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BENCH AND BAR

LEGISLATIVE BILL DRAFTING

By DUNCAN L. KENNEDY*

BILL DRAFTING is the most important part of the process of rendering expert services to state legislatures. All the legislative reference in the world combined with scientific research will not produce satisfactory laws if bills are not properly drawn.

Bill drafting involves the drawing up of bills, resolutions, memorials, and amendments for introduction in the legislature. The general directions set forth in the laws creating bill drafting agencies usually state that the draftsmen, in preparing bills, shall consider, in addition to technical form, the constitutionality of the proposal, its consistency with existing laws, whether it is necessary or already substantially covered by an existing law, and its structural relationship with the body of law.

All bills should be made to pass through the hands of expert bill drafters in order that they may be so worded as to express the legislative purpose. Even if a reference to these bill drafters were optional it would be of great benefit, for the majority of legislators would be glad of assistance in the preparation of their bills.

As a practical matter legislative research is an essential part of legislative bill drafting. The problem to be solved or the situation to be remedied by a proposed statute must be clearly understood, and the method of remedying it clearly thought out before a statute to remedy it can be drafted.

The problem of drafting relates to the formal side of legislation. The draftsman should not be called upon until after social and economic issues have been disposed of and a policy has been agreed upon. It then becomes a distinct function to translate the legislative policy into the terms of a statute.

Complete facilities are provided for bill drafting in more than half of the states. In most of the remaining states what bill drafting is done, except by members of the legislature or private individuals, is done as voluntary work by the attorney general.

The need for expert assistance in the drafting of legislative bills is obvious. It is a difficult task to prepare a law which will be clear and concise and not conflict with existing legislative or constitutional provisions. The technical part of legislation is incomparably more

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difficult than the ethical. It is easier to conceive what could be useful law than to construct it so that it will accomplish the required result.

Given a definite policy to be effected, the proper arrangement and wording of the statute so that the intent may be clear and needless litigation and confusion avoided is a distinct art governed by scientific rules capable of definite expression.

Legislative bill drafting involves technical skills of a high order and should be entrusted only to experts with a thorough knowledge of constitutional and statutory law and judicial decisions, and with the ability to express the legislative aims of members in clear language, unmistakable to both courts and administrators.

The language of a bill should be precise, but not too technical. An act of the legislature has to be interpreted, in cases of difficulty, by legal experts, but it must be passed by laymen, be administered by laymen, and operate on laymen. Therefore it should be expressed in language intelligible by the layfolk.

In some cases the compromise between popular and technical language may be effected by means of definitions, but definitions are dangerous and should be sparingly used.

The typical legislative bureau drafts bills for three groups, (1) members of the legislature, (2) interim committees and commissions of the legislature, and (3) administrative departments of the government.

The one thing to be sought in legislative bill drafting is clearness. Every statute should be so clear that it will convey the same meaning to all persons of average intelligence. Nothing should be left for construction.

This absolute clarity can be attained. The English language is so rich and flexible that by its use every concrete idea can be accurately expressed. Statutes deal with definite rights and duties, which can be precisely defined. If a statute is obscure it is because the wrong words have been employed or because of their defective arrangement.

Comparatively little has been written regarding the rules for good drafting. It may be said that the rules of good drafting are simply the rules of literary composition, as applied to cases where precision of language is required, and that accordingly anyone who is competent to draw in apt and precise terms a conveyance, a commercial contract, or a pleading is competent to draw a bill, but this is a superficial view

Accuracy in the choice of words to express the thought is an essential of bill drafting. The same word should be used throughout an act to express a single idea or concept. In order to convey his thoughts accurately the draftsman must possess a large vocabulary. He must make constant use of dictionaries and books of synonyms and antonyms if he is to choose the word best fitted for his use. When a word is used in an act in a technical or limited sense, which possesses also a popular meaning, it should be defined accurately.

