifying a remote antecedent, as in the following example: "An application to renew a license which has been rejected" In this example, "which has been rejected" modifies "application" rather than "license". While this use may be grammatically correct, it obviously is subject to misinterpretation by readers. It would be better to reword the sentence to avoid the use of "which" as follows:

If an application to renew a license has been rejected, the application

THEREFOR, THEREFORE

The word "therefor" means for something (such as "The tribunal shall make a decision and give its reasons therefor"). "Therefore" means consequently or for that reason. If you search the statutes for "reasons therefore" as a phrase, you will find a number of places where "therefore" is arguably misused.

In predrafts, you may see "therefore" misused by people who are unaware that "therefor" is a word. If they are insistent about using "therefore" incorrectly, a dictionary may help convince them that "therefor" is the word they want.

Of course, "therefor" is a lawyerism. It can usually be replaced by something easier to understand (such as "The tribunal shall make a decision and give its reasons for the decision").

WHERE, WHEN, IF, IN WHICH

"Where" indicates a place; "when" indicates a time; "if" indicates a condition; "in which" indicates a relative pronoun. Be especially careful in using "where" or "when". Before you use "where" or "when", think about how you are using the word. If you are expressing a condition, use "if" instead. Examples follow:

The notice shall state **where** (place) persons may obtain copies of the report.

The clerk shall be present **when** (time) the votes are counted.

If (Not: Where or When) a person dies intestate, the heirs take under the rules of descent and distribution.

The Department shall report all cases **in which** (Not: where) a finding of abuse or neglect is made.

WHO, WHOM

"Who" is in the nominative case; "whom" is in the objective case. A simple rule of thumb to determine which is correct is to recast the sentence and substitute a pronoun. Use "who" if the nominative pronoun "he", "she", "it", or "they" reads correctly. Use "whom" if the objective pronoun "him", "her", or "them" reads correctly. Examples follow:

A person **who** is incarcerated for a felony may not vote. ("He" is incarcerated.)

The board must determine **who** received the most votes. ("He" received votes.)

A person to **whom** notice must be given may intervene. (Notice is given to "her".)

CHAPTER 95. PUNCTUATION.

- 95-5. GENERALLY.
- 95-10. JOINED INDEPENDENT CLAUSES.
- 95-15. PAIRS.
- 95-20. SERIES.
- 95-25. DEPENDENT CLAUSES.
- 95-27. COMMAS BETWEEN A SUBJECT AND A VERB
- 95-30. EXPLANATORY MATTER.
- 95-35. DASHES AND HYPHENS.
- 95-38. UNDERLINING, SMALL CAPS, AND ITALICS.
- 95-40. QUOTATION MARKS.
- 95-45. OTHER PUNCTUATION.

SECTION 95-5. GENERALLY.**The purpose of punctuation is to clarify meaning.**

The sole purpose of punctuation is to clarify meaning. For example, in the series "residence, condominium, dwelling unit, and cooperative apartment", the comma between "condominium" and "dwelling unit" indicates that they are 2 distinct things rather than a single "condominium dwelling unit".

Punctuation clarifies meaning because we adhere to certain conventions when using punctuation marks. By using those conventions consistently, the meaning of a sentence is less open to ambiguity.

- (i) You want an apple.
- (ii) You want an apple?
- (iii) You want an apple;

We know that (i) is a statement and (ii) is a question because we all agree on the meanings of periods and question marks. Example (iii) is meaningless, however, because we have no convention in the English language for ending a sentence with a semicolon.

The conventions for using punctuation marks are agreed rules among users of a language, rather than fixed laws of nature. In the Greek language, for example, a semicolon at the end of a sentence indicates a question and "?" is not used; to a Greek, example (iii) is a question and example (ii) is meaningless. In the English language, the combination ":-" was once common, but is seldom seen today. On the other hand, some contemporary American novelists introduce dialogue with a dash rather than enclosing it within quotation marks; the dash for this purpose may be the wave of the future.

