

LEGISLATIVE DRAFTING MANUAL

New Mexico Legislative Council Service  
**2008 Update**





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## ***FOREWORD***

The *Legislative Drafting Manual* has been written to help legislative employees and others prepare bills, memorials, resolutions, amendments and other legislative documents in conformance with New Mexico legislative drafting style.

The New Mexico drafting style is driven by a simple directive: a law should be easily understood by those who must enforce or administer it and by those who must abide by its provisions. To make the jobs of writing, enacting, administering and obeying legislation simpler, if not easier, the legislative council has adopted a uniform style of format and usage. The constitution of New Mexico provides certain phrases and styles that must be used; the rules of the legislature provide others. Custom, economy of effort and ease of use provide the basis for other rules.

The conventions, formulas and rules that bill drafters adhere to will not guarantee a well-drafted law. The legislative council service believes, however, that these conventions, formulas and rules do contribute to the efficiency with which the legislature is served and to the readability of the law.

This manual will not provide the answer to every drafting circumstance; however, a clear understanding of New Mexico law and New Mexico drafting style may help a drafter think through uncharted territory. When in doubt, consult the legislative council service staff.

The *Legislative Drafting Manual* is divided into two major sections. Chapters 1 through 8 contain the explanatory text; Chapter 9 contains examples and forms. In addition to the forms for types of legislation, the manual includes common forms for other documents frequently used by the legislature. The appendices at the end of the manual cover several subjects in greater detail than provided in the manual.

The citations used in this manual are generally fictitious and the text of sample sections has been included at the whimsy of the author only to illustrate certain points.



## ***INTRODUCTION***

### ***THE BILL DRAFTER***

Legislative drafting is more art than science. Not even computers and other technology of the modern age can reduce bill drafting to a set of applied formulas. It is not possible to set forth, *Popular Mechanics* fashion, a succession of steps that, if followed, will produce a good bill draft. Excluding minor and routine legislation, substance, objectives and legislative tactics quite often dictate the form and style of a bill draft. The bill drafter may be called upon to select from among several alternatives the particular approach that will best accomplish the goal of the requester. In the absence of specific policy direction, the drafter must, of his own knowledge and experience, attempt to fill in the policy gaps. This or any other drafting manual will not be of much assistance in resolving such problems. Like an artist, the drafter must master the tools and materials of his art, and this is the purpose of a drafting manual.

Before ever putting pencil to paper or fingers to keyboard, a bill drafter should read the pertinent constitutional, statutory and legislative rule provisions governing legislation, including the compiler's notes, court decisions and attorney general opinions. To try to write law otherwise is folly.

Although a drafter is expected to read the entire constitution as well as any statutes pertaining to the subject of a request, there are provisions dealing specifically with drafting issues. Following is a list of sections and rules with which all bill drafters should be familiar.

#### ***Constitution of New Mexico***

- Article 2, Section 18 (due process, equal protection; sex discrimination)
- Article 2, Section 19 (retroactive laws; bills of attainder; impairment of contracts)
- Article 3, Section 1 (distribution of powers)
- Article 4, Section 1 (vesting of legislative power)
- Article 4, Section 5 (items considered in even-numbered years)
- Article 4, Section 15 (laws to be passed by bill; alteration of bill; enacting clause)
- Article 4, Section 16 (subject of bill in title; appropriation bills)
- Article 4, Section 18 (amendment of statutes)
- Article 4, Section 23 (effective date of act; emergency acts)
- Article 4, Section 24 (local or special laws)
- Article 4, Section 26 (grant of franchise or privilege)
- Article 4, Section 27 (extra or increased compensation for officers, contractors, etc.)

Article 4, Section 29 (laws creating debts)  
Article 4, Section 30 (payments from treasury to be upon appropriation)  
Article 4, Section 31 (appropriations to entities not under absolute control of state prohibited)  
Article 4, Section 32 (remission of debts due state or municipalities)  
Article 4, Section 33 (prosecution under repealed laws)  
Article 4, Section 34 (change of rights or procedure in pending cases)  
Article 8, Section 9 (elected governing authority prerequisite to levy tax)  
Article 9, Section 14 (anti-donation clause)  
Article 10, Section 6 (municipal home rule)  
Article 12, Section 4 (current school fund)  
Article 12, Section 11 (state educational institutions)  
Article 14, Section 1 (state institutions)  
Article 19, Section 1 (single-subject constitutional amendments).

#### ***Statutory Provisions***

Section 2-6-1 NMSA 1978 (time limit on introductions)  
Section 12-1-8 NMSA 1978 (rules of construction governing compilation of statutes)  
Section 12-2-3 NMSA 1978 (officer defined for certain statutes)  
Sections 12-2A-1 through 12-2A-20 NMSA 1978 (rules of statutory construction).

#### ***Legislative Rules***

House Rules 11-1 through 11-27, Senate Rules 11-1 through 11-27 and Joint Rules 6-1, 9-1, 10-1 and 11-1.

The *Legislative Drafting Manual* provides bill drafters with suggestions for preparing certain recommended forms. It also contains other suggestions designed to ease the chore or assist the challenge, depending on the spirit with which the drafter approaches the task. It attempts to give the shortest, most efficient phrases for the most common types of legislation used in New Mexico. The drafting manual does not attempt to discuss such fundamental problems as limits to delegated authority, types of administration that have proven most successful or other similar substantive matters. It is assumed that the drafter knows the subject matter of the request and the administrative facilities the law will rely on, either through study or from prior knowledge or instructions given by the requester. A few generally recognized, basic guidelines are set forth below in the hope that they will prove helpful to new bill drafters and serve as a reminder to experienced drafters.

### ◆ *Drafting Guidelines* ◆

► Write short and uncomplicated sentences. The goal of the drafter is to write clear, concise language that makes the point without undue oversimplification. Lengthy and tortured sentence structure has been the bane of many laws. Witness, for example, this 1865 masterpiece:

Every dog found trespassing on inclosed land unaccompanied by the registered owner of such dog or other person who shall on being asked give his true name and address may then and there be destroyed by such occupier or by his orders.

This sentence raises more questions than it answers. Does the dog have to give his true name and address? Will the owner or other person be destroyed then and there? If the dog is unaccompanied, who is the shooter talking to?

It has been suggested that the blame for this type of writing may be traced to a time when the bill drafter and copyist were paid by the number of words in a bill. In recent times, however, it is more likely a holdover of legal drafting of contracts. Contract language ill serves the purpose of bill drafting.

► Use appropriate words and avoid the use of jargon whenever possible. The words of the English language are the tools of the drafter's art. Absolute precision with the language is an impossible goal and sometimes complex policies cannot be expressed in simple terms; however, the drafter has a better chance of getting the point across if everyday words are used in their everyday meaning.

► Write a bill that can be understood by those who are supposed to administer or obey its provisions. Most laws must be administered by some authority, and the language should clearly indicate to that authority just what it is expected to do. If the law will affect citizens who need to know just what they are expected to do or refrain from doing, they, too, must be able to understand the law.

Most of the groups for which the drafter writes are not necessarily trained in the law. Normally, the last group that needs to be considered when drafting is the courts. This is not to say that the courts are the least important, but that if the other groups understand the law, there is less need for it ever to reach the courts for interpretation. If the drafter makes the law clear to those who are supposed to understand it, the courts will not be required to interpret it; or, if required, the interpretation would be easier. The common belief that the lawmaker can, through enough repetition and enough standard legal phrases, "hem the judge in" is erroneous — as judges have proven time and time again.

► Be consistent in the use of language throughout the bill. Do not use the same word or phrase to convey different meanings; do not use different words to convey the same meaning. Such unnecessary changes merely cause doubt or confusion in the reader's mind. Although drafting often requires creative solutions, it does not require creative writing.

► Be consistent in the arrangement of comparable provisions; arrange in the same way those sections containing similar material.

► Avoid gender-based language when possible. Use gender-neutral terms when possible to do so without artificiality, such as "worker" for "workman" or "drafter" for "draftsman". Avoid gender-based pronouns by omitting them, rewriting the sentence or repeating the noun. However, do not torture the sentence just to be gender neutral.

► Use definitions sparingly. Other than administrative terms, which are defined for ease of use, a word should be defined only if the drafter actually is adding to or subtracting from the ordinary dictionary meaning of the word, since it is superfluous to enact into law the common dictionary meaning. In constructing a definition, the drafter is cautioned against straying from the path of logical thought. Such carelessness produced this definition of a new building: "any building pulled or burnt down to or within ten feet from the surface of the adjoining ground". Another example in New Mexico law defined a motor boat as "any vessel propelled, or designed to be propelled, by sail".

► A duty may be incomplete without some form of sanction. To require an act without the sanction is often a useless gesture. Penalties should be sufficient but not excessive, and they should bear some relevance to the degree of the offense.

► Most requests are for general legislation that will apply in most cases. It is not possible to anticipate all exceptions or stave off all legal arguments. The drafter is urged to resist the temptation to write an answer to every possibly imagined argument against the bill; it makes for tortured sentences and unreadable legislation.

► The drafter who puts administrative detail in a bill may write himself into a separation of powers problem. The New Mexico supreme court has ruled that the legislature cannot impinge on, or "swallow up", the executive management function. Which is to say, the drafter should not micromanage in legislation. Usually, the goal of legislation is to tell a state agency or an entity that it must dot its Is and cross its Ts, not how to draw the dot and the cross.

In like manner, the supreme court strongly guards its judicial power to determine rules of procedure for itself and the inferior courts. The drafter should warn the requester of potential problems with attempting to legislate court procedures.

► Avoid the sin of blind legislation, particularly amendment by reference. While the courts have held that procedural law may be adopted by reference, substantive law cannot be amended in another section of law solely by reference to a compilation or bill section number. (The constitution of New Mexico does provide an exception for reference to the federal Internal Revenue Code.) Blind legislation includes not only amendment by reference but other choices made by the drafter that violate a basic tenet of bill drafting, which is that the purpose of a bill draft is to clearly inform the legislature what changes in the law are being proposed. Repeal and reenactment can be a form of blind legislation, for example.

► The constitution of New Mexico forbids passage of bills embracing more than one subject, with limited exceptions. Frequently, the way in which the drafter expresses the idea of a bill can lead to a contest under this prohibition that could be avoided with a little more care. An act relating to divorce and annulment might be considered as covering two subjects, but an act relating to dissolution of marriage relates to a single subject.

- ▶ Beware of taking a section of law out of context and placing it in a bill draft. Often, the lifted provision will lose its meaning and assume another, unintended result when transplanted. This is particularly true with defined terms, which have meaning only within the context of a specific act.
- ▶ Similarly, beware of copying from the laws of other states. There are many examples where provisions of other state laws have been lifted wholesale, seemingly without any sort of analysis, and placed in proposed New Mexico laws. Imagine the perplexity of the reader upon learning that one condition of licensure in New Mexico was the payment of the Michigan gross receipts and sales tax.
- ▶ A bill draft is an active instrument of government for the achievement of a desired purpose. It is both the statement of the objective and the first move toward the attainment of that objective. The drafting process is not an abstract process equally valid for every bill. Each bill has its own basic guiding principle that the drafter must identify and adhere to — otherwise, the bill will fall short of its purpose. However, bill section order, standard phrases and other legislative style rules must be fully understood before they are disregarded. If a drafter needs to violate the rules, the drafter should be able to explain why it is important to do so. **It is vital that the drafter understand the *purpose* of the rule before choosing to ignore it.**

#### ◆ *Legislative Council Service Confidentiality and Neutrality* ◆

In addition to the other constitutional and statutory provisions, the legislative council service drafter must be familiar with Chapter 2 NMSA 1978, which covers the legislative branch. Of special import are the confidentiality and neutrality provisions of Section 2-3-13 NMSA 1978:

Neither the director nor any employee of the council service shall reveal to any person outside of the service the contents or nature of any request or statement for service, except with the consent of the person making such request or statement. They shall not urge or oppose any legislation, nor give to any member of the legislature advice concerning the economic or social effect of any bill or proposed bill except upon the request of such member.

Unless authorized by the requester, the *fact* of a request is as confidential as the *content* of the request, which includes the name of the requester and the particulars of the request. The drafter should discuss confidentiality with the requester to determine what degree of confidentiality is to be maintained on the file. The requester may want strict confidentiality or may allow a range of options from discussing the request in general terms while withholding the requester's name to full disclosure. It is the requester's choice, and that choice must be marked on the green sheet in the 202 file.

A legislative council service drafter is generally prohibited from supporting or opposing legislation. The one exception to this rule is when assisting the sponsor of legislation recommended by an interim committee staffed by the drafter; in that case, the drafter may express a supportive opinion before a standing committee. In all other cases, when requested to testify on

technical points of a bill, the drafter is required to read the legislative council service staffer's disclaimer, also called the *green card*:

Mr. Chairman, I am a staff member of the legislative council service and I am here at your request to assist the committee in regard to (House) (Senate) Bill \_\_\_\_\_. Legislative council policy no. 7 requires me to state that I do not appear here in support or opposition to the matter before the committee.

## ***CHAPTER 1***

### ***PROCESSING AND PASSAGE OF LEGISLATION***

#### ***◆ Bill Preparation ◆***

For simplicity's sake, this chapter refers to preparing and processing bills, but all legislation goes through the same legislative process, be it a bill, resolution or memorial. The substantive difference in the process occurs after passage because resolutions and memorials do not require the signature of the governor.

After a bill has been drafted, typed and proofread, it is prepared for introduction. In the legislative council service, copies of the original draft are reproduced and the clearest copy is bound in the appropriate printed bill jacket (yellow for house, blue for senate). This copy becomes the "original bill". The rules of each house specify the number of copies that must accompany the original bill when it is introduced. Only the original is jacketed. In addition, the council service provides one copy for the legislator and three copies for the file. One file copy is the "delivery copy", which notes when the bill was delivered, to whom it was delivered and by whom. The extra introduction copies are distributed by the appropriate chief clerk after the bill is introduced.

It is the responsibility of the legislator to see that the original signed bill is bound in the appropriate bill jacket and is submitted for introduction with the necessary signed copies.

#### ***◆ Introduction of Bills ◆***

Only legislators can introduce bills. After a bill has been drafted and prepared for introduction, it is presented to the chief clerk in open session and is assigned a sequential number. The reading clerk reads it twice by number and title along with the name of the principal sponsor. The presiding officer orders it printed and assigns it to one or more appropriate committees for consideration.

In 2007, the legislature amended Joint Rule 10-1 to prohibit dual introduction of interim committee and state agency bills, resolutions and memorials. The rule directs the legislative council service to prepare such legislation for introduction into only one house. Joint Rule 11-1, also adopted in 2007, allows for co-sponsorship of legislation by members of the other house. A senator, for

example, may co-sponsor a house bill by filing a written notice in open session with the clerk of the house prior to third reading. The names of the sponsor and co-sponsors of all bills, resolutions and memorials shall be shown on the face of the enrolled and engrossed legislation.

The house of representatives has had a pre-filing rule since 1989, although it was virtually ignored until the senate approved a pre-filing rule in 2007. Both house and senate rules now allow for pre-filing before any regular session. The pre-filing period is the same for both houses: December 15 up to 5:00 p.m. on the Friday before the session begins.

#### ◆ *Printing of Bills* ◆

After introduction, the bill is printed by a contract printer. The copy supplied to the printer must be sharp and clean and free of any marks or smudges that might show on the printed copy. The bills are printed uniformly with numbered lines, on three-hole pre-punched paper that fits the binders supplied to legislators, standing committees and staff.

#### ◆ *Committee Action on a Bill* ◆

After its introduction, the bill is referred to one or more committees. The bill is given a hearing before the committee, then reported to the floor with the recommendation of the committee. If the committee recommends amendments or substitution of the bill, the committee report notes that action. Committee reports are subject to adoption by the full house or senate. With the adoption of a favorable committee report from the last committee, the bill is placed on the calendar for third reading and final passage. See Chapter 6, *Other Legislative Documents*, for further discussion of committee reports.