The material in an act should be arranged as logically as possible for a clear understanding and quick reference. The object of statutory drafting is that the act be clear, concise and unambiguous and that its various parts be clearly distinguishable and easy of access to the general practitioner.

Before beginning to prepare a bill it is essential to master the subject matter. Before devising a remedy it is needful to know the existing law and practice and to have a clear conception of the mischief or defects for which the remedy is required.

The law is to be found in acts of the legislature, in judicial decisions and in legal textbooks. The way in which the law actually works is less easily learnt. Information is not always available in a written form. It must often be derived from personal experience or supplied by persons having such experience.

For the purpose of studying the acts the most convenient plan is to obtain and fasten together copies of the several acts and then to strike out those portions which have been repealed by subsequent legislation, adding marginal notes to show how they have been repealed.

Lists of relevant judicial decisions, arranged in chronological order, showing the point decided in each case, will often be useful.

So also will be a short bibliography of the textbooks, etc., bearing on the subject of the measure.

It will save much trouble if the results of the information collected are embodied in a memorandum. Several documents of this kind may be required. It may be necessary to trace historically the course of previous legislation, and of discussions in the legislature and elsewhere, and to show how the existing statute law has been interpreted by judicial decisions and has been construed in practice. A memorandum stating the leading features of the proposed legislation and raising clearly the question of principle to be decided will usually be required.

More words should not be used than are necessary to make the meaning clear. Every superfluous word may raise a debate in the legislature and a discussion in court.

The future conditional "if he shall" should be avoided. The future "shall" is apt to be confused with the imperative.

One example of carelessness in phraseology which has caused a great amount of litigation is the interchangeable use of "shall" and "may." The draftsman must keep clearly in mind whether he intends to command or to lay down only optional rules for the guidance of those who are to obey the law. Because of this carelessness the courts have evolved a whole body of common law which enumerates the cases in which "may" means "shall" and "shall" means "may." If the draftsman makes the meaning plain there is no need for judicial legislation. Otherwise the decisions of the court might defeat the intent of the legislature.

The repetition of a series of terms, when one of the series could stand for all, makes statutes unnecessarily complex. For example the use of masculine, feminine and neuter gender, the use of city, village and town instead of "municipal corporation" when the latter is intended, and the use of both singular and plural number. It is a well-established rule of statutory construction that unless the context indicates a different conclusion the masculine gender includes the feminine and neuter and the singular number includes the plural. Many states, including Minnesota, have made "assurance doubly certain" by enacting statutory interpretation acts. These are a great aid to draftsmen, who can use the terms defined therein with perfect security from judicial distortion and thus shorten the list of special definitions necessary in any act. This also promotes a uniformity in the meaning of terms throughout the statutes and eliminates the possibility that a term may be used with a different meaning in different acts.

The use of indefinite words in statutes should be avoided. Words and expressions which fall into this general class are those referring to a state of mind, such as knowingly, maliciously, wilfully, words referring to what must be a matter of opinion or circumstance, such as reasonable, seasonable, due, due cause, due diligence, due notice, proper, dangerous, sufficient, excessive, extreme, justly, favorable, necessary, needful, or words of degree or condition which do not permit of easy objective measurement, such as forthwith, immediate, night-time, and good standard.

Careless use of "and" for "or" and vice versa often perverts what

seems to the court to have been the legislative intent. Such errors are unnecessary and inexcusable.

An act of the legislature should be treated as always speaking. The idea on which this rule is based is that when the present tense is used it is used, not in relation to time, but as the present tense of logic. The word "shall" should be reserved for requirements or prohibitions. The words "said," "such," "aforesaid," "whatever," which make the reading of the ordinary statute so much like riding over a corduroy road, should be avoided as far as possible.

The words "herein," "hereinbefore" and "hereinafter" are ambiguous. They may mean in this act, in this section or in this group of sections.