As bill drafters, however, our job is to write laws that can be clearly understood. We cannot take the risk of using innovative punctuation or the risk of perpetuating the use of archaic forms of punctuation. Instead, we should stay within the common and accepted rules of punctuation developed for our purposes. Although the substance of a bill may be innovative or regressive, its punctuation should always be pedestrian.

This Chapter discusses some of the more troublesome punctuation problems.

SECTION 95-10. JOINED INDEPENDENT CLAUSES.

Joined independent clauses are separated by (i) a comma and a coordinating conjunction or (ii) a semicolon.

A clause is a group of words containing both a subject and a predicate. An independent clause makes sense by itself and can stand alone as a sentence. When 2 independent clauses are joined as one compound sentence, they are separated by (i) a comma and a coordinating conjunction or (ii) a semicolon.

Correct: The Governor must appoint the members, and the members must elect a member as chairman.

Correct: A lien is perfected by filing; it may be foreclosed by public sale.

The common coordinating conjunctions are as follows: "and", "but", "or", "for", "nor", "yet", and "so".

When independent clauses are joined by a connective other than a coordinating conjunction, use a semicolon between the clauses. Some other connectives are "for example", "nevertheless", "therefore", and "consequently".

Correct: The powers and duties of the Soybean Promotion Board are transferred to the Department of Agriculture; consequently, the Soybean Promotion Board is dissolved.

Some common mistakes are as follows:

Wrong: The Board may award scholarships to needy students, and may grant tuition waivers. (The conjunction joins 2 verbs rather than 2 independent clauses; omit the comma.)

Wrong: The mayor may veto an ordinance, the council may override the veto by a three-fourths vote. (This is a comma splice. Replace the comma with a semicolon, or add a coordinating conjunction after the comma.)

Wrong: Arson is a Class 2 felony; and aggravated arson is a Class X felony. (The conjunction links 2 simple independent clauses, so there is no need for a semicolon. Replace the semicolon with a comma, or omit the conjunction.)

In the last example, both independent clauses are simple clauses without internal punctuation. If either independent clause contains commas, then you may use a semicolon and a conjunction for clarity. An example follows:

Acceptable: When a member dies, it is the duty of the member's surviving relative who is first in the following order to notify the plan administrator of the member's death: spouse, child, parent, or next of kin determined under the rules of the civil law; and upon receiving notification of a member's death, the administrator must liquidate the member's account. (Better would be to split the independent clauses into 2 sentences.)

SECTION 95-15. PAIRS.

Pairs joined by a coordinating conjunction are not separated by punctuation.

Pairs of words, phrases, or dependent clauses joined by a coordinating conjunction are not separated by punctuation.

Examples of pairs of words are as follows:

Correct: "Presiding officer" means the President of the Senate or the Speaker of the House of Representatives, as the case may be. (Nouns: President or Speaker.)

Wrong: The mayor of a municipality with over 2,000,000 inhabitants, and the city council of that municipality are responsible for implementing this Act. (Nouns: mayor and council. Omit the comma.)

Correct: The plaintiff must state under oath that he or she claims title through a common source with the defendant. (Pronouns: he or she.)

Correct: An applicant must file a typed or printed form that has been signed by the applicant. (Adjectives: typed or printed.)

Correct: When a party sues or defends as the representative of a deceased person, that party may have the benefit of the Dead Man's Act. (Verbs: sues or defends.)

Wrong: A person who is injured because of a defective toothbrush may sue the manufacturer in the circuit court, or apply to the American Dental Association for arbitration. (Verbs: sue or apply. Omit the comma.)

A phrase is a group of words that does not contain a verb and its subject. Examples of pairs of phrases are as follows:

Correct: An objection must be filed after the primary election but before the general election. (Prepositional phrases joined by a conjunction: after ... but before)

Wrong: Applicants filing their applications, and paying their fees, must be fingerprinted. (Participial phrases joined by a conjunction: filing ... and paying Omit the commas.)