#### ◆ *Final Passage of a Bill* ◆

When a bill has been placed on the calendar for third reading, members debate its pros and cons in open session. The bill may be further amended at this stage by floor amendment, or a new bill may be substituted by floor substitute. Following debate, the final vote is recorded. If the bill passes, the original bill with all its attachments is delivered to the chief clerk of the other house. There it goes through a similar process — introduction, committee referral, committee action and, if favorable, final passage. If the second house amends the bill, the bill must be returned to the originating house for its concurrence in the amendments. If the second house substitutes the bill, the originating house cannot concur with the changes, but must treat it as a new bill.

#### ◆ *Enrolling & Engrossing a Bill* ◆

If a bill passes both houses of the legislature, the original bill with all its attachments is delivered to the appropriate committee in the house of origin that is responsible for enrolling and engrossing it. The enrolling and engrossing process, informally called E&E, consists of removing bracketed material, deleting underscoring and conforming the bill to the instructions provided in adopted amendments. The bill is checked and prepared in final form. The E&E bill is signed by the officers of both houses and delivered to the governor for final action. After the session, the original bill with its attachments is filed in the office of the secretary of state as a subject of

historical interest; the legal authority for the measure has now passed to the E&E bill. See Chapter 6, *Other Legislative Documents*, for further discussion of enrolled and engrossed bills.

**◆ Action by the Governor ◆**

The governor may sign a bill, veto it or refuse to act on it. If the governor fails to act on a bill within three days after he receives it (Sundays excepted), it becomes law without his signature, unless the legislature has adjourned within those three days. The governor has 20 days after the session has ended to act on those bills sent to him during the last three days of the session and those sent to him after the session has adjourned. If he does not sign or veto those bills within the 20-day limit, they are considered vetoed (pocket veto).

**◆ Assignment of Session Law Chapter Numbers ◆**

After the governor signs the bill, it is sent to the secretary of state. The secretary of state assigns the next available chapter number and the act becomes part of the session laws for that year.



## CHAPTER 2

### LAWS AND THE NMSA 1978

#### ◆ *New Mexico Statutes* ◆

New Mexico statutes are published in two forms: the session laws and the *New Mexico Statutes Annotated, 1978 Compilation*, commonly known as "the compilation" or "the comp" and referred to as NMSA 1978 in statutory and other references.

After each session of the legislature, all bills enacted into law are published in a volume entitled "Laws of New Mexico, (*year*)". These volumes are known as the "session laws". The laws are printed in the numerical sequence in which they are received and assigned chapter numbers by the secretary of state.

The NMSA 1978 is a series of volumes in which these same laws are compiled; that is, cumulated and assigned chapter, article and section numbers by subject matter. The compiler updates the compilation, providing supplemental pamphlets following each session or, if a particular pamphlet has been changed extensively, providing a replacement pamphlet. In the absence of instructions by the legislature, the compiler not only decides the order in which sections will appear in the compilation, but also determines which sections, because of their temporary nature, will not be compiled. The compiler annotates the text of compiled sections by bracketed notes, which are not part of the law. The comp is also available to subscribers in electronic format.

In New Mexico, there is a very real difference between the law and the compilation. The NMSA is not the law; it is solely an annotated compilation of the law. It is a research tool that makes it easier to find the law. Prior to 1965, even the printed session laws were not the ultimate source of the law, because they were typeset from the E&E version of the law. If a conflict arose between the session laws and the E&E version, the E&E controlled. After 1965, the session laws were photographically reproduced from the E&E bills, and so were an exact duplicate. Now, the E&E version is transferred electronically to the compiler.

Only the session laws contain the full, complete and authentic copy of every law enacted, including temporary provisions. The compilation contains only substantive legislation that is intended to last longer than one or two years; ephemera such as appropriations, property transfers,

effective dates and other temporary provisions are not compiled. Because it is not the source, but the resource, of the law, the compilation cannot be used for drafting purposes. This is a paramount rule in drafting: do not draft from the NMSA 1978. The only exception to this rule is that proposed amendments to the constitution of New Mexico are drafted from the comp because that is the only official published source.

### ◆ *Proper Organization of the Compilation* ◆

All volumes of the compilation have cream colored, tabbed divider cards labeled by chapter and subject and white supplement divider cards with red tabs. Each chapter will have one or more brown-covered pamphlets labeled as original or replacement pamphlets; replacement pamphlets will specify what year they were replaced. Behind *each* brown-covered pamphlet, whether original or replacement, is a supplement divider card. Regardless of whether there is a supplement for a given year, the supplement divider card should remain behind the brown pamphlet. Supplements are distinguished from regular pamphlets by having no cover; on the front is the year of the supplement and the chapter, subject and pamphlets to which the supplement relates. At the front of each volume is a colored annual contents card that lists the pamphlets and their supplements; the contents card is a different color each year. Behind the contents card of Volume 1 is the preface and the user's guide; other volumes have a table of chapters for the entire compilation, list of abbreviations and the particular volume contents. The drafter needs to be familiar with the information in the user's guide in order to properly use the compilation.

### ◆ *Compiler's Notes* ◆

The compiler frequently inserts reference citations in brackets following a citation in the law when an act refers to another act or to a different section of the same act. For example, if the law reads: "Any violation of Section 3 of this act. . .", the compiler will insert the corresponding compilation section number in brackets as follows:

***Example:***

"Any violation of Section 3 [17-15-3 NMSA 1978] of this act [17-15-1 to 17-15-16 NMSA 1978]. . .".

This practice, while helpful in using the compilation, includes language in brackets that the legislature did not enact.

The compiler will correct typographical errors in the law by bracketing the correct spelling or will supply a word to clarify a section (e.g., ". . .provide for [the] actual cost. . ."). In at least one case, the supreme court interpreted one word to be another and the compiler inserted the court's word after the word enacted by the legislature.

If the drafter is satisfied that the compiler's notes are necessary and correct, the changes should be incorporated into the bill by the appropriate use of brackets and underscoring. This allows the legislature to decide if the changes should be enacted into law. If a bill is enacted without a section heading, the compiler usually inserts one in brackets. The drafter may use the compiler's heading,

or he may write a new heading when amending the section; in either case, the heading is underscored as new language.

Drafters must be aware of the dangers of drafting from the compilation. It is not sufficient simply to remove any bracketed information in the section. There are other compiler's changes that are not identified by any typographical distinction. For example, the compiler automatically converts pre-1978 short title references into NMSA 1978 numbers without brackets or other notation.

***Example:***

Compilation: Sections 31-1-1 through 31-3-9 NMSA 1978 may be referred to as the "Criminal Procedure Act".

Session law: Sections 41-1-1 through 41-1-6 NMSA 1953 may be referred to as the "Criminal Procedure Act".

These sections were enacted in 1972 and have not been amended since the NMSA 1978 came into effect. To amend this section correctly, the drafter must bracket the 1953 compilation numbers and underscore the NMSA 1978 numbers. The only way to know this is necessary, however, is to draft from the session laws.

There may be typographical errors in the NMSA 1978 that do not appear in the law; by drafting from the compilation, the drafter will correct a word that is not wrong in the law. Typographical errors in the compilation must be checked against the session laws.

A bill proofread by the legislative council service will be proofed against the E&E version in the form of "zoo files", which are electronic and hard copies of all compiled sections of law. Uncompiled sections of law are proofed against the session laws.

**◆ *Citation of New Mexico Law* ◆**

► When amending existing law or repealing and reenacting a section, the lead-in to the section cites the compilation section number, followed by the original session law enactment in parentheses.

***Examples:***

Section 1. Section 2-3-10 NMSA 1978 (being Laws 1967, Chapter 271, Section 2) is amended to read:

\* \* \*

Section 7. Section 1-2-3 NMSA 1978 (being Laws 1886-1887, Chapter 15, Section 3953, as amended) is repealed and a new Section 1-2-3 NMSA 1978 is enacted to read:

► Repeal sections must also cite the compilation section number and its history, but that is done in the body of the section, not the lead-in.

***Example:***

Section 1. REPEAL.--Section 2-3-10 NMSA 1978 (being Laws 1967, Chapter 271, Section 2) is repealed.

The classifications of sections are discussed in greater detail in Chapter 3.

► The history is obtained by finding the latest incarnation of the compilation section in the NMSA 1978. The drafter must first look for the section in the supplement; if it is not there, he looks in the original or replacement pamphlet. Directly under the text of the section is the **History**, which gives the sequence affecting that particular law from the year of original enactment through all subsequent amendments. The drafter must verify the history in the session laws. In the legislative council service, the "zookeeper" and the proofing office verify histories.

► A law is cited parenthetically by the original session law year, chapter and section.

*Example:* Section 14-59-2 NMSA 1978

History: Laws 1968, ch. 68, § 2

Correct citation: Section 14-59-2 NMSA 1978 (being Laws 1968, Chapter 68, Section 2)

► If the law was subsequently amended, the words "as amended" must follow the citation.

*Example:* Section 14-59-2 NMSA 1978

History: Laws 1968, ch. 68, § 2; 1973, ch. 72, § 4; 1976 (S.S.), ch.14, § 1

Correct citation: Section 14-59-2 NMSA 1978 (being Laws 1968, Chapter 68, Section 2, as amended)

► Included in the history of certain sections of the compilation are references to earlier compilations, such as the Compiled Laws of 1884 (C.L. 1884), the Compiled Statutes of 1929 (C.S. 1929), the 1941 Compilation (1941 Comp.), the 1953 Compilation (1953 Comp.) or Code 1915. Although appearing in the history, the compilations are not amendments to the law being cited, **except for references to the 1915 Code**. The changes to previous law by the 1915 recodification/compilation were so extensive that the code is assumed to have amended all previous law. Therefore, a reference to Code 1915 is considered an amendment. (As an historical note, it appears that the same was true for the 1865 revised statutes. (See *In the Matter of Watts* 1 NM 541 (1872), which was a probate case.)

*Example:* Section 4-3-3 NMSA 1978

History: Laws 1899, ch. 3, § 8; Code 1915, § 1066; C.S. 1929, § 33-303; 1941 Comp., § 15-303; 1953 Comp., § 15-3-3

Correct citation: Section 4-3-3 NMSA 1978 (being Laws 1899, Chapter 3, Section 8, as amended)

**Example:** Section 19-3-3 NMSA 1978

History: Laws 1851-1852, p. 274; C.L. 1865, ch. 86(2d), § 1; C.L. 1884, § 2751; C.L. 1897, § 3745; Code 1915, § 4634; C.S. 1929, § 111-107; 1941 Comp., § 8-303; 1953 Comp., § 7-3-3

Correct citation: Section 19-3-3 NMSA 1978 (being Laws 1851-1852, p. 274, as amended)

- ▶ The 1915 Code **did not** enact section headings (see Code 1915, p. 1665). To find out if an old section of law has a section heading, the best way is to check the law; in this example's case, by going back to the 1851-1852 laws. The other way is to check the NMSA 1978 to see if the heading is in brackets, which indicates that the compiler has written it for purposes of the compilation. If a heading has never been enacted, one must be written and underscored in the draft to show that it is new material. The drafter may use the compiler's heading or draft one of his own.
- ▶ The laws of 1915 were enacted after the 1915 Code; therefore, a section history that began in 1915 will only have "as amended" if there was an amendment after 1915.
- ▶ Until recently, when a history started out citing an NMSA, e.g., "1978 Comp., §" or "1953 Comp., §", it showed that the comp number was assigned by the legislature, not the compiler. Unfortunately, that is no longer true for histories after about 2004; the compiler has stopped noting whether a comp number was assigned by the legislature.

**Example:** Section 22-10A-20 NMSA 1978

History: 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1; 1993, ch. 226, § 5; 1993, ch. 228, § 1; 1994, ch. 109, § 1; recompiled and amended as 1978 Comp., § 22-10A-20 by Laws 2003, ch. 153, § 51

Correct citation: Section 22-10A-20 NMSA 1978 (being Laws 1986, Chapter 33, Section 3, as amended)

This history shows that the drafter assigned the compilation number when she wrote the section in 1986. Notice also that the 2003 drafter recompiled Section 22-2-8.2 NMSA 1978 as Section 22-10A-20 NMSA 1978.

- ▶ The compiler has the right to reassign a drafter-assigned compilation number if he deems it necessary. For example, in 1998, a section on appeal of final decisions by state agencies was enacted as Section 12-8A-1 NMSA 1978. The compiler thought the section should be in Chapter 39 NMSA 1978, which is about judgments, costs and appeals, so he recompiled the section as

Section 39-3-1.1 NMSA 1978. **Drafters are strongly discouraged from assigning compilation numbers.** (See Appendix B for a discussion of assignment of compilation numbers.)

► The following are **examples of unusual citations**:

**Odd Enactment:**

*Example:* Section 3-29-1 NMSA 1978

History: 1953 Comp., § 14-28-1, enacted by Laws 1965, ch. 300

Correct citation: Section 3-29-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-1)

**Duplicate Enactment:**

*Example:* Section 1-4-5.1 NMSA 1978

History: 1978 Comp., § 1-4-5.1, enacted by Laws 1993, ch. 314, § 7 and by Laws 1993, ch. 316, § 7; 1997, ch. 209, § 1.

Correct citation: Section 1-4-5.1 NMSA 1978 (being Laws 1993, Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7, as amended)

This used to be extremely rare, but is becoming more common as the legislature passes more and more duplicate bills and the governor signs them.

**Multiple Amendments:**

*Example:* Section 7-1-2 NMSA 1978

History: 1953 Comp., § 72-13-14, enacted by Laws 1965, ch. 248, § 2; 1966, ch. 54, § 1; 1969, ch. 156, § 1; 1971, ch. 276, § 3; 1973, ch. 346, § 1; 1974, ch. 13, § 1; 1975, ch. 301, § 1; 1978, ch. 182, § 22; 1979, ch.144, § 2; 1982, ch. 18, § 1; 1983, ch. 211, § 3; 1985, ch. 65, § 1; 1986, ch. 20, § 2; 1987, ch. 45, § 20; 1987, ch. 268, § 1; 1988, ch. 71, § 1; 1988, ch. 73, § 1; 1989, ch. 263, § 1; 1989, ch. 325, § 1; 1989, ch. 326, § 10; 1989, ch. 327, § 1; 1990, ch. 86, § 1; 1990, ch. 88, § 1; 1990, ch. 99, § 45; 1990, ch. 124, § 12; 1990, ch. 125, § 1

Correct citation: Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended by Laws 1990, Chapter 86, Section 1 and by Laws 1990, Chapter 88, Section 1 and by Laws 1990, Chapter 99, Section 45 and by Laws 1990, Chapter 124, Section 12 and also by Laws 1990, Chapter 125, Section 1)

The recitation of all the 1990 amendments lets the legislature know that something unusual has happened. Unless irreconcilable, all the 1990 versions of Section 7-1-2 NMSA 1978 are construed together until the section is amended again, and the long history allows the legislature to track the versions. The bill draft would amend the section by using the 1990, Chapter 125 E&E version as the base and reconciling all other amendments. If a provision cannot be reconciled, it will be

absent from the text when the section is amended and the drafter will have to repeal that section of the session laws. See the drafter's notes on the pertinent zoo.

### **Repeal and Reenactment:**

The compiler has changed the history line for sections that have been repealed and reenacted. Before about 2006, when a section was repealed and reenacted, the prior history was deleted and the history of the section began anew with the reenactment. Now, because of database links with parallel tables and other sources, prior histories are saved in the history line.

#### ***Examples:***

Section 22-13-1 NMSA 1978

History: 1978 Comp., § 22-13-1, enacted by Laws 2003, ch. 153, § 57; 2005, ch. 315, § 9; 2007, ch. 307, § 7; 2007, ch. 308, § 7

Annotations: Repeals and reenactments. — Laws 2003, ch. 153, § 57 repeals former 22-13-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 180, and enacts the above section, effective April 4, 2003. For provisions of former section, see New Mexico One Source of Law DVD.