It is common in acts of the legislature to use "such" as a demonstrative, equivalent to "the" or "that," but this departure from the English of ordinary life seems unnecessary and often causes confusion.

It is also common to use the expression "the same" when referring to an antecedent, but this form of expression slurs over a looseness of reference.

A rule of statutory construction which vitally affects drafting is the *eiusdem generis* rule, the force of which lies in the declaration by the courts that when specific cases or a series of particular terms are used in a statute, the act will be held to apply only to such cases or terms and not to the general class of cases or things of which they form a part. The application is limited to the enumerated items even though the enumeration may be accompanied by a general statement intended to include a whole class or group. Because of this rule the draftsman should use only inclusive general terms. Enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion.

Roman numerals should never be used. Even cultivated people find difficulty in deciphering them, except for a few simple numbers. The Arabic numerals should always be employed.

The draftsman who would be clear should avoid long sentences. A sentence should convey but one idea.

Provisos should be used rarely. A proviso is ordinarily added because the preceding language was too broad, necessitating the exclusion from it of a matter which never should have been included. If the main idea is correctly expressed, a proviso is unnecessary.

Sentence structure and arrangement often has an important

bearing upon the interpretation of a statute, both by the administrative officers charged with its enforcement and by the courts.

The sections should be brief. The mind gets lost in the maze of a long sentence and is still more apt to lose its bearing in a long section.

There should be no inconsistency between sections. Each should be complete in itself and not encroach upon any other. They should stand like soldiers in a company, each a unit, but combining to make a constant whole. This requires great care and a clear comprehension of the entire plan, but is by no means impossible.

Short sections are more easily amended. Each proposition that is separable from other propositions should be placed in a separate section. When one section covers a number of contingencies, alternatives, requirements or conditions, it should be broken up into detached lines or paragraphs distinguished by figures or letters.

The draftsman of a bill should give careful attention to the use of proper punctuation. His work may go for naught if ill-considered amendments are inserted, but, if his handiwork escapes mutilation, he will be glad that this finishing touch was added. Every bill should leave the draftsman as nearly perfect from this standpoint as his skill can make it.

Any bill should be so drawn that the legislators can ascertain from its own provisions its entire scope. If it refers to some other act, they usually rely upon the statements of interested persons as to what that act contains. In this way they are misled into passing bills which never would have passed if their true nature appeared upon their faces.

In statutes there is no room for eloquence of rhetorical phrasing and terms which are inserted merely for emphasis or rhetorical effect may be given by the courts a meaning not dreamed of by their authors. The courts must assume that the legislature intends something by every word it uses, and too often they are misled by expressions thrown in with that passion for verbosity so frequent in deliberative assemblies.

Every bill cannot set out the administrative machinery by which it is to be enforced. To do so would swell the statutes to an intolerable bulk and involve needless repetition, so references are made to the statutes governing procedure.

The administrative machinery of a statute should be as simple and flexible as possible. The chief merit of any machine is efficiency and the worst enemy to the efficiency of the governmental machine is

red tape. The statute should be flexible because human affairs are so complex that the most far-sighted legislator cannot foresee all the exigencies that may arise. Complicated administrative machinery is sometimes due to the belief of the draftsman that he can provide for all contingencies, sometimes to a desire to prevent fraudulent abuses of power. Both are fallacious. Red tape aids the concealment of fraud more often than it serves for its exposure.

No substantive rights should be conferred and no substantive duties imposed by reference. In these respects each statute should be complete in itself.

If definitions are given, they should always be at the beginning of the act. Otherwise the statute might be read through, attributing to the words a meaning different from that intended and gaining a false impression of its meaning difficult to eradicate. The list of definitions should be limited to words of more than one meaning, and no definition should give a forced meaning to a word in ordinary use.

Construction provisions should be omitted, including even the severability clause, to which too much virtue has been ascribed.