Correct: Violating this Section or disobeying an order of the Commission is a Class 4 felony. (Gerund phrases joined by a conjunction: violating ... or disobeying)

Wrong: The arbitrator must try to bring the parties together at a meeting, and to suggest settlement options. (Infinitive phrases joined by a conjunction: to bring ... and to suggest Omit the comma.)

Correct: The death of former Senator John Doe, a dedicated Democrat and a patriotic American, is a loss to us all. (Appositive phrases joined by a conjunction: ... Democrat and ... American.)

A dependent clause (sometimes called a subordinate clause) is a clause that cannot stand alone as a sentence and that is always combined with an independent clause. An example of dependent clauses joined by a coordinating conjunction is found in the last sentence: that cannot stand ... and that is always ...

Coordinate adjectives that equally modify the same noun are separated by a comma or joined by a coordinating conjunction. A rule of thumb for determining whether adjectives are coordinate is to substitute "and" for the comma; if "and" naturally fits, the adjectives are coordinate.

Correct: The purpose of this Act is to prevent complicated, expensive litigation. (The litigation is both complicated "and" expensive.)

Correct: Taxpayers must file their returns on forms that are printed on bright blue paper. (It is not bright "and" blue paper; the paper is blue, and the blue paper is bright.)

Correct: A female pretermitted heir has the same rights of inheritance as a male pretermitted heir. (It is not a female "and" pretermitted heir; the heir is pretermitted, and the pretermitted heir is a female.)

SECTION 95-20. SERIES.

Items in a series are separated by commas or, if complex, by semicolons.

Words, phrases, or clauses in a simple series are separated by commas. Opinions vary on whether a comma needs to be placed before the usual conjunction linking the last 2 items in the series. As a general rule, placing a comma before the conjunction will be clear, but omitting the comma may cause ambiguity. Because clarity is one of the cardinal virtues in drafting statutes, follow the practice of inserting a comma before the conjunction.

Potentially ambiguous: Real estate is classified as vacant, residential, farm, commercial and industrial.

In the example, are there 4 or 5 categories? Is "commercial and industrial" one category, or are "commercial" and "industrial" 2 categories?

Clearly 5 categories: Real estate is classified as vacant, residential, farm, commercial, and industrial.

Clearly 4 categories: Real estate is classified as (i) vacant, (ii) residential, (iii) farm, and (iv) commercial and industrial.

Do not place a comma before the first item in a series or after the last item unless the comma is required by another rule of punctuation.

Wrong: The treasurer must file an annual report with the board itemizing, income on investments, grant money received, other receipts, and all expenditures, and shall make the report available for public inspection. (Omit the first and last commas.)

Don't use commas when the items in the series are all separated by conjunctions.

Correct: The court may enter an order granting custody to the mother or to the father or to both parents jointly.

Wrong: Applications must be on pink, or blue, or green paper.

If the items in a series contain commas, clarity is achieved by using semicolons to separate the items.

Correct: At least one member of the board must be from each of the following categories: social workers, psychiatrists, psychologists, and clergymen; lawyers; real estate brokers and salespersons.

Likewise, independent clauses in a series are best separated by semicolons.

Correct: An applicant who has been convicted of a felony may not receive a grant; a person who is convicted of a felony after being awarded a grant may not receive any further grant money; and a person who receives a grant based on a fraudulent application must pay back all grant moneys received. (Making each independent clause a separate sentence would be better.)

Use a colon after a grammatically complete independent clause that introduces a list.

Correct: Employees must be classified as follows: managers, supervisors, and operators.

Wrong: Required elementary school courses are: reading, writing, and arithmetic. (The list is not preceded by an independent clause. Omit the colon.)

Correct: An applicant must submit the following as proof of birth date:

- (1) a birth certificate;
- (2) a baptismal record; or
- (3) an affidavit of a family member.

As seen in the last example, items in a list in outline format are separated by semicolons; the last item is joined by a coordinating conjunction. This is the correct punctuation, but lists in statutes are often amended by adding or deleting items. Amendments to the list are more easily accomplished if each item ends in a period and the coordinating conjunction is omitted. When using periods, however, make sure that the conjunctive or disjunctive nature of the now missing coordinating conjunction is expressed in the introductory independent clause.