Section 1-14-16 NMSA 1978

History: 1953 Comp., § 3-14-20, enacted by Laws 1969, ch. 240, § 345; 1977, ch. 222, § 84; repealed and reenacted by Laws 2008, ch. 41, § 3

► Regardless of the history line, for legislative drafting purposes, the history begins with the new enactment.

***Example:*** Section 1-14-16 NMSA 1978 (being Laws 2008, Chapter 41, Section 3)

### **Historical Oddity:**

***Example:*** Section 42-4-1 NMSA 1978

History: C.L. 1897, § 2685 (250), added by Laws 1907, ch. 107, § 1 (250); Code 1915, § 4360; C.S. 1929, § 105-1801; 1941 Comp., § 25-801; 1953 Comp., § 22-8-1

Correct citation: Section 42-4-1 NMSA 1978 (being Laws 1907, Chapter 107, Section 1 (250), as amended)

This history is dependent on the specific circumstances of the law's enactment. The history starts, in this case, with 1907 because there was no Sub-Sec. 250 in 1897. Section 2685 only went to Sub-Sec. 181; other subsections, including 250, were added in 1907. There are other sections that say "as added by" that should cite the history as the original enactment ", as amended". To write the history of these unusual sections correctly will require research.



***Example:***

" . . .contingent upon House Bill 344 of the forty-fourth legislature, first session becoming law. . ."

It is not sufficient to say "contingent upon passage of House Bill 344. . .". The bill must be passed and signed by the governor before the contingency is operative.

**◆ *Codification or Revision* ◆**

Codification or revision of the law is aimed at cleaning up the statutes and enacting them in systematic form. New Mexico has not had a complete codification since 1915. Codification does not ordinarily anticipate substantive changes, but such changes frequently occur; the danger of inadvertent changes and the expense involved probably account for the hesitancy of the legislature to attempt a complete new codification.

The codification or recodification of a discrete segment of the law relating to one subject, such as the Election Code, the Criminal Code, the Motor Vehicle Code or the New Mexico Insurance Code, is attempted more frequently and usually involves substantive changes. It is considered a "revision" for constitutional title requirement purposes.

## **CHAPTER 3**

### **BILLS**

A bill is the form used to propose laws. Article 4, Section 15 of the constitution of New Mexico states: "No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.". A bill is the only form that carries the phrase "AN ACT" in its title and has an enacting clause.

Bills may originate in either house; by custom, the "Feed Bill", which appropriates money for the legislative session, originates in the house of representatives as House Bill 1.

► Bills create, empower, impose duties or obligations, prohibit acts, appropriate money or do any combination of these things.

#### **◆ Parts of Bills ◆**

► A bill contains several parts. Some of the parts are mandatory, such as the heading, title, enacting clause and main provisions. Other parts are not required in every bill, but may be necessary or useful in certain cases. The parts of a bill are as follows and should be used in a bill in the order shown:

1. Heading (mandatory)
2. Title (mandatory)
3. Enacting Clause (mandatory)
4. Short Title
5. Legislative Findings/Purpose of Act
6. Definitions
7. Main Provisions (mandatory)
8. Penalty (should be in title if in text, but not mandatory)
9. Liberal Interpretation
10. Saving Clause
11. Temporary Provisions
12. Appropriation (must appear in title if in text)
13. Repeal

14. Severability
15. Applicability (primarily for tax bills)
16. Effective Date
17. Emergency Clause (must appear in title if in text)

The remainder of this chapter explains the uses and requirements of each part of a bill.

### ◆ *Heading*

The words centered on line 1 of the first page of a bill indicate the house of origin. Line 2 carries the heading for the specific session. The phrase "INTRODUCED BY" is centered on line 3. Sponsoring legislators sign their names in the space provided between lines 3 and 10. Signatures should be written in black ink so the names will appear legibly on the printed bill.

***Example:***

1	HOUSE BILL
2	<b>49TH LEGISLATURE — STATE OF NEW MEXICO — FIRST SESSION, 2009</b>
3	INTRODUCED BY
4	
10	AN ACT
11	RELATING TO LEGISLATION; REQUIRING LEGISLATION TO BE PRINTED ON
12	SPECIAL PAPER; SPECIFYING CERTAIN CONDITIONS FOR SIGNATURES
13	BY SPONSORS.

### ◆ *Title*

The title of a bill, typed in capital letters, begins with the words "AN ACT" centered on line 10.

The constitution of New Mexico requires that the subject of every bill be clearly expressed in its title and forbids passage of bills embracing more than one subject, with the exception of general appropriation bills and bills for the codification or revision of the laws (Article 4, Section 16). The constitution further provides that if the title does not cover a part of the bill's subject matter, the part not covered is void. Since a properly prepared title is essential to the constitutionality of any bill that becomes law, the title should be carefully reviewed to determine that it covers everything in the bill.

There are two schools of thought concerning the drafting of titles. The first school, which has gone out of favor over the last several decades, believes that a title should be written as tightly as possible; this has the effect of severely limiting amendments to the bill. The other school holds

the opinion that titles should be general in nature, with only enough detail to inform the reader of the contents of the bill. The selection of which type of title to write will depend on the details of the request and the predilection of the drafter.

- ▶ A note of warning: the more detailed the title, the more danger there is of omitting reference to a part of the bill. As mentioned, another reason for avoiding detailed titles is the chance that additions to the body of a bill made by amendment may not be covered by the title. These problems may be avoided if the original title is general rather than specific; however, the phrase "for other purposes" added to the title is useless since the phrase will not include subject matter not covered by the language expressing the general subject.

- ▶ The title should state the general subject of the bill and not index its contents in minute detail. The broad category is stated first, followed by the more specific categories in descending order, separated by semicolons. By custom, most bills state the broad category as "RELATING TO . . .". The general exceptions to the "relating to" custom are simple appropriation bills and one-section repeal bills.

- ▶ Do not put "AND" in the relating clause. To do so opens the bill to very good constitutional arguments that the bill relates to more than one subject. For example, a bill "RELATING TO DIVORCE AND ANNULMENT" would in all likelihood violate Article 4, Section 16 of the constitution of New Mexico. The relating clause might be changed to "RELATING TO DISSOLUTION OF MARRIAGE".

- ▶ Writing a general title does not mean there is no information conveyed. Unless directed to do otherwise by the sponsor, a title should give fair warning about the contents of the bill. Writing a title such as "RELATING TO PROPERTY; AMENDING CERTAIN SECTIONS OF THE NMSA 1978" would seem to violate the spirit, if not the letter, of the constitutional requirement that the subject of the bill be clearly expressed in the title. There are exceptions to this rule, as there are to every rule, but the drafter should strive to avoid the exceptions unless absolutely necessary.

- ▶ Drafters should keep in mind that titles are used by legislative staff and others as quick references and the titles should contain as much information as possible within the confines of the request. Everything from committee referrals to bill indexing is made easier with an informative title.

- ▶ The rules of both houses require that for the convenience of legislators, if a bill makes an appropriation or carries an emergency clause, the phrase "MAKING AN APPROPRIATION" or "DECLARING AN EMERGENCY" is required in the title. The New Mexico supreme court has held that a tax earmarked for expenditure is an appropriation; therefore, the rule requiring the phrase "MAKING AN APPROPRIATION" in the title includes bills that provide for expenditure of fees, taxes or other revenues. "MAKING AN APPROPRIATION; DECLARING AN EMERGENCY." goes at the end of the title.

- ▶ Custom requires that if the bill contains criminal or civil penalties, they be noted in the title. PRESCRIBING PENALTIES (or singular) goes toward the end of the title, before MAKING AN APPROPRIATION.

Whether to write the title before or after the bill is drafted is a personal preference. Some drafters find it helpful to craft a working title first as a means of focusing on the purpose and design of the bill; others prefer to wait until the bill is written. Either way, the title *must* be checked against the bill to ensure the two agree.

### ◆ *Title Drafting Methods*

Up until 1970, legislative council service drafting style required that every section of the compilation to be amended, repealed or added be listed in the title. This technique, however, was useful mainly to attorneys familiar with the compilation and was of little value to most legislators or ordinary citizens. In *Bureau of Revenue v. Dale J. Bellamah Corporation*, 82 N.M. 13, 474 P.2d 503 (1970), it was held that the inclusion of section numbers in the title narrowed the title to the point that it did not cover the entire bill. The court said:

Here, as in *Frohmler* [an Arizona case quoted in the decision], if the title had stated only 'An Act Relating to Taxation,' it would have been broad in scope and perhaps alerted its readers to anticipate anything in that field. . . The natural reaction of the reader is to conclude that the specific references in the title limit the broad subject. (82 N.M., at 16)

Because of this decision, the inclusion of section numbers in the title is left to the discretion of the drafter or the legislator requesting the bill. A word of caution: listing compilation numbers and section histories offers a greater opportunity for proofing and typing errors. If the drafter chooses to include section numbers, he should always double-check the draft before releasing it to the requester. Incorrect citations are grounds for veto or court challenge.

► It is not necessary to recite that the bill amends, repeals or enacts sections of the NMSA 1978 as a catch-all phrase at the end of the title if the substantive wording of the title adequately conveys the contents of the bill. However, if the drafter wants to use that litany, it is put in what is known in the proofing office as "ARE order", for "*a*mending, *r*epealing and *e*nacting sections of the NMSA 1978". Note that using ARE order in the title has no relationship to section order in the bill itself. Do not list an action that is not taken in the bill. This phrase, or the appropriate parts of it, go after the substantive language of the title and before "MAKING AN APPROPRIATION" or "DECLARING AN EMERGENCY".

► When repealing a section of law, it is necessary that the action be indicated in the title, either as part of ARE or as part of the title narrative. Either of the following examples is correct:

**Examples:**

10 | AN ACT  
11 | RELATING TO ORIENTAL MEDICINE; LIMITING THE SCOPE OF PRACTICE;  
12 | REQUIRING INTERNSHIPS; REPEALING PROVISIONS OF LAW PERTAINING TO  
13 | PRESCRIPTIVE AUTHORITY OF DOCTORS OF ORIENTAL MEDICINE.

\*\*\*

10 | AN ACT  
11 | RELATING TO ORIENTAL MEDICINE; LIMITING THE SCOPE OF PRACTICE;  
12 | REQUIRING INTERNSHIPS; ELIMINATING PRESCRIPTIVE AUTHORITY; AMENDING,  
13 | REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

► For title purposes, if a drafter writes a new section of law, it is considered to be enacting a section of the NMSA 1978 even if he does not assign a compilation number.

► The remainder of this section covers examples of title drafting methods, some of which have explanatory text. Any of these examples is correct when used in the proper context.

**Examples:**

10 | AN ACT  
11 | RELATING TO TRAFFIC SAFETY; CREATING THE TRAFFIC SAFETY  
12 | COMMISSION; DEFINING ITS POWERS AND DUTIES; CREATING A FUND; PROVID-  
13 | ING FOR LOANS AND GRANTS FROM THE FUND; MAKING AN  
14 | APPROPRIATION.

\* \* \*

10 | AN ACT  
11 | RELATING TO PROPERTY TAXATION; ESTABLISHING A METHOD OF DETERMINING  
12 | TAXABLE VALUE FOR PERSONAL PROPERTY LOCATED IN THE RESIDENCE OF THE  
13 | OWNER.

\* \* \*

10  
11  
12  
13  
14

AN ACT

RELATING TO RAILROADS; PROVIDING FOR THE ADOPTION OF THE CUMBRES AND  
TOLTEC SCENIC RAILROAD COMPACT; REPEALING THE COMPACT PREVIOUSLY  
ADOPTED; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

► If a bill amends one or more sections of existing law and the drafter elects to list the amendatory sections of the NMSA 1978, they are listed in numerical order followed in parentheses by the citations to the original session laws enacting the sections (their histories). The parenthetical listing of the session law citations must parallel the compilation citations, even if it is necessary to be repetitious. If the compilation sections or session law sections are consecutive, it is sufficient to set out the first and last sections with the word "THROUGH". If one or more compilation sections in the series have been amended since their original enactment by subsequent session laws or the 1915 Code, insert the words "AS AMENDED" at the end of the parenthetical series. "AS AMENDED" appears only once, regardless of the number of amended sections.

**Example:**

10 AN ACT  
11 RELATING TO MOTOR VEHICLES; PROVIDING FOR UNIFORM TRAFFIC CONTROL  
12 DEVICES; AMENDING SECTIONS 66-7-2, 66-7-6, 66-7-9 AND 66-7-101  
13 THROUGH 66-7-109 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTIONS  
14 372, 376, 379, 381 AND 382, LAWS 1989, CHAPTER 320, SECTION 7,  
15 LAWS 1978, CHAPTER 35, SECTION 383, LAWS 2007, CHAPTER 368,  
16 SECTION 1, LAWS 1978, CHAPTER 35, SECTION 384, LAWS 1953, CHAPTER  
17 139, SECTIONS 34 AND 35, LAWS 1978, CHAPTER 35, SECTIONS 387 AND  
18 388 AND LAWS 1953, CHAPTER 139, SECTION 38, AS AMENDED).

These section numbers and histories are correct as of the 2008 update of the *Legislative Drafting Manual*, and the drafter interested in writing this type of title should look up the section numbers and histories in the NMSA 1978 to understand how the histories vary.

► In a variation of a section number title, state the general subject, list the section and its parenthetical history and follow the citation with a statement of what the bill does.

**Example:**

10 AN ACT  
11 RELATING TO LARCENY; AMENDING SECTION 30-16-1 NMSA 1978 (BEING LAWS  
12 1963, CHAPTER 303, SECTION 16-1, AS AMENDED) TO INCREASE THE PENALTY  
13 FOR LARCENY OF LIVESTOCK.

► If one purpose of a bill is to repeal a section of the compilation, the repealed section may be listed at the end of the title in numerical order with its parenthetical session law citation in the same manner previously discussed for amendments. It is not mandatory that the title state what the section being repealed does, but this type of title does convey less "first-hand" information and is, therefore, less helpful to the person reading the title.

*Example:*

10 | AN ACT  
11 | RELATING TO CAPITAL IMPROVEMENTS; CREATING THE CAPITAL PROGRAMS  
12 | COUNCIL; PROVIDING POWERS AND DUTIES; REPEALING SECTION 6-4-1 NMSA  
13 | 1978 (BEING LAWS 1975, CHAPTER 282, SECTION 3, AS AMENDED).

► If the entire purpose of the bill is to repeal one or more sections, reference should be made to the subject matter of the sections being repealed.

*Example:*

10 | AN ACT  
11 | REPEALING SECTIONS 15-5-1 THROUGH 15-5-6 NMSA 1978 (BEING LAWS 1963,  
12 | CHAPTER 181, SECTIONS 1 THROUGH 6, AS AMENDED) RELATING TO THE  
13 | TELECOMMUNICATIONS BUREAU OF THE GENERAL SERVICES DEPARTMENT.

► If a bill amends and repeals sections and the drafter wishes to make reference in the title to the compilation sections, these are listed in numerical sequence within each group, with the amendatory sections being listed first.

*Example:*

10 | AN ACT  
11 | RELATING TO TAXATION; PROVIDING FOR THE IMPOSITION AND  
12 | REALLOCATION OF CERTAIN TAXES; AMENDING SECTIONS 7-19-2,  
13 | 7-19-4, 7-19-11 AND 7-19-12 NMSA 1978 (BEING LAWS 1975 (S.S.),  
14 | CHAPTER 16, SECTION 2, LAWS 1978, CHAPTER 151, SECTION 1 AND LAWS  
15 | 1979, CHAPTER 397, SECTIONS 2 AND 3, AS AMENDED); REPEALING  
16 | SECTIONS 7-9-18 AND 7-9-19 NMSA 1978 (BEING LAWS 1969, CHAPTER  
17 | 144, SECTIONS 11 AND 12, AS AMENDED); MAKING AN APPROPRIATION;  
18 | DECLARING AN EMERGENCY.