Every statute must have a title, but it should be as simple and comprehensive as possible. Titles of statutes have to be set out at large in other states, in judicial opinions, in briefs of counsel and in many other papers. A long title is an unnecessary burden imposed on the public. A short title is much easier to understand.

The title of the bill is the last portion to be drafted. It is essential to draft the title to fit the bill and not the bill to fit the title. When the title has been drawn each section should be re-read to be assured it comes within the title. The draftsman should avoid making an index of the contents of the bill in the title. This may be dangerous because courts are justified in holding that the provisions not indexed are not clearly expressed. The best title is one which is brief and expressed in general terms, one that contains a brief descriptive expression of the substance of the act, a brief statement of what the act is about. In some cases an explanatory clause may be added to more fully disclose the scope of the subject. The charge that an act contains more than one subject can frequently be met by the care with which the subject is expressed in the title.

Where the law requires that titles be in a certain form the courts generally hold that these provisions are mandatory and not merely directory. Where there are title requirements it is neces-

sary to make the title comprehensive enough to include all of the subject matter embraced in the enactment. The title must not be so broad as to be misleading, as it may then be annulled because of generality. Where the title is too narrow a difficult situation arises. Is the entire act invalid or is only that portion invalid which is not embraced within the terms of the title. The decisions vary. The general rule appears to be that if it is apparent that the legislature would not have passed the enactment without the offending portions, the entire law falls. An act concerning or relating to (naming briefly the subject matter of the statute) without any addition is probably the best form. A title expressing only the object to be accomplished by the act is too vague. If this were not so, every act might be entitled "An act to promote the general welfare of the state." A title indicating a very wide category, while the act deals only with a specific portion of that category, is also objectionable as being too vague.

Though the title is a passive factor its importance is great. In practice it is the only means used by the legislator to determine whether he is interested in the subject matter or not. He relies on the general debate of the open session or on party caucuses or conversations with his friends in the legislature to put him in touch with the principle involved. Under such conditions it becomes of the greatest importance that the title should be accurate. Otherwise a harmless-looking title may cover a vicious bill, it may be made the sheep's clothing for a legislative wolf. Abuses of this sort existed long before an effective remedy was devised. In America the use of written constitutions suggested the insertion of requirements which would be enforced by the courts. This would make it to the interest of every member who introduced a bill to have its title fit the rules of the constitution, because otherwise it would eventually be declared unconstitutional.

The draftsman must give constant attention to constitutional requirements. He should be a master of these, he must become a specialist. This need for specialization applies to formal requirements rather than to substantive general limitations.

The most common constitutional requirement concerning the form of bills relates to title and subject. The Constitution, art. 4, s. 27, states "No law shall embrace more than one subject, which shall be expressed in its title." The object of this is to prevent insertion of "jokers" or "sleepers" in bills and securing passage under the false color of the title. The draftsman must be familiar

with the decisions on this point in this state and, on points not decided by the state courts, he must know the prevailing view in other jurisdictions, if he is to draft measures possessing proper constitutional validity.

The word "subject," as used in the Constitution, is difficult to define and no comprehensive definition has been written. To the writer it means a brief descriptive expression of the general substance of the act, a single statement of what it is about. This descriptive expression or statement should be one which places the reader of the title on guard that provisions, such as are contained in the act, may be found therein because they are congruous, related or collateral to the common subject.

A failure to observe the provisions of the State and the United States constitutions frequently results in well-meant efforts for the public welfare being declared unconstitutional. Many people put the blame for this upon the courts rather than upon the persons responsible for the preparation of the legislation.

Our Constitution, art. 4, ss. 33, 34, denies to the legislature power to pass special and local laws upon a wide variety of subjects or to pass a special law when a general law can be made applicable. There is a long line of court decisions interpreting the meaning of these sections. The draftsman must familiarize himself with these decisions. What constitutes a "general law" is a problem for the draftsman. The schemes of classification used by legislatures are many and varied, and the courts have recognized the propriety of many of them.