Acceptable: An applicant must submit any one of the following as proof of birth date:

- (1) A birth certificate.
- (2) A baptismal record.
- (3) An affidavit of a family member.

A final problem with items in a series is making it clear whether a modifier at the end of the series applies to all the items or only to the last item.

Ambiguous: A county clerk, an auditor, a sheriff, or a coroner who is over 65 years of age must have an annual physical examination.

Does "who is over 65 years of age" apply only to coroners, or does it also apply to county clerks, auditors, and sheriffs? The rule of the last antecedent, absent evidence of a contrary intention, applies the modifier only to the words or phrases that immediately precede the modifier. *McMahan v. Industrial Commission*, 183 Ill. 2d 499 (1998). See also the discussion in *In re K.B.J.*, 305 Ill.App.3d 917 (4th Dist. 1999). Thus, following the rule, "who is over 65 years of age" applies only to coroners, yet it seems likely that the intention is to apply the age requirement to all officers. A clearly drafted sentence resolves the ambiguity.

Clearly coroners only: Each of the following officers must have an annual physical examination: a coroner who is over 65 years of age, a county clerk, an auditor, and a sheriff.

Clearly all officers: Each of the following officers who is over 65 years of age must have an annual physical examination: a county clerk, an auditor, a sheriff, and a coroner.

See *United States v. Palmer*, 16 U.S. 471, 3 Wheat. 610 (1818), for an example of inattentive drafting that put 3 men's lives in jeopardy. In that case, the United States Supreme Court had to interpret a federal statute providing for the capital offense of piracy. The statute provided that if a person commits, "upon the high seas, ... murder or robbery, or any other offense, which, if committed within the body of a county, would, by the laws of the United States, be punishable with death", then that person, upon conviction, "shall suffer death". The 3 defendants committed robbery upon the high seas. Robbery, if committed on land, was not punishable with death under the laws of the United States. In the statute, did "which ... would ... be punishable with death" apply to murder and robbery and "any other offense" or only to "any other offense"? In other words, did robbery, if committed upon the high seas, thereby constitute piracy, or did it constitute piracy only if it was punishable by death under the laws of the United States if committed on land? The court interpreted the statute to say that robbery committed upon the high seas constituted piracy even if it was not punishable by death if committed on land. Thus, the lives of 3 men were put in jeopardy based on the interpretation of an ambiguous statute.

SECTION 95-25. DEPENDENT CLAUSES.

A nonessential dependent clause is set off by commas; an essential dependent clause is not set off by commas.

A clause contains both a subject and a predicate. An independent clause (sometimes called the main clause) makes sense by itself and can stand alone as a sentence. A dependent clause (sometimes called a subordinate clause), on the other hand, cannot stand alone as a sentence and is always joined with an independent clause. A dependent clause begins with a relative pronoun or a subordinating conjunction; "that", "which", "who", "whom", "although", "because", "if", "until", "when", "where", and "while" are examples.

A dependent clause acts as a single part of speech: noun, adjective, or adverb.

Noun clause: Whoever receives the most votes is elected. ("Whoever receives the most votes" is the subject of the sentence.)

Adjective clause: The Governor is the only official who may exercise the veto power. ("Who may exercise the veto power" modifies "official".)

Adverb clause: An alderman may vote if he is present. ("If he is present" modifies "may vote".)

A dependent clause may be either essential (sometimes called restrictive or defining) or nonessential (sometimes called nonrestrictive or nondefining). The general rule is that a dependent clause that is essential to the meaning of the independent clause is not set off by commas, whereas one that is not essential to the meaning of the independent clause is set off by commas.

Essential: A person who is convicted of murder is a danger to society. (Taking the clause "who is convicted of murder" out of the sentence completely alters its meaning).

An application that is not signed by the applicant must be rejected.