► If a bill contains any combination of amending, repealing and enacting, and the drafter wants to note that without listing the compilation numbers and their histories, she simply uses **ARE** order to note the actions taken in the bill. Obviously, the drafter recites only those actions contained in the bill; she would not write "amending, repealing and enacting" if the bill only amends and

repeals. This technique is particularly helpful when the enacting sections are not assigned comp numbers. The required ARE order in the title has no bearing on the section order in the bill.

**Example:**

10 | AN ACT  
11 | RELATING TO UNEMPLOYMENT COMPENSATION INSURANCE; EXTENDING  
12 | COVERAGE TO CERTAIN SERVICES; PROVIDING CERTAIN EXCLUSIONS FROM  
13 | COVERAGE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA  
14 | 1978.

▶ If a bill contains a section of law that was last amended more than once in the same session, the drafter must reconcile those laws. The "reconciliation committee" in the legislative council service has approved proposed changes in the zoos that reconcile the provisions of multiple amendments and suggests required bracketing and underscoring. Since this "reconciliation" may not have anything to do with the purpose of the bill, the title must alert the reader to those changes in the section. A clause such as "RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2002" adequately notifies the reader.

▶ Multiple amendments are not always reconcilable. In the case of contradictory laws, one or more session laws will need to be repealed, and that action needs to be included in the title. A clause such as "RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN 2008 BY REPEALING LAWS 2008, CHAPTER 383, SECTION 16 AND LAWS 2008, CHAPTER 514, SECTION 23" provides adequate notice.

▶ The reconciliation/repeal clauses should come toward the end of the title before the "ARE" clause, if that is used.

**Examples:**

10 | AN ACT  
11 | RELATING TO PUBLIC SCHOOLS; CHANGING HIGH SCHOOL GRADUATION  
12 | REQUIREMENTS; ALLOWING CREDIT FOR FOREIGN TRAVEL; REQUIRING NEW  
13 | MEXICO HISTORY TO BE TAUGHT IN MIDDLE SCHOOL; RECONCILING MULTIPLE  
14 | AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2005.

10 AN ACT  
11 RELATING TO PUBLIC SCHOOLS; CHANGING HIGH SCHOOL GRADUATION  
12 REQUIREMENTS; ALLOWING CREDIT FOR FOREIGN TRAVEL; REQUIRING NEW  
13 MEXICO HISTORY TO BE TAUGHT IN MIDDLE SCHOOL; RECONCILING MULTIPLE  
14 AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2005;

10 AN ACT  
11 RELATING TO PUBLIC FINANCE; CHANGING THE MEMBERSHIP OF THE WATER  
12 TRUST FUND BOARD; CHANGING THE CONDITIONS FOR GRANTS AND LOANS;  
13 CHANGING THE DISTRIBUTION FROM THE WATER PROJECT FUND; RECONCILING  
14 CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2008 BY  
15 REPEALING LAWS 2007, CHAPTER 14, SECTION 45; AMENDING AND REPEALING.

**◆ *Enacting Clause***

The enacting clause is mandatory in bills. The constitution of New Mexico prescribes the exact wording of the enacting clause (Article 4, Section 15): "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:".

Omission of the enacting clause or failure to use the prescribed wording renders the bill defective, invalidating it if the defect is not corrected by amendment prior to passage. A motion to strike the enacting clause is not a valid motion in the house; such a motion is allowed in the senate and is considered equivalent to rejection of the bill.

The enacting clause, all in capital letters, begins at the left margin two numbered lines below the title.

**Example:**

10 AN ACT  
11 RELATING TO PUBLIC ASSISTANCE; EXTENDING BENEFITS TO  
12 UNEMPLOYED PARENTS; CREATING JOB TRAINING PROGRAMS; MAKING AN  
13 APPROPRIATION; DECLARING AN EMERGENCY.  
14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**◆ Body of the Bill ◆**

The following parts comprise the "body" of a bill. A bill may contain any number of provisions, or parts, as long as they all relate to the single subject expressed in the title. With the exception of the main provisions that carry out the purpose expressed in the title, none of the other parts is mandatory; however, if they are used, they are each contained in a separate section.

**◆ Short Title**

A short title defines a specific, discrete, cohesive body of law. If a draft of original legislation meets that description, it is useful to give it a short title for reference purposes. A short title is a drafter's tool and must be short to be worthwhile. It is a reference, not an exhaustive description of what the act does. Since the New Mexico legislature can legislate only for New Mexico, there is no reason to put "New Mexico" as part of a short title. As well, there is usually no good reason to put the year of enactment in the title.

**Examples:**

<i>Use</i>	<i>Do Not Use</i>
Relocation Assistance Act	New Mexico Highway Relocation Assistance to Displaced Persons Act of 1983
Uniform Uniforms Act	Uniform Code of Standardized Clothing for State Guardsmen
Photographic Copies Act	Photographic Copies of Business and Public Records as Evidence Act
Election Code	New Mexico State Election Code
Reciprocal Support Act	Reciprocal Enforcement of Support Act of 1993

The term "code" is used to describe a large, complex body of law, e.g., the Election Code, the Criminal Code, the Motor Vehicle Code; a code may contain one or more short titled acts. Do not use "code" to describe what is simply an "act".

- ▶ The short title section, when used, is usually the first section of a bill, or at least the first section of an act. The short title is enclosed by quotation marks when it is being created; first letters of the short title are capitalized in the same manner as book titles.

*Example:*

15 |           Section 1.   SHORT TITLE.--This act may be cited as the  
16 | "Pharmacy Act".

- ▶ In some instances, a draft may contain a new act and also amend sections of existing law or enact sections of law that do not belong within the short titled act. In that case, the sections of the bill that are covered by the short title must be specified.

*Example:*

15 |           Section 1.   [NEW MATERIAL] SHORT TITLE.--Sections 1 through  
16 | 8 of this act may be cited as the "Pharmacy Act".

It is extremely important to check and recheck the citations in this type of section, as additions to or deletions from the bill can alter those citations. For instance, if Section 4 is deleted from the bill referred to in the above example, it is necessary to renumber the sections and change the short title section to read "Sections 1 through 7. . .".

- ▶ The test of whether a short title section is inclusive or exclusive as to other sections in the bill is whether the other sections will be compiled. If a bill contains a short titled act and uncompiled provisions such as repeal, appropriation and effective date sections, it is not necessary to enumerate the sections under the short title. The short title section is written as "This act may be cited as. . ." **not** "Sections 1 through 8 of this act may be cited as. . .". If the bill contains a short titled act and other new or amendatory substantive provisions that are compilable, the short title will be written as "Sections 1 though 8 of this act may be cited as. . .".

- ▶ If the drafter wishes to add something to an existing short titled act, she must check the reference of the short title to ensure that her section will be part of the act. For example, to add a section to the Per Diem and Mileage Act, it is necessary to amend the short title section. There are two acceptable ways to change a short title. The first example is preferred where possible because it alleviates the need for future amendment and it does not require the assignment of a comp number to the new section; its use, of course, depends on how the short titled act fits in the compilation.

**Examples:**

15 |       Section 1. Section 10-8-1 NMSA 1978 (being Laws 1963,  
16 | Chapter 31, Section 1, as amended) is amended to read:  
17 |       "10-8-1. SHORT TITLE.--[Sections 10-8-1 through 10-8-8]  
18 | Chapter 10, Article 8 NMSA 1978 may be cited as the "Per Diem and  
19 | Mileage Act"."

\* \* \*

15 |       Section 1. Section 10-8-1 NMSA 1978 (being Laws 1963,  
16 | Chapter 31, Section 1, as amended) is amended to read:  
17 |       "10-8-1. SHORT TITLE.--Sections 10-8-1 through [~~10-8-8~~  
18 | 10-8-9 NMSA 1978 may be cited as the "Per Diem and Mileage Act"."

► Once a section is made part of a short titled act, the definitions of the act apply to that section. Conversely, an act's definitions do not apply to sections of law outside the confines of that act. If a drafter forgets to amend the short title section, the new section he thought he was including in the act may not be covered by the definition section.

► The short title index in the NMSA 1978 index is a primary research tool for drafters; it is the fastest way to find particular statutes. When writing a new short title, the drafter should check the short title index to ensure that he is not using a short title name that already exists.

► Having a short title is the best way to avoid the use of "this act", a reference that is discouraged by New Mexico drafting style because it loses its meaning over time. The drafter should not enact a short title inappropriately or unnecessarily simply to avoid this problem, however. There are other ways to deal with "this act".

**◆ *Legislative Findings or Purpose of Act***

It is generally unnecessary to include a legislative findings or purpose of act section because the courts have said that it is their job to interpret the purpose of a contested act. Certainly, a drafter may not rely on a purpose section as the substitute for good drafting in later sections of the law. Nor should the drafter seek to codify what is, essentially, committee testimony. At best, most purpose sections are redundant; at the worst, they may conflict with or set a standard that is not met in the remainder of the act or they may lead a court to interpret more broadly or narrowly than the sponsor and drafter ever expected.

There are rare instances when a findings or purpose section may be necessary, such as when the legislature is staking its claim on some federal or state constitutional provision. For example, the drafter might want to specify why a general law cannot be made applicable in the instant case; he might want to assert the constitutional basis for the particular bill; or she might want to counter an allegation of unreasonableness or arbitrariness by indicating the rational basis for action by the legislature.

***Example (from statute):***

"18-9-2. Purpose.--The purpose of the Library Privacy Act is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article 2 of the constitution of New Mexico by providing privacy for users of the public libraries of the state with respect to the library materials that they wish to use."

▶ A bill may have both legislative findings and a purpose of act; if so, they are written in the same section, with findings first.

**◆ *Definitions***

A definition section is used when terms need defining or when it is desirable to substitute a single word for a long phrase that has to be used many times. It is not acceptable drafting style to define "act" or "federal act" to avoid using a long short title. Nor is it acceptable drafting style to define acronyms or use other abbreviations in the law, except for "a.m.", "p.m." and "NMSA".

▶ Superfluous definitions cloud meaning.

▶ Do not define words that are being used in their normal dictionary meaning.

▶ If a term is used in only one section, it may be defined in that section.

▶ There is no need to write "includes but is not limited to"; the word "includes" implies an incomplete listing. Put another way, "includes" includes the concept of "not limited to".

▶ The definition section does not need to state that the definitions "control unless the context requires otherwise"; that is understood.

▶ If the definition is restrictive, use the word "means"; if the definition is extensive, use the word "includes". If it is necessary to exclude a meaning from an extensive definition, add the phrase "but does not include".

▶ Whether the defined word is singular, plural or collective, the verb "means" or "includes" always remains singular.

▶ Definitions are listed alphabetically. When creating a definition section, the drafter should resist the temptation to list definitions hierarchically; he will find that, more often than not, other people will not agree with or even understand his schema. Drafters are encouraged to maintain the

alphabetical order of definition sections even when adding definitions by amendment; however, they must be sensitive to highly litigious areas of law, heavily amended definition sections and overly cross-referenced acts to ensure that they are not causing more harm than good when opting to reorder an existing definition section.

- ▶ Each term that is being defined is enclosed in quotation marks, and whatever is within the quotation marks is the **precise** term to be used in the bill. A different grammatical form of the defined term is allowed if the sentence structure requires, but if the precise term is not used predominantly, the drafter needs to rewrite the term.
- ▶ Define administrative terms, e.g., "department", "division", "board", "commission", "fund" and similar terms.
- ▶ The drafter must be familiar with the definition of "person" in the Uniform Statute and Rule Construction Act. "Person" will need to be defined in the bill if the drafter wants a definition other than that in the statutory construction act. Unlike the old statutory construction act, the new law is not permissive. The usual definitions of "person" include both natural (individuals) and artificial (corporate) persons; therefore, the drafter should not try to distinguish individuals from entities in the text. This is one of the best examples of the admonition against using synonyms in the law. There may be rare occasions when there is a legitimate reason to differentiate between person and individual, but the drafter would have to change the normal definition of person to accommodate the differentiation.
- ▶ Beware of defining a word that crosses governmental lines. For example, defining "agency" to mean both a state agency and a municipal agency can cause untold — and unnecessary — problems in future amendments.
- ▶ Do not define terms that are not used in the bill. Do not define terms solely to use them in another definition. It is acceptable, however, to use a defined term in another definition; this is particularly prevalent with administrative terms. Do not use circular definitions.
- ▶ Do not put substantive law in a definition section. The problems caused by having substantive law in the definition section are both immediate and long lasting. The most obvious problem with legislating in the definition section is that no one will think to look for it there. This can cause unnecessary problems with amendments, as well as enforcement of the law.
- ▶ Usually, each defined term occupies its own subsection in a single definition section, but there are rare exceptions. Extensive codifications may have individual sections for each definition or series of definitions, particularly when a single definition section is several pages long and is frequently amended. The Motor Vehicle Code, which has close to 150 defined terms, has 21 definition sections, based on alphabetical order, to make it easier to change or add definitions.

**Example:**

14           Section 3. DEFINITIONS.--As used in the Fish Act:  
15           A. "department" means the department of game and  
16 fish;  
17           B. "fingerling" means a fish shorter than six inches  
18 in length;  
19           C. "fish" includes both game fish and nongame fish,  
20 but does not include carp;  
21           D. "fund" means the fish replenishment loan fund;  
22           E. "hatchery" means a fish farm licensed by the  
23 department and the federal department of the interior; and  
24           F. "poaching" means the taking of fingerlings from a  
25 lake or stream in the state by someone other than a department  
representative.

Like the title, it is a matter of personal preference whether the definition section is drafted first or last. Perhaps the easiest way is to write the common or known definitions first, then leave the section open to add or delete defined terms as the bill is drafted.

**◆ Main Provisions**

The drafter constructs the main provisions of the bill to implement the intent of the requester, always keeping in mind the constitutional prohibition against bills embracing more than one subject. The design of the main provisions is the most flexible of all the parts of the bill and depends entirely upon the bill's purpose. Bill design does have to fit within the confines of legislative style, however.

There are several types of bills that are so common that a discussion of required contents is provided in Appendix A. The information should be helpful to the seasoned pro as well as the beginning drafter.

### ◆ *Penalty*

Following is a brief discussion of penalties, but any drafter who expects to draft criminal statutes, either in or out of the Criminal Code, should be thoroughly familiar with the style and contents of the Criminal Code and the Criminal Sentencing Act.

► Crimes are classified into two major categories: felonies and misdemeanors. A crime is a felony if so designated by law or if it is punishable by imprisonment for one year or more. A crime is a misdemeanor if so designated by law or if it is punishable by imprisonment for less than one year. Misdemeanors may be tried in either magistrate or district court; felonies may be tried only in district court.

► Crimes **within** the Criminal Code (Chapter 30 NMSA 1978) are further classified as capital felonies; felonies of the first, second, third and fourth degrees; misdemeanors; and petty misdemeanors. See Sections 31-18-15, 31-19-1 and 31-20-1 NMSA 1978 for the penalties.

► Crimes **outside** the Criminal Code that are designated as felonies without specifying penalties constitute fourth degree felonies and carry the penalty specified in Section 31-18-15 NMSA 1978, which is part of the Criminal Sentencing Act. All other crimes outside the Criminal Code that do not specify the class of crime or that specify no penalty constitute petty misdemeanors and carry the penalty specified in Subsection B of Section 31-19-1 NMSA 1978. (See Section 31-18-13 NMSA 1978.)

► In certain cases, special penalties apply to a particular chapter, article or other part of the statutes. For example, any provision contained in Chapter 17 NMSA 1978 that classifies a game and fish violation as a misdemeanor, but does not specify a penalty, carries the penalty specified in Section 17-2-10 NMSA 1978 rather than the penalty specified in the Criminal Sentencing Act. Similarly, misdemeanors in the Motor Vehicle Code not specifying penalties carry the penalty contained in Section 66-8-7 NMSA 1978. Pursuant to Section 66-8-9 NMSA 1978, Motor Vehicle Code felonies carry the same penalties as prescribed in Section 31-18-15 NMSA 1978.