In this state acts dealing with county affairs, although general in form, are made special in application by an adroit process of classification, using from two to five different criteria in the same act.

Every law has at least two elements, the legal subject and the legal action. It may also state the "case" to which the legal action is confined and the "conditions" under which it will operate. These four parts only are found in a legislative act.

An act of the legislature is intended to confer rights and impose duties. It should be made clear on whom the rights are conferred and the duties are imposed. For this purpose, as a rule, the active form, "may do" or "shall do" should be used, and the passive form "may be done" or "shall be done," should be avoided. Where possible, the person or group which is the legal subject should be placed at the beginning of each sentence or clause of the bill,

followed by the legal action. The abilities or disabilities created by the law should be kept close to its subject in order to leave no room for ambiguity in construing the law as to whom the lawmaker intended to affect.

Few laws are of universal application so each act must provide the cases in which the law is to apply and the conditions which must exist before it is to operate. These limiting cases should be set out at the beginning of the statement which they are to limit. The conditions precedent to the operation of the law should precede the statement of the legal subject and the legal action. The order in which these four elements should appear are, (1) case, (2) condition, (3) legal subject, (4) legal action. Either or both of the first two may not appear in some bills, but the last two appear in every act.

The usual literary sequence should be followed in arranging the order of sections once they have been properly constructed. Chronological relation between the various sections may govern their arrangement, or logical relationship based upon any other criteria may be followed.

Often doubt exists as to the proper arrangement of sections when dealing with substantive or administrative provisions. Much shifting will be made until the draftsman is satisfied that the best arrangement has been made. The subject should be developed in logical sequence so as to simplify it for the reader. Where procedure is involved the arrangement is simplified by following, in correct order, the various steps which the person using the procedure must take.

A right or duty is incomplete without what is commonly called a sanction, that is to say, the evil which may attend a violation of the right or a breach of the duty. The sanction may be either civil or criminal, or both. Where a civil sanction only is required the courts will usually have power to apply the appropriate remedy, without express words, and the enactment should be so expressed as to give the right, not the remedy, to say that a person may do a particular thing, not that he may bring a particular action or obtain from the court a particular order. In some cases it may be necessary to enlarge the jurisdiction of a court for the purpose of bringing the enforcement of a right or duty within that jurisdiction. In other cases it may be necessary to devise or specify a particular form of remedy, but in such cases the details of procedure should be left to be regulated by rules of court.

The rules as to the criminal sanction are different. If it is proposed by a bill to make an act penal, then the original sanction should be imposed expressly by the bill. It is not satisfactory to enact in express terms merely that the breach shall be a misdemeanor.

Care must be taken that the penalties imposed are sufficient, but not excessive. The temptation to include several different offenses in the same clause or to impose the same penalty for them should be avoided, unless it is clear that they are of like nature and gravity. In some cases guilty knowledge ought to be an essential element of the offense; in other cases, not.

If the bill imposes a right or duty upon a public officer, the draftsman must consider whether it is to be enforced by the administrative action of superior officers or by the coercion of the courts or by civil or criminal liability. The nature of the responsibility of public officers entitles them to some protection. This can be given through careful consideration of the sanctions to be imposed for the violation of official duties.

Where the administration of a measure will require a new staff or additional expenditure, care must be taken that due provision is made for these purposes.

Care must be taken not to frame the language in a bill in such a way as to make non-compliance with unessential requirements invalidate the proceedings.

Special considerations apply to consolidation bills. The object of a consolidation bill is to combine in a single measure enactments relating to the same subject matter, but scattered over different acts, and thus to improve the form, without altering the substance, of the law.

For this purpose mere paste and scissors consolidation seldom suffices. In many cases the result would be alteration of meaning. It also tends to prolixity and ambiguity.

Literal reproduction often means substantial alteration. An act of the legislature speaks with reference to the time at which and the circumstances under which it is passed. The language of one hundred, or even of fifty, years ago would often have an entirely different meaning if reproduced in an act of the present day. The mere collocation of enactments of different dates alters the sense.