Nonessential: An action against the Secretary for a writ of mandamus under this Act may be commenced in the circuit court of Sangamon County, which is the county in which the seat of government is located. (The clause beginning "which is the county ..." is not essential. It may be omitted without changing the meaning.)

The Supreme Court, which is the State's chief judicial body, shall discipline attorneys.

Ponder the following syllogism:

- (1) Statutes should contain only what is essential.
- (2) Essential dependent clauses are not set off by commas.
- (3) Therefore, statutes should not contain dependent clauses set off by commas.

If a dependent clause is truly nonessential, it should probably be omitted from the statute.

On the other hand, if a dependent clause is truly essential, it should not be set off by commas. Trying to do too much in the same sentence frequently causes problems. You may be lured into setting off an essential clause by commas in order to break up a sentence, even though the commas are inappropriate.

Wrong: The secretary, who must be appointed by the board, is the custodian of the seal.

In the last example, 2 things are being stated: (i) the secretary must be appointed by the board and (ii) the secretary is the custodian of the seal. Both are essential, yet setting off the dependent clause (providing for the appointment of the secretary) by commas has the misleading effect of indicating that the clause is nonessential. Since the dependent clause is essential, it should not be set off by commas; yet taking the commas out leaves a rather jumbled sentence. The solution is either to give both essential things being stated equal grammatical weight or to state them in 2 sentences.

Acceptable: The secretary must be appointed by the board and is the custodian of the seal. (It would be better to avoid the passive voice.)

Correct: The board must appoint a secretary. The secretary is the custodian of the seal.

Cross reference: Section 90-30 concerning "that, which" and "who, whom".

SECTION 95-27. COMMAS BETWEEN A SUBJECT AND A VERB

Some people like to put an unnecessary comma between a subject and a verb. You will often see this in pre-drafts. In the following example, there should not be a comma after the word "Section":

Any person convicted of violating this Section, shall be guilty of a Class A misdemeanor.

A comma between a subject and a verb is appropriate if the comma is at the end of a dependent clause that is set off by commas. The placement of commas in the following example is OK because the comma before the verb follows the end of the dependent clause "when used with reference to practice, procedure, or appeal" and the dependent clause is set off by commas:

"Other civil cases" and "ordinary civil cases" or any equivalent expression, when used with reference to practice, procedure, or appeal, shall be deemed to refer to cases under the Civil Practice Law.

Sometimes it isn't easy to tell whether there should be a comma before a verb. In the following example, a comma may have been put before the verb because the subject was very long:

The explanation, the arguments for and against each constitutional amendment, and the form in which the amendment will appear on the separate ballot, shall be filed in the office of the Secretary of State with the proposed amendment.

The following example simplifies the subject in the preceding example but keeps the same sentence structure, which makes it easier to see that the comma shouldn't be there:

The explanation, the arguments, and the form, shall be filed in the office of the Secretary of State with the proposed amendment.

In the following example, a comma appears between a subject and a verb because the subject isn't punctuated correctly:

The Board through the Attorney General, may seek injunctive relief under those circumstances.

The mistake is not corrected by removing the comma. It is corrected in the following example by setting off the dependent clause using two commas instead of one:

The Board, through the Attorney General, may seek injunctive relief under those circumstances.

On rare occasion, a compound subject consisting of more than one clause will have one or more of the clause set off by commas for the sake of clarity. In such a case, it may OK to have a comma between a subject and a verb. Please make sure, however, that it is not just an incorrectly punctuated subject.

SECTION 95-30. EXPLANATORY MATTER.

Explanatory matter may be enclosed in parentheses.

Enclosing explanatory matter within parentheses is a handy device to break up a sentence without overusing commas.

Example: An application for a certificate of need (as provided in Section 10) must be filed with the Director.

Example: A metropolitan water reclamation district (formerly known as a metropolitan sanitary district) may sue or be sued in its own name.

Take care, however, not to overuse parentheses and not to rely on parentheses to break up a sentence when the correct solution is to rewrite the sentence or divide it into 2 sentences.