► If a bill amends the Criminal Code, any class of felony or misdemeanor may be stipulated without specifying a particular penalty.

#### **Criminal Penalty Within the Criminal Code:**

##### *Example:*

15 |           Section 1. REMOVING BONES FOR COMMERCIAL PURPOSES.--  
16 |                   A. Removing bones for commercial purposes consists of  
17 | any person removing bones from public property to sell, trade,  
18 | exchange or barter for monetary or other gain.  
20 |                   B. Whoever commits removing bones for commercial  
21 | purposes is guilty of a \_\_\_\_\_ degree felony <or misdemeanor or  
22 | petty misdemeanor>.

► Good drafting style requires that the drafter specify both the class and the penalty for any crime he creates outside the Criminal Code.

► One method is to conform the penalty to that in the Criminal Sentencing Act. For example, if a felony penalty is desired, the drafter should examine Section 31-18-15 NMSA 1978 to see whether the penalty for one of the classes of felony specified there is appropriate. (For misdemeanor penalties, examine Section 31-19-1 NMSA 1978.) If the Criminal Sentencing Act penalty is appropriate, the penalty provided in the bill should conform. Reference the section to provide the complete sentencing authority of Section 31-18-15 NMSA 1978:

". . . is guilty of a <fill in the blank> degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

The reason for this procedure is to create some uniformity between sentencing authority for crimes found in the Criminal Code and those found outside the code.

► New Mexico has determinate sentencing, which means the judge will sentence a person to a definite term of imprisonment or a fine of a definite amount of money, or both. When drafting outside the Criminal Code, if the drafter wants to provide a different penalty than that specified in Section 31-18-15 or 31-19-1 NMSA 1978, the style is to provide a penalty ceiling up to which the judge can sentence. Following is an example of a standard penalty clause:

". . . shall be punished by a fine of not more than \_\_\_\_\_ (\$ ) or by imprisonment for a definite term not to exceed \_\_\_\_\_ or both."

► It is not necessary to write "or to both such fine and imprisonment in the discretion of the judge"; the words "or both" say the same thing in a much simpler way.

**Criminal Penalties Outside Criminal Code:**

***Examples:***

► **Misdemeanor**

15 | Section 4. REMOVING BONES--PERSONAL USE--PENALTY.--Any  
16 | person who removes bones from public property for personal use is  
17 | guilty of a misdemeanor and shall be punished by a fine of not  
18 | more than five thousand dollars (\$5,000) or by imprisonment for a  
19 | definite term not to exceed one year or both.

► **Felony**

15           Section 4. REMOVING BONES--COMMERCIAL USE--PENALTY.--Any  
16 person who removes bones from public property for commercial  
17 purposes is guilty of a third degree felony and shall be punished  
18 by a fine of not more than fifteen thousand dollars (\$15,000) or  
19 by imprisonment for a definite term not to exceed five years or  
20 both.

These examples are intended solely as examples of proper drafting technique. One consideration for the drafter of criminal penalties is whether the penalty fits the crime. In addition to the possible loss of freedom and money, a person convicted of a felony loses civil rights, and those rights are not restored unless the felon is pardoned by the governor.

► A penalty relating to only one section is placed in that section; a penalty pertaining to several sections or an entire act is put in a separate section.

► Sentencing corporations under the Criminal Code is governed by Section 31-20-1 NMSA 1978. For crimes outside the Criminal Code, the same rules apply as for individuals. Usually, corporations are sentenced to fines, since applying imprisonment to a corporation is problematic. However, there are several models in the statutes to support jail time for corporations, or at least corporate officers. Drafters can find examples in areas such as environmental protection (Volume 13 NMSA 1978), where the legislature has decided the public good mandates that someone pay by loss of freedom and rights for such a serious harm against the citizens of the state. When looking at those laws, the drafter may note the way monetary penalties can accrue, for example "per violation per day".

► *Civil penalties* are placed in the same position in a bill as criminal penalties. A bill may have both criminal and civil penalties. **Like criminal fines, civil penalties are deposited to the credit of the current school fund** (See Article 12, Section 4 of the constitution).

**Example:**

15           Section 12. CIVIL PENALTY.--A person who violates Sections  
16 5 through 10 of the Hazardous Tanks Act may be assessed a civil  
17 penalty not to exceed ten thousand dollars (\$10,000) per tank for  
18 each day during any portion of which a violation occurs.

► Civil penalties are usually assessed by the court, but the legislature can give that right to a state agency. Until recently, administrative penalties were relatively rare in New Mexico law; the

legislature traditionally had been loath to give over that judicial function to executive agencies. That is changing, however, as administrative penalties gain favor because of limited prosecutorial and judicial resources. The drafter should discuss the issue with the requester.

▶ When providing for administrative penalties, the drafter needs to specify: (1) the amount of the penalty; (2) the reason for its assessment; (3) the procedures for assessing the penalty; (4) the procedures for protesting and appealing, including the provision of a hearing and appeal to a state court; (5) how a record of the hearing is taken and the scope of review; and (6) how the agency may enforce compliance.

▶ In addition to civil penalties, the drafter may provide for private remedies.

▶ Although not mandatory, it is good drafting practice to mention in the title that the bill provides penalties, particularly when criminal penalties are possible. The legislature has come to expect such notice in the title and it ensures proper committee referrals.

***Example:***

10 | AN ACT  
11 | RELATING TO ANIMALS; ENACTING THE PET STERILIZATION ACT; PRESCRIBING  
12 | CRIMINAL AND CIVIL PENALTIES; MAKING AN APPROPRIATION.

**◆ *Liberal Interpretation***

A liberal interpretation section is intended to allow a court or administrator greater latitude in interpreting or carrying out the provisions of an act. Such a section is of doubtful value and tends to blur the law, but if one is desired, the following language is suggested:

***Examples:***

15 | Section 12. LIBERAL INTERPRETATION.--The Drafting Act shall be  
16 | liberally construed to carry out its purpose.

\* \* \*

15 | Section 12. LIBERAL INTERPRETATION.--Sections 1 through 11 of  
16 | this act shall be liberally construed to carry out their purpose.

Similar to the false safety of a severability clause, the requester may think he has more protection than he does with a liberal interpretation clause. The courts will determine how to interpret the law and what is severable. The drafter should warn the requester of the limits of these two sections.

### ◆ *Saving Clause*

A saving clause is designed to preserve certain rights, duties or privileges that might otherwise be destroyed by a general enactment containing an amendment to or repeal of existing provisions of law. Saving clauses are not used very often in New Mexico law because Article 2, Section 19 and Article 4, Sections 33 and 34 of the constitution cover the problem most of the time. If a saving clause is needed, the following language is suggested:

#### *Example:*

15 |           Section 13. SAVING CLAUSE.--The Radiation Act does not apply  
16 | to pending litigation.

#### ▶ *Cumulative, Additional or Supplemental Remedies*

A type of saving clause is used to save existing law from implied repeal. An example is when the requester wants to provide for cumulative remedies. The section heading is usually written more specifically, e.g., "REMEDIES CUMULATIVE.--", instead of under the rubric "SAVING CLAUSE.--". The section is compiled, same as a saving clause section.

#### ▶ *Grandfather Clause*

A grandfather clause is a special type of saving clause, usually used to ensure that persons lawfully engaged in a particular activity do not have to comply with certain provisions of a new law. For example, a grandfather clause may be used to exempt a current occupational practitioner from certain licensing provisions, such as testing or education, of a newly regulated occupation.

### ◆ *Temporary Provisions*

These sections are used to instruct the compiler, e.g., giving recompilation instructions, or to provide for a one-time change, such as a transfer of property and budget when a function is transferred from one agency to another. Labeling these types of provisions as temporary informs the compiler that the section should not be compiled with the permanent laws. The compiler has the right, however, to compile or not compile as he sees fit.

*Examples:*

15 | Section 168. TEMPORARY PROVISION--RECORDS.--On the  
16 | effective date of the Rig Water Act, all records of the energy,  
17 | minerals and natural resources department pertaining to rig water  
18 | shall be transferred to the state engineer.

\* \* \*

14 | Section 6. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
15 | PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1,  
16 | 2009:

17 |           A. all functions, personnel, appropriations, money,  
18 | records, equipment, supplies and other property of the grasshopper  
19 | eradication board shall be transferred to the department of  
20 | agriculture;

21 |           B. all contracts of the grasshopper eradication board  
22 | shall be binding and effective on the department of agriculture;  
23 | and

24 |           C. all references in law to the grasshopper  
25 | eradication board shall be deemed to be references to the  
1 | department of agriculture.

► In the above example, it is a policy decision whether to transfer personnel; sometimes the intent is to make a significant organizational change and start with new personnel. The drafter should ask the requester's intentions.

\* \* \*

10           Section 9. TEMPORARY PROVISION--MEDICAID TASK FORCE.--  
11           A. The secretary of human services shall appoint a  
12 twenty-one-member "medicaid cost containment task force",  
13 consisting of three hospital administrators, three nursing home  
14 administrators, two physicians, one pharmacist, three primary  
15 health care providers, one home health agency administrator, five  
16 representatives of mental health and developmental disabilities  
17 advocacy groups and three members of the general public. The task  
18 force shall function from the date of its appointment, which shall  
19 be no later than July 1, 2009, until December 15, 2009.  
20           B. The task force shall investigate federal and state  
21 statutes, rules and regulations regarding the medicaid program and  
22 other states' cost containment measures. The task force shall  
23 report its findings and recommendations to the governor and the  
24 legislature prior to January 1, 2010.

The above example is an atypical use of a temporary provision section. Normally, the material would be presented to the legislature as a memorial, not as a temporary provision. Presumably, this provision fit with the substantive portion of the request, including why the mandate to name a task force should have the force of law. Note that the task force will function for only one interim; the drafter was correct to mark it as a TEMPORARY PROVISION so as not to clutter the NMSA 1978 with short-term provisions. If the task force were to function for a longer term, the compiler might compile the section regardless of the drafter's instruction of a temporary provision.

#### ◆ *Appropriations*

The constitution of New Mexico has a great number of restrictions on the purposes for which appropriations and expenditures of public money can be made. The drafter should be familiar with all of them, particularly Article 4, Sections 30 and 31 and Article 9, Section 14, so she can advise the requester.

The constitution of New Mexico also has specific language on the technique of making the appropriation (Article 4, Section 30) and specific requirements as to whether an appropriation should be made in the general appropriation act or in a separate bill (Article 4, Section 16).

- ▶ By recent custom, HAFB/HB 2, which usually becomes the general appropriation act, is drafted by the legislative finance committee when the bill is substituted by the house appropriations and finance committee. The original bill introduced by the house appropriations and finance committee chairman at the request of the governor is usually formatted and typed in the legislative council service. All legislative council service drafters should be familiar with the style, format and contents of the act, as well as the standing finance committees' requirements for amending the act.
  
- ▶ Article 4, Section 16 of the constitution of New Mexico limits the appropriations in the general appropriation act to those for the expenses "required under existing law" and requires other appropriations to be made in separate acts. Consequently, when a new agency is created or an entirely new function is added to an existing agency, the bill should contain an appropriation section to cover expenses for at least the first year. Thereafter, the agency or function will become part of the general appropriation act.
  
- ▶ Article 4, Section 30 of the constitution of New Mexico provides that an appropriation section must "distinctly specify the sum appropriated and the object to which it is to be applied". Tradition and drafting style require more information.
  
- ▶ In a section appropriating money, specify:
  1. the amount of money appropriated;
  2. the fund or revenue source from which appropriated;
  3. the agency or fund to which the money is to be allocated;
  4. the period during which the money can be spent;
  5. the purpose of the appropriation; and
  6. the disposition of any unexpended or unencumbered balance.

**Example:**

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15 |           Section 10. APPROPRIATION.--Twenty-five thousand dollars
16 | ($25,000) is appropriated from the general fund to the orchard
17 | inspection commission for expenditure in fiscal year 2010 to carry
18 | out the provisions of the Prune Act. Any unexpended or
19 | unencumbered balance remaining at the end of fiscal year 2010
20 | shall revert to the general fund.

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- ▶ Although money reverts unless the legislation specifies that it does not, drafting style requires that the standard reversion clause be used: "Any unexpended or unencumbered balance remaining at the end of <whatever fiscal year> shall revert <or not revert> to the <source>. If the reversion clause is left off, enough confusion can ensue that money may not be returned to its source for further appropriation by the legislature.

- ▶ If money is being appropriated to a **nonreverting** fund, the money must be provided for the current **and subsequent fiscal years** or the financial control division of the department of finance and administration will not permit expenditures past the named fiscal year.

*Examples:*

20 |           Section 6. APPROPRIATION.--One hundred thousand dollars  
21 | (\$100,000) is appropriated from the general fund to the tree farm  
22 | fund for expenditure in fiscal year 2010 and subsequent fiscal  
23 | years to provide loans to tree farmers as provided in the Tree  
24 | Farm Loan Act. Any unexpended or unencumbered balance remaining  
25 | at the end of a fiscal year shall not revert to the general fund.

The money does not revert because the tree farm fund was created as a nonreverting fund in the enabling legislation. As a convenience to the reader, include the nonreversion instructions in the appropriation section; this way, the reader will not have to research substantive law in order to find out what will happen to the balance of an appropriation.

14 |           Section 14. APPROPRIATION.--One hundred thirty-two  
15 | thousand six hundred dollars (\$132,600) is appropriated from the  
16 | art in public places fund to the supreme court building  
17 | commission for expenditure in fiscal years 2010 and 2011 to  
18 | purchase and display art in the supreme court building. Any  
19 | unexpended or unencumbered balance remaining at the end of fiscal  
20 | year 2011 shall revert to the art in public places fund.

Please note in this example that there is a potential problem with the amount of the appropriation. Under the Art in Public Places Act, a single appropriation for an existing building is limited to \$50,000; in addition, there may be a problem with appropriating money from that fund to an entity other than the arts division, since the division is statutorily responsible for administering the art in public places program and fund. Any time a drafter is appropriating money from an existing fund, it is incumbent upon him to read the statute concerning the fund to ensure he is complying with its provisions. In appropriations, as in general law, the requester should be given enough information to make an informed decision regarding a request that is not in compliance with law.

15           Section 3. APPROPRIATION.--Five million dollars  
16 (\$5,000,000) is appropriated from the general fund to the higher  
17 education department for expenditure in fiscal years 2010 through  
18 2015 to provide grants to state universities to purchase science  
19 equipment. No more than one million dollars (\$1,000,000) may be  
20 expended in any one fiscal year. Any unexpended or unencumbered  
21 balance remaining at the end of fiscal year 2015 shall revert to  
22 the general fund.

There is always a problem with multi-year appropriations because of their vulnerability to future legislatures. This appropriation section *may* avoid the problem of trying to bind future legislatures because the money will be debited against fiscal year 2010, with restricted expenditures over several fiscal years; however, it is possible for a future legislature to repeal the appropriation and take the remaining balance.

There have occasionally been bills drafted that provided for an appropriation each year for several years. These bills are even more vulnerable, because the money is being debited each year. This is a clear violation of the admonishment against binding future legislatures. This type of appropriation is discouraged, and the drafter should discuss this issue with the sponsor at the time of the request.

When providing for multi-year appropriations or for expenditures over several fiscal years, the drafter could consider creating a fund and providing a one-time appropriation to it, along with a mechanism for disbursements from the fund over the life of the project. Creating a fund does not require numerous support sections, such as short title, definitions and other main provisions. It can be as simple as two sections: one for the fund and one for the appropriation.

► Note the use of the phrase "unexpended or unencumbered balance" in appropriation sections. The whole phrase must be used. In government finances, money can be encumbered but not spent; therefore, by reverting the "unexpended balance" the drafter could foul up contractual relationships and requirements in violation of the constitution.