The enactments to be reproduced are often unduly prolix, and even where that is not so, the net result of a long series of amendments of the law can frequently be summed up very briefly. The

language of different acts, even when they relate to the same subject matter, is often not uniform. The same expressions are differently defined and are given different meanings by the context. Hence, alteration of language is necessary for the sake of clearness and consistency

For all these reasons the work of consolidation can seldom be effected mechanically. The law has to be rewritten in such form as to preserve its substance whilst altering its form, but care should be taken to preserve the material language unless there is a special reason for altering it, and especially to preserve expressions on which a judicial construction has been placed or which have acquired a particular signification in practice.

It is rarely possible to reproduce existing statute law without some slight alteration of substance. Ambiguities and inconsistencies have to be removed and modern machinery has to be substituted for machinery which has become obsolete or inconvenient. Alterations of this kind may properly be described as necessarily incidental to the process of consolidation, and, if their nature is fully and fairly explained, objection will probably not be raised on the ground that the measure goes beyond the proper scope of consolidation. Every consolidation bill should be accompanied by a memorandum and notes showing what alterations of this kind are made by the bill.

In order to make sure that the existing enactments have been fully reproduced and that nothing has been overlooked, a reference to each section reproduced should be given on the margin of each reproducing clause, and there should also be a separate table of the enactments repealed and superseded, showing where each repealed section is reproduced or, if it has not been reproduced, on what ground it has been omitted. There thus will be a double check on the accuracy of the consolidation. The marginal reference will show whence the new law is derived and the table of comparison will show how the existing law is accounted for.

Special heed should be paid to the transitional arrangements consequential on the passing of an act. It must be considered how the new law will affect existing officers, rights, liabilities, and proceedings, and such provisions must be inserted as are necessary for adapting the old state of things to the new

Regard should be had to the general rules for the interpretation of statutes. The provisions of Chapter 645, the Interpretation Act, should be carefully studied.

Satisfactory expertness in the draftsmanship of the measures enacted by the legislature is of primary importance. The work should not be hurried by the rush of a legislative session. This is not conducive to the careful study and examination of materials relating to proposed legislation or to the careful preparation of proposed legislative measures. Under such conditions it is impossible to give to all requests made during the session that degree of care and attention they should receive. Work disposed of in advance of the session reduces the number of requests during the session and the efficiency of the service is greatly increased. Too much care cannot be given to the preparation of measures.

There are too many badly constructed statutes. Many of them are awkward, verbose, and ungrammatical. Sometimes it is merely faulty punctuation. The statute may be so involved as to be difficult to understand. Sometimes the language is clear but does not say what it means to say. Our statutes are full of ridiculous and glaring errors, obscurities, redundancies and inconsistencies, but the worst thing is that they are full of holes, not only loopholes, by means of which the law can be evaded, but places where there is an entire absence of policy, so that no one can say what the legislature intended to happen under certain circumstances or at least cannot say that the intention is expressed in the bill.

Improperly drawn bills are introduced with grammatical and typographical errors and with wrong references to existing law. As a result valuable legislative time is taken up and additional printing expenditures incurred because of the corrective or technical amendments that must be made. It is estimated that corrective amendments constitute 40 per cent of all amendments. To eliminate the necessity for corrective amendments, all bills prior to introduction should be checked by expert draftsmen as to form, accuracy in the text and references, and consistency with the language of existing statutes.

Improvement in the language of laws is within our immediate reach. No effort should be spared to improve the form of our statutes and to insure that they shall not offend our constitutional limitations. Much criticism of our lawmaking bodies arises from the failure to observe well-established rules as to logical arrangement of material and the legal meaning of words. These defects lie back of much of the criticism of the courts. The authors of a poorly phrased though well-intentioned law which is declared to be unconstitutional or to have accomplished something which it did not

intend too often blame not their own failure to put the law in proper form but the "extreme conservatism" of the judiciary. The standard in the drafting of legislation should be to use language which the court will find sufficient to express the intent, and which will also make clear to the legislator, the administrative official, and the layman exactly what the law commands.