SECTION 95-35. DASHES AND HYPHENS.

Never use dashes. Hyphenate compound adjectives where appropriate.

Never use dashes; they are too easily confused with striking through. Instead, use commas or parentheses to set off an inserted phrase within a sentence. Use a colon to introduce a list of items.

Hyphenate compound or phrasal adjectives that combine 2 or more words to form an adjective that precedes a noun, as in the following examples: public-health education; single-subject rule; 2-year statute of limitations; child-support payments; law-of-the-case doctrine. If the hyphen is omitted in those cases, the reader may be momentarily misled into thinking that the modifying phrase is instead a noun. Don't use a hyphen, though, in the following cases:

- (1) When the compound adjective contains an adverb ending in *ly* followed by a past participle: frequently published notice.
- (2) When the compound adjective follows the noun it modifies: the bill is well drafted.
- (3) When the compound adjective consists of a proper noun: New York cases.

SECTION 95-38. UNDERLINING, SMALL CAPS, AND ITALICS.**Never use underlining or small caps. Only use italics for case names.**

In amendatory provisions of a bill, new matter is shown by underscoring and matter to be omitted is shown by striking through (see Section 25-25 of this Manual). Do not underline matter unless it is intended to indicate underscoring of new matter.

In a new Act, in amendatory provisions, or in a resolution, you may be asked to include a reference to a case name or the title of a published work. The usual convention is that those names or titles are shown in italics. A drafter should never use italics in the synopsis. While the italicized language looks fine in the document itself, the language that is italicized will disappear in the synopsis on the General Assembly web site.

SECTION 95-40. QUOTATION MARKS.**Only what is actually quoted should be enclosed within quotation marks.**

The literary convention is that the ending punctuation mark is enclosed within the quotation marks even when the punctuation mark is not part of the quotation. Don't follow this convention in bills and amendments. The law must be precise, and only what is actually quoted should be enclosed within quotation marks. This is especially true in amendments when quoting material that is being either inserted or deleted. Moreover, use only double quotation marks.

Example: Amend House Bill 6997 on page 1, line 6, by replacing "shall state, "Beware of Dog" with "shall state, "Beware of Animals".

Example: Section 1. "An Act making appropriations", approved June 17, 2006, is amended by adding Section 1.1 as follows:

SECTION 95-45. OTHER PUNCTUATION.**Use a good reference book for other punctuation questions.**

This Chapter discusses several punctuation problems, but there are many others that are encountered in drafting bills. The reference books listed in Section 90-5 of this Manual, although varied in approach and sometimes giving conflicting advice on particular problems, are all worth considering.

Always remember that the purpose of punctuation is to clarify meaning. In any particular situation, the context may require breaking a rule of punctuation to achieve clarity. Nevertheless, follow the conventional rules whenever possible; those rules provide consistency and, in turn, clarity.

PROOFREADING MARKS

| SYMBOL | EXAMPLE | MEANING |
|--------|--|--------------------------------------|
| | the spice of of life | Delete. |
| | sub section | Close up. |
| | the spice of life | Insert. |
| | the spice of life | Space. |
| | (a) In this Act: (1) "x" means... (2) "y" means... | Carry farther to right. |
| | (a) In this Act: (1) "x" means... (2) "y" means... | Carry farther to left. |
| | I see you. ¶ You see me. | Paragraph. |
| | Jan. 12, 1921 | Spell out. |
| | a, b, or c | Insert comma. |
| | "Person" means | Insert quote marks. |
| | General Assembly | Transpose. |
| | Bill's dog | Lower case. |
| | bill's dog | Upper case. |
| | the spice of life | Ignore mark. |
| | I see you. You see me. | Run together. |
| | The Governor shall appoint the members | Insert accompanying text marked "A". |
| | The board may do "x" and "y". | Underscore. |
| | The board may do "x" or "y". | Underscore. |
| | The board may do "x" or "y". | Strike through. |
| | The board may do "x" or "y". | Strike through. |

TABLE OF CONSTITUTION CITATIONS

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