► The rules of both houses require that the phrase "MAKING AN APPROPRIATION" must appear in the title of a bill that appropriates money. As noted in the *Title* section of this chapter, an appropriation does not have to be as obvious as a separate section entitled "APPROPRIATION.--". An appropriation is any time the legislature gives up its control of revenue. Earmarking a revenue source is an appropriation.

► The state fiscal year begins on July 1 and ends on June 30 of the following calendar year. Prior to July 1, 1994, fiscal years were numbered beginning with the first year of statehood (1912), so that the fiscal year beginning July 1, 1994 *would have been* cited as the eighty-third fiscal year.

Laws 1994, Chapter 12 amended Section 6-10-1 NMSA 1978 to change the way fiscal years are cited. That section provides that:

... Beginning July 1, 1994, the fiscal year shall be cited by citing the calendar year in which the fiscal year ends. The fiscal year beginning July 1, 1994 shall be fiscal year 1995.

Drafters will encounter a mixture of old and new cites for a few years. Fiscal years before fiscal year 1995 should be cited under the old system. Following are examples of the proper citations:

... for expenditure in fiscal years 2000 and 2001 . . .

... balance remaining at the end of fiscal year 2001 shall revert . . .

... for expenditure in the eighty-second [~~through eighty-fifth~~] fiscal [~~years~~] year and fiscal years 1995 through 1997 . . .

If needed, the drafter can determine what a fiscal year *would have been* by simply subtracting "1912" from the last calendar year of the fiscal year.

#### ◆ *Repeal*

Sections in conflict with a bill and sections not necessary after the passage of the bill should be expressly repealed. The supreme court has held that a general phrase such as "all acts or parts of acts in conflict with the provisions of this act are hereby repealed" is useless. The phrase states an obvious fact and does not remove conflicting, obsolete or unnecessary laws from the compilation.

#### *Example:*

15 |           Section 20. REPEAL.--Sections 4-19-7 and 4-19-8 NMSA 1978  
16 | (being Laws 1991 (1st S.S.), Chapter 22, Sections 5 and 6) are  
17 | repealed.

#### ◆ *Severability*

No definite statement can be made as to the necessity of a severability clause. Therefore, if the act is severable, with parts that are constitutionally questionable, and it is desired that the remainder stand, a severability section may be advisable. The requester, though, should be warned that the section may not offer the protection he desires. This is a stock phrase that has survived the test of time, and it is suggested that the drafter not try to rewrite it:

*Example:*

15 | Section 10. SEVERABILITY.--If any part or application of  
16 | the Rabid Rabbit Eradication Act is held invalid, the remainder or  
17 | its application to other situations or persons shall not be  
18 | affected.

► There are times when the drafter wants to state that parts of a bill are **not** severable. A request for a nonseverable bill is rare, but, if necessary, the following section is recommended.

*Example:*

15 | Section 10. ACT NOT SEVERABLE.--If any part or application  
16 | of this act is held invalid, the remainder or its application to  
17 | other situations or persons shall likewise be invalid. The  
18 | provisions of this act are not severable.

◆ *Applicability*

This temporary provision is used primarily in bills related to taxation, but there may be other times an applicability section is needed.

*Examples:*

15 | Section 6. APPLICABILITY.--The provisions of this act apply  
16 | to taxable years beginning on or after January 1, 2009.

\* \* \*

15 | Section 24. APPLICABILITY.--  
16 |       A. The provisions of Sections 1 through 10 of this  
17 | act apply to taxable years beginning on or after January 1, 2009.  
18 |       B. The provisions of Sections 11 through 23 of this  
19 | act apply to taxable years beginning on or after January 1, 2010.

\* \* \*

1 | Section 5. APPLICABILITY.--The provisions of this act apply  
2 | to the 2009 and subsequent property tax years.

\* \* \*

12 | Section 67. APPLICABILITY.--The provisions of this act  
13 | apply to policies, plans, contracts and certificates delivered or  
14 | issued for delivery or renewed, extended or amended in this state  
15 | on or after <date>. [an Insurance Code example]

#### ◆ *Effective Date*

Article 4, Section 23 of the constitution of New Mexico provides that laws go into effect 90 days after the adjournment of the legislative session enacting them. If the provisions of the bill are to be effective at a later date, the drafter must state the date in a separate section. Effective date sections are also used when the effective date of the provisions of the act is to be contingent on the occurrence of some event, such as the passage of a constitutional amendment, and when it is necessary that the provisions of the act be effective at different times for different categories of affected people.

- ▶ Note that effective date sections are always written to provide that *the provisions* of the act or sections become effective on a given date.
- ▶ A bill that *does not* contain an emergency clause cannot have an effective date earlier than 90 days after the end of the legislative session.
- ▶ Do not use the short title in the effective date section. Use "this act" or "Sections \_\_\_ through \_\_\_ of this act". There have been enough horror stories in New Mexico law to make this a blanket prohibition, even if the only sections in the bill are under a short title.

#### *Example:*

15 | Section 12. EFFECTIVE DATE.--The effective date of the  
16 | provisions of this act is July 1, 2009.

If an effective date section is written any differently than the above example, the drafter must carefully think through both the intention and the effect of the change, and all sections of the bill must be accounted for, preferably by inclusion in the effective date section (or emergency clause if one is included in the bill). Sections that are mentioned become effective when stated; sections not mentioned become effective 90 days after the session. The drafter must guard against unintended results when drafting an unusual effective date section.

*Examples:*

15 | Section 15. EFFECTIVE DATE.--The effective date of the  
16 | provisions of Sections 1 through 9 and 13 of this act is July 1,  
17 | 2009. The effective date of the provisions of Sections 10 through  
18 | 12 and 14 of this act is January 1, 2010.

\* \* \*

15 | Section 22. EFFECTIVE DATE.--The effective date of the  
16 | provisions of Sections 14 through 20 of this act is July 1, 2009.

17 | Section 23. EMERGENCY.--It is necessary for the public  
18 | peace, health and safety that this act take effect immediately.

\* \* \*

15 | Section 43. EFFECTIVE DATE.--The provisions of this act  
16 | shall become effective upon certification by the secretary of  
17 | state that the constitution of New Mexico has been amended as  
18 | proposed by a joint resolution of the forty-ninth legislature,  
19 | second session entitled "A JOINT RESOLUTION PROPOSING AN  
20 | AMENDMENT TO ARTICLE 6, SECTION 16 OF THE CONSTITUTION OF NEW  
21 | MEXICO TO ALLOW REVISION OF JUDICIAL DISTRICTS."

► Infrequently, the drafter might need to make the effective date contingent upon some event happening. Since the legislative council service and the compiler do not necessarily know whether the event occurred, the effective date should provide that both be notified when it does occur.

- ▶ Whether a contingent law is effective determines which version of the section the drafter will use as the drafting base, and, perhaps, what is cited as the section history.

**Examples:**

12           Section 14. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--The  
13 provisions of this act become effective upon enactment into law  
14 of an appropriation for development training in the General  
15 Appropriation Act of 2009. The secretary of finance and  
16 administration shall notify the New Mexico compilation commission  
17 and the director of the legislative council service by July 1,  
18 2009 that the appropriation was made in that act.

3           Section 6. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--The  
4 effective date of the provisions of this act is January 1, 2007,  
5 unless congress or the United States department of transportation  
6 delays the implementation of the federal Unified Carrier  
7 Registration Act of 2005. If implementation of that act is  
8 delayed, the effective date of the provisions of this act will be  
9 the date determined by the federal government. The public  
10 regulation commission shall notify the New Mexico compilation  
11 commission and the director of the legislative council service if  
12 the effective date of this act is delayed and when the act  
13 becomes effective.

- ▶ The same reasoning applies to a repeal that is contingent a remote event. The legislative council service and the compiler need to know if the event happened so they know the state of the law.

**◆ Emergency Clause**

If the bill is an emergency measure, it is effective immediately upon passage and approval by the governor instead of the usual 90 days after the session. The constitution of New Mexico provides that the emergency must be stated in a separate section and the bill must be passed by a two-thirds' vote of each house (Article 4, Section 23). If the required vote is not achieved, the emergency clause is removed from the bill. An emergency clause cannot be added in the second house. The emergency clause is the last section of a bill and is standard language.

**Example:**

15 |           Section 10. EMERGENCY.--It is necessary for the public  
16 | peace, health and safety that this act take effect immediately.

The rules of both houses require the phrase "DECLARING AN EMERGENCY" to appear in the title of a bill with an emergency clause.

Note that the phrase "this act" is allowed in the emergency clause, certain effective date sections and certain temporary provisions; otherwise it is not normally allowed as a sole reference. A discussion of the use of "this act" is found in Chapter 4, under *Use of "This Act", "Herein" and Other Meaningless Phrases*.

## CHAPTER 4

### BILL DRAFTING

A bill is divided into numbered sections. If a section is long or contains several distinct narrative breaks, it is easier to read, understand and refer to if it is broken into subsections and sometimes even paragraphs and subparagraphs. The subject matter determines to what extent this division should be made. To enable readers to know the level of the division without checking back to the prior division, the following standard form is required by legislative rule:

- Section 1. *<indented 5 spaces>*
- A. Subsections: *<10 spaces>*
- (1) paragraphs: *<15 spaces>*
- (a) subparagraphs *<20 spaces>*, containing: 1) items. *<run-on>*

When used in a bill, sections carry a number designation, e.g., "Section 1.". The other divisions of a section carry the appropriate letter or number designation. If a division is made in a bill, there must be at least two of them. Said another way, there cannot be an "A." without a "B." a "(1)" without a "(2)" and so forth.

#### ◆ Section Headings ◆

The section heading immediately precedes the text and indicates the contents of the section. Headings should be descriptive, but not exhaustive. Failure to be inclusive in the heading does not invalidate the section. Since section headings are obvious quick-reference and research tools, the drafter should write them with that in mind. Each division in the heading is separated by a dash, and the end of the heading is separated from the text by a period and a dash.

#### *Example:*

```
15 |           Section 15. NOTICE OF ELECTION--PREPARATION OF BALLOTS.--
16 | The board of county commissioners shall. . .
```

◆ *Types of Sections* ◆

A section of law may:

1. enact a new law;
2. amend an existing law;
3. repeal an existing law;
4. repeal an existing law and enact a new one in its place;
5. recompile an existing law; or
6. recompile and amend an existing law.

A bill may contain any one or a combination of these types of sections.

◆ *Sections Enacting New Material*

Sections enacting new material are used for situations not covered by existing law.

*Example:*

13           Section 1.  PET STERILIZATION REQUIRED--ANIMAL SHELTERS TO  
14 PROVIDE.--  
15           A.  All animals adopted from animal shelters shall be  
16 sterilized before adoption.  
17           B.  Every animal shelter operating in the state shall  
18 provide sterilization services.  The animal shelter may charge a  
19 reasonable fee for the sterilization services provided.  
20           C.  Sterilization of animals in animal shelters may be  
21 performed by nonveterinarians if they have taken and passed the  
22 board's course for volunteer sterilizers.

► Note that new sections without assigned compilation numbers or attachment to an existing short titled act do **not** have quotation marks at the beginning and end of the section.

► ***Unless absolutely necessary, the drafter should leave the assignment of compilation numbers for new sections to the compiler.*** To assign a compilation number requires a great deal of familiarity with the design of the NMSA 1978. See Appendix B for a discussion of the issue.

**Example:**

9 | Section 7. A new Section 4-5-6 NMSA 1978 is enacted to  
10 | read:  
11 | "4-5-6. [NEW MATERIAL] ASSIGNMENT OF COMPILATION NUMBERS--  
12 | WHEN USED.--  
13 |         A. The drafter should not assign compilation numbers  
14 | unless it is absolutely necessary to ensure proper placement of  
15 | the section in the compilation.  
16 |         B. The drafter may assign compilation numbers if:  
17 |                 (1) the section is intended to be inserted into  
18 | and be construed as an integral part of a sequence of compiled  
19 | sections;  
20 |                 (2) the section is being added to an article or  
21 | act and there is a strong possibility that the bill will not give  
22 | the compiler a clue as to where the section should be compiled; or  
23 |                 (3) the section is being repealed and reenacted  
24 | because the revisions are so substantial and require so many  
25 | changes that to use brackets and underscoring would make it  
| almost impossible to read and understand the changes."

Note that this section uses quotation marks at the beginning and end of the section.

► If the intent is to have the new section become part of an existing short titled act, the drafter must affirmatively express that intent.

**Examples:**

► **No assigned compilation number:**

15 | Section 3. A new section of the Controlled Substances Act  
16 | is enacted to read:  
17 | "[NEW MATERIAL] FORFEITURES--USE OF PROPERTY.--"

► **Assigned compilation number:**

15 |           Section 3. A new section of the Controlled Substances  
16 | Act, Section 30-31-34.1 NMSA 1978, is enacted to read:  
17 |           "30-31-34.1. [NEW MATERIAL] FORFEITURES--USE OF  
18 | PROPERTY.--"

► Do not forget to check the short title section of the act to see if it needs updating. If the short title section still uses the session law section citations or if the citation from an earlier compilation has been enacted into law, the short title section should be added to the current bill and the appropriate amendment made to it. See Chapter 3, *Short Title*, for a discussion on writing short title citations.

► The drafter may also want to mention the addition of a section to the short titled act in the title.

*Example:*

15 | . . . ; AMENDING THE CONTROLLED SUBSTANCES ACT BY ADDING A  
16 | NEW SECTION TO ALLOW USE OF FORFEITED PROPERTY.

◆ *Sections Amending Existing Law*

An amendatory section is used to change an existing statute while retaining its original subject matter.

► The constitution requires that the entire statutory section being amended be set out in full (Article 4, Section 18). In addition, legislative council service drafting style requires that each statutory section being amended occupy its own numbered section in the bill.

► To amend a section of existing law, the text published in the session law, not the compilation, is used. The compilation is used only to find the history of the section and to check the compiler's notes. The most recent session law citation in the history gives the appropriate session law text.

► The rules of both houses of the legislature require that any bill "amending existing law by the addition and deletion of language must have all new matter underscored and must have all material intended to be deleted set forth in brackets". The use of brackets and underscoring is explained in the *Brackets, Line-Through and Underscoring* section of this chapter.

**Example:**

15 |       Section 1. Section 64-27-63 NMSA 1978 (being Laws 1933,  
16 | Chapter 154, Section 48) is amended to read:

17 |       "64-27-63. ARREST AND PROSECUTION OF VIOLATORS.--It  
18 | [~~shall be~~] is the duty of the sheriffs of the counties to make  
19 | arrests, and it is the duty of the district attorneys [~~and/or~~  
20 | ~~attorney general~~] to prosecute all violations of [~~this act~~]  
21 | Sections 64-27-1 through 64-27-65 NMSA 1978."

► Over the last few years, there has been a disturbing penchant for delayed repeals and numerous versions of a single section. When amending a section that has more than one version, the drafter must be sure he is amending the correct version. New drafters and drafters outside the legislative council service are strongly urged to seek the advice of a knowledgeable legislative council service drafter when faced with amending a multiple-version section. All drafters should fully inform the requester of the dangers of multiple versions, dangers that are then compounded by the desire to amend one or more of those versions.

**Example:**

15 |       Section 15. That version of Section 7-9-3 NMSA 1978 (being  
16 | Laws 1978, Chapter 46, Section 1, as amended by Laws 2003, Chapter  
17 | 28, Section 1 and also by Laws 2003, Chapter 203, Section 2) that  
18 | is to become effective July 1, 2006 is amended to read:

19 |       "7-9-3. DEFINITIONS.--As used in the Gross Receipts and  
20 | Compensating Tax Act: . . ."

### ◆ *Sections Repealing Existing Law*

A repeal section is used to eliminate existing statutory sections.