Repealing acts are of two general types. A repeal by implication is obtained by enactment of contrary provisions, and since the latest statute prevails, the former is of no effect and is repealed by implication, but the former statute is repealed only insofar as it is in conflict with the provisions of the later statute. Repeals by implication are more prevalent when statutes are not kept up to date and in their proper place. If the statutes are not up to date and do not clearly show what is the latest amendment or law on any subject, legislators are more apt to pass laws concerning matters already covered without specifically repealing the prior laws and without taking them into consideration. The result is a multiplicity of laws and repeals by implication. Only the courts can finally decide whether an entire law, or only a part thereof, is repealed. Until the court passes upon it, no one can know whether an implied repeal will stand. Most implied repeals can be prevented by an efficient revisor of statutes who knows the statutory law and is constantly on the lookout for bills containing implied repeals.

In express repeals care must be exercised to fully determine the status of existing matters by virtue of the act to be repealed, and also as to the status of pending matters. Provision would also have to be made to take care of applications for licenses which are pending at the time the repeal would take effect. These results are generally taken care of by means of saving clauses. The repeal of an act takes away from it all force and the act is totally destroyed. It is a common practice to include a general repealing clause providing that all acts or parts of acts inconsistent therewith are repealed. Such provisions are surplusages and have no place in a well drafted act.

Care should also be exercised to repeal existing laws which are no longer of any value. The extent of each repeal, whether absolute or partial, should be noted, but the draftsman should avoid repealing a specific act so far as inconsistent. Such a repeal is no more helpful than an implied repeal.

One pitfall to be avoided by draftsmen is the use of references

to existing laws. Where portions of one statute are adopted by reference into another the effect is the same as though the statute adopted had been incorporated bodily into the new act. The adoption by reference in a statute of a law or a part thereof does not include subsequent amendments of such adopted statute, unless the intent to so include them is expressed or plainly implied. It is because of decisions of this kind that where there is an express reference to a law to be incorporated, it should be to the effect that the same be incorporated as amended from time to time, unless there is a particular reason to fear an amendment which would be derogatory to the incorporating act. Confusion arises where care is not employed in the subsequent amendment of acts, the whole or portion of which have been incorporated into other acts. It is for this reason that incorporation by reference should be limited to those general acts particularly designed for such purpose.

References to existing laws is particularly obnoxious where an existing law is adopted so far as not inconsistent. Such use should be avoided because it is unfair to the legislator and to other readers to be required to look beyond the four corners of the bill to comprehend its terms. It is on rare occasions justified, but it should be limited to the adoption of established modes of procedure, or to transfer of official functions where an officer or department of government is abolished and another substituted, or to the adoption of standards found in other laws or recognized authorities.

The field of the amending act is restricted as to the subject matter of an amendment. The type of act which may be amended is not restricted, as the right of amendment cannot be destroyed or legislated away. The legislature cannot deprive itself or its successors of the power to amend statutes nor restrict this power by prescribing methods by which any particular act may be amended. The scope of an amendment is as wide as the original act and may embrace any provision that might have been inserted in the original act.

Any statute can be rendered ineffective by dishonest or careless administration, but a statute which works out the administrative feature in a careful and comprehensive way stands a much better chance of being properly enforced than one which lays down a rule of substantive law and stops short.

In practice the functions of a bill drafting agency are complicated and difficult of execution. Without actual experience it is impossible to have an adequate conception of the extent of analysis

necessary in working out and presenting to a committee the administrative detail of a game and fish code or the legal basis for an election code, an education code, or a drainage code.