#### *Example:*

15 |           Section 4. REPEAL.--Section 59-60-61 NMSA 1978 (being  
16 | Laws 1929, Chapter 113, Section 2, as amended) is repealed.

► When repealing more than one section of the compilation, the sections are listed in numerical order and the parenthetical session law citations that follow must parallel the compilation section numbers. If any one of the sections has been amended, "as amended" appears only once before the closing parenthesis.

#### *Examples:*

15 |           Section 10. REPEAL.--Sections 12-1-8, 15-38-3 through  
16 | 15-38-6 and 15-43-21 NMSA 1978 (being Laws 1937, Chapter 39,  
17 | Section 8, Laws 1955, Chapter 176, Sections 1 through 4 and Laws  
18 | 1919, Chapter 16, Section 1, as amended) are repealed.

\* \* \*

15 |           Section 24. REPEAL.--Sections 55-12-1 through 55-12-16  
16 | and 55-13-1 through 55-13-7 NMSA 1978 (being Laws 1969, Chapter  
17 | 235, Sections 1 through 8, Laws 1971, Chapter 146, Section 8,  
18 | Laws 1969, Chapter 235, Sections 10 through 14, 16 and 17 and  
19 | Laws 1971, Chapter 102, Sections 1 through 7, as amended) are  
20 | repealed.

### ◆ *Delayed Provisions*

Delayed repeals and delayed effective dates are political decisions that make the law unnecessarily complicated as they attempt to bind future legislatures. One look at the NMSA 1978 will show the confusion caused by these tricks: a compilation number may have two or more disparate — or, even more dangerous, subtly different — sections set out that show the compiled section as it will be until a predetermined date and as it will be after that future date. The existing section shows the "effective until" date in parentheses; the future section appears in italics immediately after.

There has been an ongoing discussion in the legislative council service as to the preference of using a standard delayed repeal or effective date section at the end of the bill or putting delayed provisions in the substantive section. The advantage of putting the action in the substantive section is that it may lessen future problems with tracking and amending uncompiled delayed effective date and repeal sections. While there is no set drafting rule for this problem, the drafter is cautioned to think through the likelihood of future amendments to delayed dates.

### **Delayed Repeal**

- ▶ The requester must inform the drafter whether the entire section is to be repealed in the future or whether just the changes that are being drafted now will be repealed. If only the amendments are to be repealed, two versions of the section will need to be enacted in order to revive the previous incarnation of the law. The drafter also must provide for enactment and repeal dates.
- ▶ As discussed under *Sections Amending Existing Law*, delayed repeal is a complicated drafting maneuver that is best left to seasoned drafters. The complication comes not in the words, but in the intent and consequences of fairly simple words. Drafters outside the legislative council service are strongly advised to seek the aid of a knowledgeable legislative council service drafter.

### ***Example:***

#### ***Standard Delayed Repeal Section***

```
15 |           Section 45.  DELAYED REPEAL.--Section 6-6-6 NMSA 1978
16 | (being Laws 1990, Chapter 666, Section 6, as amended) is
17 | repealed effective January 1, 2015.
```

#### ***Complicated Delayed Repeal Section***

4           Section 3. DELAYED REPEAL.--Sections 7-25A-1 and 7-25A-2  
5 NMSA 1978 (being Laws 2006, Chapter 48, Sections 1 and 2, as  
6 amended) are repealed effective January 1, 2016. That version  
7 of Section 7-25A-3 NMSA 1978 (being Laws 1999, Chapter 177,  
8 Section 2, Laws 1985 (1st S.S.), Chapter 3, Sections 1 and 2, as  
9 amended) that was amended in Section 4 of this 2009 act is  
10 repealed effective January 1, 2015. Sections 7-25A-4 through  
11 7-25A-6 NMSA 1978 (being Laws 1966, Chapter 48, Section 4, Laws  
12 1978, Chapter 34, Sections 5 through 8, Laws 1966, Chapter 48,  
13 Section 5 and Laws 1999, Chapter 177, Sections 2 and 3, as  
14 amended) are repealed effective July 1, 2015.

**NB:** In an instance in which a section of law is being amended for the first time and the requester wants a delayed repeal of the entire section, the section history in the delayed repeal section must read ", as amended".

***Example:***

4           Section 1. Section 7-70-7 NMSA 1978 (being Laws 2001,  
5 Chapter 543, Section 1) is amended to read: . . .

22           Section 6. DELAYED REPEAL.--Section 7-70-7 NMSA 1978  
23 (being Laws 2001, Chapter 543, Section 1, **as amended**) is  
24 repealed effective January 1, 2015.

**Delayed Effective Date**

The only difference in a regular effective date section and a delayed effective date section is the date.

***Example:***

***Standard Delayed Effective Date Section:***

18           Section 46. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is January 1, 2012.

► Since effective dates are not compiled, if a drafter has to change a delayed effective date, he must do so from the law. When amending a delayed effective date section, the drafter should convert references to "this act" to session law cites.

*Example:*

16           Section 3. Laws 1990, Chapter 3, Section 10, as amended  
17 by Laws 1992, Chapter 17, Section 1 and also by Laws 1992,  
18 Chapter 104, Section 1, is amended to read:  
19           "Section 10. EFFECTIVE DATE.--  
20           A. The effective date of the provisions of  
21 Sections 1, 2, 4, 5, 7 and 9 of [~~this act~~] Chapter 3 of Laws  
22 1990 is January 1, 1991.  
23           B. The effective date of the provisions of  
24 Sections 6 and 8 of [~~this act~~] Chapter 3 of Laws 1990 is  
25 January 1, [~~2004~~] 2001."

◆ *Sunset Provisions*

Delayed repeal and sunset provisions are two distinctly different provisions. Delayed repeal pertains to the future repeal of a section of law; sunset pertains to the termination of an agency. The Sunset Act provides the procedures for legislative review, termination and renewal of agency life. It also provides a one-year period for the agency to wind up its affairs. To subject an agency to sunset is to subject it to all the provisions of that act. Prior to termination, the agency is subject to legislative finance committee review.

Sunset is most often used when creating professional and occupational licensing boards or other types of regulatory organizations that are administratively attached to executive departments or that are adjunct agencies. Such agencies are more likely to have their own funding stream, such as licensing fees, separate from the general fund; therefore, sunset may be appropriate because they probably do not receive the same scrutiny each year through the budget process that regular general fund agencies receive.

Sunset begins July 1 of an odd-numbered year and repeal occurs July 1 of the next even-numbered year. In the agency's statutes, the termination section includes a delayed repeal of the agency's statutes. The sunset section is standard and should not vary.

**Example:**

15 | Section 23. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
16 | The jewelers' board is terminated on July 1, 2015 pursuant to  
17 | the provisions of the Sunset Act. The board shall continue to  
18 | operate according to the provisions of the Jewelry Act until  
19 | July 1, 2016. Effective July 1, 2016, Sections 1 through 23 of  
20 | this act are repealed. [NB: Section references will be  
21 | converted to Chapter and Article or compilation numbers at the  
22 | next opportunity.]

If the drafter wishes to sunset an agency, he must not write it simply as a delayed repeal section. The following example is **wrong**:

**Incorrect Example:**

18 | Section 22. DELAYED REPEAL.--The Private Investigators and  
19 | Polygraphers Act is repealed on July 1, 2016 pursuant to the  
20 | Sunset Act.

**◆ Sections Repealing Existing Law and Enacting New Law**

After serious contemplation of the consequences of his actions, a drafter may decide to repeal a statute and put new material in its place. Repeal and reenactment is a form of blind legislation because legislators must go back to current law to see how it is being changed. This drafting alternative should be used sparingly; it is generally better to bracket and underscore if the new material is similar to the current law. See Appendix B for a discussion of when it is acceptable to repeal and reenact compilation numbers.

Until recently, when a section was repealed and reenacted, the old history was struck from the compilation when the new section was published. Now, since the compilation is part of a comprehensive database, the history notes for each section are maintained even when the section is repealed and reenacted. The history note will include the notation of repeal and reenactment.

**Example:**

History: 1953 comp., § 3-14-20, enacted by Laws 1969, ch. 240, § 345; 1977, ch. 222, § 84; repealed and reenacted by Laws 2008, ch. 41, § 3.

► For drafting purposes, the history will begin with 2008.

**Example:**

18 |       Section 1. Section 1-14-16 NMSA 1978 (being Laws 2008,  
19 | Chapter 41, Section 3) is amended to read:  
20 |       "RECOUNT OR RECHECK PROCEEDINGS.--. . . ."

► A section that is being repealed and reenacted is a new section and must have [NEW MATERIAL] before the section heading.

**Example:**

15 |       Section 4. Section 4-4-4 NMSA 1978 (being Laws 1887,  
16 | Chapter 87, Section 7, as amended) is repealed and a new Section  
17 | 4-4-4 NMSA 1978 is enacted to read:  
18 |       "4-4-4. [NEW MATERIAL] SECTION SAME AS ENACTMENT.--. . . ."

**◆ Sections Recompiling Existing Law**

There are times — **very rarely** — when a drafter may need to move sections from one place in the compilation to another; this is done by recompiling the section numbers. This is not a drafting alternative to be undertaken lightly because of the confusion that can result with cross-references in statutes, regulations and court cases.

In addition, since drafters are discouraged from assigning compilation numbers in the first instance, *recompiling* them doubly transgresses the dictum. Persons outside the legislative council service who are contemplating this kind of drafting maneuver are strongly urged to seek the advice of senior legislative council service drafters.

► A recompilation section is a temporary provision because it is nothing but an instruction to the compiler.

**Examples:**

15 |       Section 23. TEMPORARY PROVISION--RECOMPILATION.--Sections  
16 | 15-28-38 through 15-28-40 NMSA 1978 (being Laws 1965, Chapter 21,  
17 | Sections 2 through 4, as amended) are recompiled as Sections  
18 | 15-28-1 through 15-28-3 NMSA 1978.

\* \* \*

15 Section 14. TEMPORARY PROVISION--RECOMPILATION.--Section  
16 22-5-1 NMSA 1978 (being Laws 1918, Chapter 14, Section 1) is  
17 recompiled as Section 76-3-52 NMSA 1978. Section 22-5-2 NMSA  
18 1978 (being Laws 1918, Chapter 14, Section 2, as amended) is  
19 recompiled as Section 76-3-61 NMSA 1978. Section 22-5-3 NMSA  
20 1978 (being Laws 1918, Chapter 14, Section 3) is recompiled as  
21 Section 76-3-55 NMSA 1978. Section 22-5-4 NMSA 1978 (being Laws  
22 1918, Chapter 14, Section 8, as amended) is recompiled as  
23 Section 76-3-59 NMSA 1978. Section 22-5-5 NMSA 1978 (being Laws  
24 1918, Chapter 14, Section 9, as amended) is recompiled as  
25 Section 76-3-53 NMSA 1978.

It is possible that the drafter wants to move one or more sections of law from one chapter/article to another, but does not want to assign the new compilation numbers. In that case, simply provide adequate information so the compiler will know where to place the sections.

***Example:***

7 Section 14. TEMPORARY PROVISION--RECOMPILATION  
8 INSTRUCTIONS.--The compiler shall recompile Sections 11-111-11  
9 and 11-111-12 NMSA 1978 (being Laws 1899, Chapter 2, Sections  
10 23 and 28, as amended) as part of Chapter \_\_\_\_, Article \_\_\_\_ NMSA  
11 1978 <or> the Section Moving Act.

**◆ *Sections Recompiling and Amending Existing Law***

A section recompiling and amending existing law is placed in the main provisions of the bill. The placement order of the section in the bill is determined by the new compilation number.

*Example:*

1 Section 1. Section 3-14-1 NMSA 1978 (being Laws 1918,  
2 Chapter 14, Section 1) is recompiled as Section 2-3-19 NMSA 1978  
3 and is amended to read:

4 "2-3-19. RECOMPILATION--CONSULTATION.--[~~Sec. 4592~~]  
5 Recompilation shall [~~not~~] be attempted only after consultation  
6 with senior legislative council service drafting staff."

7 Section 2. Section 3-9-8 NMSA 1978 (being Laws 1990,  
8 Chapter 900, Section 3) is recompiled as Section 2-3-20 NMSA  
9 1978 and is amended to read:

10 "2-3-20. RECOMPILATION--CROSS REFERENCES.--

11 A. When recompiling a statute, the drafter [~~may~~]  
12 shall search the statutes, agency rules and court cases to  
13 determine the extent of the chaos he will create by recompiling  
14 sections of the NMSA 1978.

15 B. The compiler [~~shall~~] may annotate statutory  
16 references affected by the recompilation.

17 C. If a section is being recompiled and amended, the  
18 drafter shall use the new compilation number to determine where in  
19 the substantive portion of the bill the section belongs. If  
20 sections are being recompiled, but not amended, they are written in  
21 a temporary provision section in the back of the bill. A  
22 recompilation section is similar to a repeal section in appearance.

23 D. For the purposes of this section, "agency rules"  
24 means those rules that have been filed in accordance with the  
25 State Rules Act."

### ◆ *Combination of Sections*

A bill may contain a combination of any of the actions discussed in the previous sections of this chapter. Except for the standard repeal or recompilation section, all sections of the bill appear in numerical order by compilation number. In a bill that includes amendatory sections and new sections without compilation numbers, it is solely a function of bill design whether the new material goes before, after or in between the amendatory sections. What matters is that the reader can understand the internal logic and flow of the bill as a whole.

### ◆ *Brackets, Line-Through and Underscoring* ◆

New Mexico is fortunate that its constitution requires that a section to be amended be set out in full. The reader may have to consult surrounding statutes for a full understanding of the effect of the change, but he at least has the full text of the section in question. The rules of both houses require new material in amendatory sections to be underscored and material being deleted from existing law to be set out within brackets. For emphasis, the language to be deleted is lined through. The bracketed material then looks like this: [~~an obviousness of unwanted language~~]. Brackets, line-through and underscored new material clearly indicate what the section proposes to do without the necessity of comparing one piece of paper (the bill) against a separate piece of paper (the law book). Without those indicators, a bill would be blind legislation.

Following are rules and guidelines in regard to bracketing and underscoring:

- ▶ **Parentheses are never used in place of brackets.** Substitution of parentheses for brackets has caused ambiguity in the law in the past and does not constitute deletion of material within the parentheses.
- ▶ Brackets and underscoring are used only when amending existing law or constitutional provisions.
- ▶ Bracketed material comes before underscored material. Complete all bracketing before underscoring; that is, do not bracket one or two words, underscore a couple of words, then bracket again. The point is to maintain the flow of the material, which choppy bracketing and underscoring certainly does not do.

#### *Example:*

15	"47-8-3. FEE.--The fee for practicing the art of sword
16	swallowing is [ <del>five dollars (\$5.00)</del> ] <u>twenty-five dollars</u>
17	( <u>\$25.00</u> ) a year. An application for a license [ <del>must</del> ] <u>shall</u> be
18	filed on or before [ <del>the tenth of</del> ] January <u>10</u> of each year."

\* \* \*

***Do not use:***

15 | ". . . [~~five dollars~~] twenty-five dollars [~~(\$5.00)~~]  
16 | (\$25.00) a year. . ."

15 | "Any person owning [~~twenty-five~~] one [~~horses~~] horse [~~may~~]  
16 | shall. . ."

► When changing the tense, ending or spelling of a word, the entire word to be changed must be bracketed and the correct word inserted and underscored. Never bracket or underscore part of a word.

***Examples:***

**Use:** "Any person owning [~~twenty-five horses may~~] one horse shall. . ."

**Do not use:** "Any person owning [~~twenty-five~~] one horse[~~s~~] may [~~shall~~]"

**Use:** "Any person owning [~~one horse~~] six horses. . ."

**Do not use:** "Any person owning [~~one~~] six horse~~s~~. . ."

► When changing or creating the possessive case, the incorrect word is bracketed and the correct word is underscored.