The actual service rendered by a bill drafting agency differs greatly with the nature of the requests. Many bills are handed to members in fully drafted form by their promoters. Such members might introduce these bills without consulting the bill drafting agency, but they should bring them to the agency to have them "checked over," which service may or may not involve redrafting.

Frequently the members may give only general instructions concerning the bills which they desire, placing upon the draftsman the responsibility of working out their ideas and putting them into bill form. The chief of the agency or a draftsman should sit down with the member who desires a bill drafted and talk over his propositions with him in order to secure as comprehensive instructions as possible, he then puts these instructions on paper and has the member sign them before he leaves.

At the time a member brings in a new and complex proposal, usually neither he nor the draftsman can think of all the detailed problems involved and the instructions given are likely to be very general. The draftsman must study the question and become thoroughly familiar with all sections of the statutes which might be affected. He then looks up the member, calls attention to all problems involved in his request and asks for further instructions upon the possible alternatives. The first draft of the bill is a tentative one and is submitted to the member for his examination and approval. If it does not do what the member has in mind, a new draft is prepared in accordance with his further instructions. Many drafts may be submitted before a complicated bill is finally completed.

When a member gives instructions by telephone or requests the agency to send by messenger amendments to a bill under discussion, the policy should be to do the work first and then get the signed instructions. When the governor or state department wants a bill drafted, work upon it should be begun promptly, with the understanding that before the bill is delivered in form for introduction, some member must sign for it. The bill drafting agency should not be a "bill factory," but rather a "custom-order shop," in which bills are made precisely to order and exactly to fit. A bill should never be drafted without a request for it nor details filled in without ascertaining the wishes of the author

The amount of work required of the staff of a bill drafting agency during legislative sessions is in excess of that which can be completed during a normal daily working period. Night and Sunday work is usual, rather than exceptional. This pressure is unfortunate for it makes oversight and error more probable. For the most part this pressure is not preventable, because it arises from hurriedly realized political necessities and the speed of action in committee or on the floor during the final stages of consideration of a piece of legislation.

Every effort should be made to serve the legislature promptly and efficiently. Drafting requests should be taken up in turn as nearly as possible and no effort should be spared to get them out as promised and needed. If necessary, extra stenographers and proof-readers should be employed.

The drafting service must be kept impartial and nonpartisan. In bill drafting all relations with members are regarded as strictly confidential. Under no circumstances are requests for the drafting of bills revealed to anyone and a completed bill should be delivered only to the member who requested it or to some one else on his order.

The drafting agencies that are active and efficient draft virtually all of the bills. In several of the states they draft almost all important amendments so that the final product is attributable to the service. In Wisconsin members frequently send for a draftsman and have him prepare in the chambers amendments for immediate introduction.

A drafting agency may prevent much duplication by advising a member that the bill he is considering has been, or is being, drafted for someone else. It may be discovered that the provisions of a requested bill are already covered by the statute or by the administrative orders of some state department.

After a bill becomes a law all drafting records relating to it are treated as public property and in many cases they give most helpful clues in the interpretation of statutes. Prior to enactment all drafting requests are treated as if they were the private property of the member, to be revealed only as he directs.

During the period between sessions of the legislature the drafting agency collects library material for use in drafting work, and also works with interim committees which have been directed to propose laws at the next session. The heads of state departments

come to the agency with requests for bills, usually to amend existing laws.

The members of a staff of bill drafters would be available for the committees of the legislature. Appearances before a committee are important in securing accurately and quickly the desires of the committee and in presenting and explaining the legal considerations involved in the various drafts prepared. Frequently a committee takes a measure with which it agrees in principle, but which is unsatisfactory in form, and tries to whip it into shape, under great difficulties and without very much satisfaction with the result of its efforts. With this service available the committee would be able to send such a measure to the chief of staff of bill drafters to be put into shape in accordance with the instructions of the committee.

Members of the staff could appear before conference committees to aid in drafting the agreements reached in conference.