***Examples:***

[~~officer's~~] officers'

[~~lobbyists~~] lobbyist's

[~~drivers'~~] driver's

[~~legislators~~] legislator's

► When changing a dollar amount, the entire phrase is bracketed and the new amount is underscored.

**Use:** "A fee of [~~one thousand dollars (\$1,000)~~] one thousand three hundred dollars (\$1,300). . ."

**Do not use:** "A fee of one thousand three hundred dollars [~~(\$1,000)~~] (\$1,300). . ."

► Brackets and underscoring are not used when the only change consists of changing the upper or lower case of a letter.

**Example:**

**Do not use:** [~~Congress~~] congress

**Use:** a simply typed lower case congress

► Brackets and underscoring are not used when the only change consists of adding or deleting punctuation. Both capitalization and punctuation changes should be made as necessary so that sections being amended conform to New Mexico drafting style.

**Examples:**

**Session law reads:**

**When amending, change to:**

". . .by the Attorney General, State Auditor, or Governor. . ."

". . . by the attorney general, state auditor or governor. . ."

". . .by the Attorney General, State Auditor, or Governor. . ."

". . .by the attorney general, state auditor or [~~Governor~~] governor. . ."

"No person shall litter; Provided that any person. . ."

"No person shall litter, [~~Provided that~~] but any person. . ."

► All consecutive wording being deleted needs only initial and closing brackets regardless of the number of lines, pages or indentations involved.

► When inserting or deleting entire subsections, paragraphs or subparagraphs, underscore or bracket the letter or number along with the language, then bracket or underscore the letter or number at the next item as appropriate.

**Example:**

10 |           Section 3. Section 76-6A-3 NMSA 1978 (being Laws 1932,  
11 | Chapter 19, Section 3, as amended) is amended to read:  
12 |           "76-6A-3. DEFINITIONS.--As used in the Fruits and  
13 | Vegetables Act:  
14 |                   [A. ~~"board" means the board of regents of New Mexico~~  
15 | ~~state university;~~  
16 |                   B.] A. "department" means the New Mexico department  
17 | of agriculture;  
18 |                   B. "division" means the agricultural products

19 | marketing division of the economic development department;  
20 |           C. "chile" means the Spanish adaptation of the chili  
21 | pepper and includes both green and red varieties;  
22 |           D. "fruit" means [~~apples, cherries, and plums~~] fruit  
23 | grown by New Mexico farmers; and  
24 |           [E. ~~"pinto beans" means frijoles~~]  
25 |           E. "vegetable" means chile, pinto beans and squash."

► Note that the definitions are not in alphabetical order. When amending, the drafter should maintain alphabetical order.

◆ *Use of [NEW MATERIAL]* ◆

A new substantive (compilable) section in a bill must have the notation [NEW MATERIAL] if the section:

- (1) is part of a bill that also contains other sections that amend current law or assign compilation numbers;
  - (2) assigns a compilation number;
  - (3) is enacted as part of an existing short titled act, whether or not a compilation number is assigned;
  - (4) repeals existing law and enacts a section under the same compilation number; or
  - (5) is in a bill in which [NEW MATERIAL] appears in other sections.
- The point of [NEW MATERIAL] is to alert the reader that he must read the section in full rather than scan for bracketed and underscored material. In sections that are made a part of an existing act or that assign compilation numbers, the reader is also notified that he may have to look in the NMSA 1978 to understand the section and how it relates to current law.

*Examples:*

17 | Section 5. [NEW MATERIAL] ANNUAL REPORT.--Every creator of  
18 | short examples shall file a report annually with the commission.  
19 | The commission shall issue a short notice of receipt of the  
20 | short example.

21 | Section 6. Section 5-5-5 NMSA 1978 (being Laws 1955,  
22 | Chapter 5, Section 5, as amended) is amended to read:

23 | "5-5-5. EXAMPLES RETAINED BY COMMISSION.--All examples  
24 | less than [~~ten~~] five inches in length shall be retained by the  
25 | commission in appropriate files."

\* \* \*

16 | Section 14. A new section of the Majority Rules Act is  
17 | enacted to read:

18 | "[NEW MATERIAL] ELECTION COUNT TELEVISED.--The counting of  
19 | the ballots for every election held pursuant to the Majority  
20 | Rules Act shall be televised. Every television station that  
21 | broadcasts news programming in New Mexico shall provide ballot-  
22 | counting coverage without commercial interruptions."

23 | Section 15. Section 22-99-87 NMSA 1978 (being Laws 1914,  
24 | Chapter 22, Section 87) is repealed and a new Section 22-99-87  
25 | NMSA 1978 is enacted to read:

1 "22-99-87. [NEW MATERIAL] SECRETARY OF STATE--  
2 PRESENCE AT ELECTION COUNT.--The secretary of state shall be  
3 present at every election count held pursuant to the Majority  
4 Rules Act."

5 Section 16. Section 22-99-93 NMSA 1978 (being Laws 1932,  
6 Chapter 17, Section 3, as amended) is amended to read:

7 "22-99-93. DRESS CODE.--

8 A. If the secretary of state is a woman, she shall  
9 wear a floor length gown that, while festive, reinforces the  
10 dignity of the office of secretary of state and the gravity of  
11 the election.

12 B. If the secretary of state is a man, he shall wear  
13 a tuxedo with lapels, tie and cummerbund in Indian or Hispanic  
14 motif and shirt studs of turquoise.

15 [~~B.~~] C. The secretary of state [~~shall~~] may require  
16 the election clerks to wear outfits that coordinate or contrast  
17 with [~~her~~] the secretary's ensemble."

Note that this last example is a prime example of the error of writing too much detail into the law. It seems fair to say that the legislature is overstepping its bounds when it tries to exert this much control or dictates this degree of specificity.

► The following is an example of a rare form of [NEW MATERIAL], but one that is most confusing to drafters and proofers.

**Example:**

12           Section 1. A new section of the Community Corrections  
13 Act is enacted to read:  
14           "[NEW MATERIAL] GROUP HOMES--TORT CLAIMS ACT COVERAGE.--  
15 Group homes operated by providers contracting with the state  
16 are covered by the Tort Claims Act."  
17           Section 2. [NEW MATERIAL] SHORT TITLE.--Sections 2  
18 through 14 of this act may be cited as the "Contractors  
19 Liability Act".

**◆ Use of "This Act", "Herein" and Other Meaningless Phrases ◆**

In original legislation, the phrase "this act" may be a clear statement. If amendments were never made or if all sections of a certain act were simultaneously amended, the meaning of the term or its application might remain clear. Unfortunately, this is not usually the case; very few acts have remained untouched since their enactment. Piecemeal amendments are made, sections are added or deleted and the meaning of "this act" becomes uncertain. If the phrase is included in the original section that is to be amended and is allowed to remain, it may refer to the amendatory act or to the entire original act as previously amended, but excluding the present amendment. "This act" also may be immediately confusing to the reader. Does "this act" refer to all pages of the draft, which may contain more than one act, or does it refer to a particular part of the statutes?

► Avoid the use of "this act" whenever possible. This can be done by:

1. referring to the short title of the act:

"As provided in the Radiation Act. . ."

2. referring to a compilation number:

"As provided in Section 1-1-1 NMSA 1978. . ."

3. referring to the specific behavior prohibited:

"Any person selling goods below cost. . ." (instead of "violating the provisions of this act")

4. putting the penalty in the same section in which the violation is defined and referring to the section:

"Any person violating the provisions of this section. . ." (instead of "the provisions

of this act")

- ▶ When a reference to "this act" cannot be avoided, qualify it:

"Pursuant to the provisions of Section 5 of this act. . ."

"As used in Sections 1 through 3 of this act. . ."

"As provided in this 2004 act. . ." (rare)

The qualification will enable the reader to identify the provisions, will provide adequate instructions to the compiler and will force a subsequent drafter to be specific when she amends the act.

- ▶ When referring to a short titled act more than once in a subsection, name the act first and use "that act" for subsequent references:

". . .the Rig Water Act. . . As provided in Section 4 of that act. . ."

- ▶ There are a few instances where the use of "this act" is acceptable:

1. when creating a short title without assigning compilation numbers:

"This act may be cited as the "Self-Care Act"."

2. in the standard effective date section:

"The effective date of the provisions of this act is July 1, 2004."

3. in the standard emergency clause:

"It is necessary for the public peace, health and safety that this act take effect immediately."

4. in an applicability section where a cite to a short title would be incorrect:

"The provisions of this act apply to taxable years beginning on or after January 1, 2009." [Do not use an existing short title, particularly when amending only a portion of that act. For example, to cite the entire Income Tax Act would be incorrect if the bill only amends tax tables for married, filing separately.]

5. in a severability section where no short title exists and all sections of the bill relate to the severability:

"If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected." [Normally, if the drafter is worried about severability, he probably has a bill that should have a short title.]

6. in certain temporary provisions and appropriations:

". . .appropriated. . .to carry out the provisions of this act. . ."

"On the effective date of this act, all property,. . .of the blah blah department shall be transferred. . ."

► In amendatory legislation, avoid "this act" in the added language and replace "this act" with a specific statutory citation when the term occurs in the original language. Frequently, the compiler has inserted in brackets a note giving this citation, but since the compiler is only guessing as to the legislative intent, the drafter must check the citation to see if she agrees that it is a correct citation. The drafter brackets the "this act" citation and underscores the correct citation in the bill.

***Examples:***

"Any person violating the provisions of [~~this act~~] Sections 15-3-1 through 15-3-6 NMSA 1978. . ."

"As used in Sections [~~10 and 11 of this act~~] 33-33-33 and 33-33-34 NMSA 1978. . ."

**◆ *Other Meaningless Words***

Words and phrases such as "herein", "hereinbefore", "hereinafter", "above", "below", "the preceding section", "the following section" and the like will lose meaning even quicker than "this act". Absent a direct order from the requester, there is no instance when these words are acceptable in bill drafting.

See Chapter 7 for further discussion on legislative style and language provisions.

**◆ *Internal Cites* ◆**

Internal cites include references to other parts of the bill, references to existing state or federal law, references to court cases and references to state, local and federal agencies, programs, positions and funds, etc.

► Drafters are reminded that amendment by reference is prohibited by the constitution of New Mexico. The New Mexico supreme court has ruled that only procedural law may be adopted by reference. This rule is not always as clear-cut as drafters would like; distinguishing between substantive and procedural provisions may be difficult in certain cases.

► Drafters are also reminded that the purpose of bill drafts is to clearly inform members of the legislature, and the public, what changes to the law are proposed. Drafters should endeavor to limit the reader's need to research other statutes, or even other pages of the bill, to understand the provisions of a given section.

- ▶ Cross-references to existing law, whether in the same act or not, should be used sparingly and only when the absence of the reference would lead to confusion or an unacceptable lack of clarity.

***Examples:***

**Use:**

"...is sixteen years of age and has been emancipated by the court. . ."

**Do not use:**

"...is an adult as provided in Section 4-4-4 NMSA 1978. . ."

**Do not use:**

"...state employee as defined in Subsection F of Section 3 of the Blah Blah Act. . ."  
." [The defined term covers the whole act; the whereabouts of the definition does not need to be restated.]

\* \* \*

"...the board created in Section 14-3-3 NMSA 1978. . ." [It does not matter in what section the board was created; that it exists is sufficient.]

- ▶ It is the drafter's choice as to how specific a cross-reference is, and the specificity will probably depend on the request and the material. For example, the drafter may need the specificity of "Subparagraph (d) of Paragraph (4) of Subsection G of Section 5 of the Blah Blah Act" or the simpler "Section 5 of the Blah Blah Act" may suffice. A note of warning about very specific cross-references, that is, references to the most specific unit possible rather than the most general unit possible: there is more to keep track of and remember to fix when divisions of sections are changed through the amendment process, either now or in the future.

- ▶ The legislative council service drafter must double check federal cites and court cases to ensure the reference is correct. The proofing office is responsible only for checking federal short titles.

◆ ***Substitute Bills*** ◆

A substitute may be made for a bill whenever the bill is open to amendment. If adopted, the substitute takes the place of the original bill. Article 4, Section 15 of the constitution of New Mexico, which states that no bill shall be so altered or amended on its passage as to change its original purpose, applies to substitute bill titles. The title and subject matter of the substitute must be related to the title and subject matter of the original bill.

- ▶ A substitute bill goes through the same process as an original bill, that is, it must pass both houses. For example, a senate bill that substitutes a house bill must go back to the house for passage; it is not an amendment that the house can concur in or ask the senate to recede from.

- ▶ A substitute bill may be adopted by a committee as a substitute for a bill referred to that committee if the bill is in the committee or a substitute bill may be adopted on the floor of either

house as a substitute for a bill on third reading and final passage. The form of a substitute bill is the same as for a bill prepared for introduction, except that the heading, which appears on line 1 and one or more single spaces above line 1, states that it is either a committee or floor substitute for a particular bill. Since there are no individual sponsors on a substitute bill, the phrase "INTRODUCED BY" is omitted.

**Examples:**

1	HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
2	HOUSE BILL 168

\* \* \*

1	SENATE FLOOR SUBSTITUTE FOR
2	HOUSE BILL 10

- ▶ One substitute bill may substitute for another.

**Example:**

1	HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE
2	SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
3	SENATE BILL 456

- ▶ A single bill may be substituted for many bills on the same subject.

**Examples:**

1	SENATE FINANCE COMMITTEE SUBSTITUTE FOR
2	SENATE BILLS 3, 4 & 7 AND HOUSE BILLS 4, 27, 66 & 112

\* \* \*

1	HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
2	HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
	HOUSE BILLS 76, 137 & 285 & SENATE BILL 4 AND SENATE BILL 5

Note that in the last example, Senate Bill 4 was substituted by HBIC (note the use of the ampersand); Senate Bill 5 has been brought into the process by HJC (note the use of "and").

***Examples:***

- ▶ Slug lines for substitute bills are discussed in Chapter 8.

***Examples:***

SFI/HB10  
HAGC/SCC/SB 456  
SFC/SB 3, 4 & 7 and HB 4, 27, 66 & 112  
HJC/HBIC/HB 76, 137 & 285 & SB 4 and SB 5

- ▶ The number and distribution of introduction copies of a substitute bill are the same as for a regularly introduced bill. Substitute bills are bound in the bill jacket of the house submitting the substitute, regardless of the original bill's house of origin. Additional copies of a proposed committee substitute are provided to committee; additional floor copies are provided whether the substitute is a committee or floor substitute. Senate substitutes require 60 floor copies; house substitutes require 80 floor copies.

**◆ *Uniform Acts and Model Legislation* ◆**

Uniform acts are developed by the uniform law commissioners, a national legislative drafting organization to which New Mexico belongs. Model legislation is usually developed by national industry or other interest groups. Since these proposals are shopped around the nation, they do not match New Mexico style. The legislative council service drafter is expected to conform these proposals to New Mexico style and format in the same way he would conform any other draft proposal submitted to the office. The Uniform Commercial Code is an exception to this conform rule.

## **CHAPTER 5**

### **RESOLUTIONS AND MEMORIALS**

#### **◆ Resolutions ◆**

A resolution is a formal declaration of the legislature concerning a certain subject it cannot or does not wish to control by law. Resolutions are either joint, concurrent or simple and require no action on the part of the governor. By far, the most common resolution is a joint resolution proposing to amend the constitution of New Mexico.

#### **◆ Joint Resolutions**

Joint resolutions are generally used to:

- (1) propose amendments to the state constitution;
  - (2) ratify amendments to the federal constitution; or
  - (3) express the approval of the legislature in those instances where by statute the legislature has required only legislative (not executive) approval, such as approving the sale, trade or lease of state-owned real property as required by Section 13-6-3 NMSA 1978.
- In preparing a proposed constitutional amendment, the drafter must draft from the compilation since this is the only place the constitution appears in its entirety as an official document.
- There is no specific provision for repealing all or any part of the constitution; therefore, deletions are submitted in the form of a proposed amendment to the constitution. The rules governing brackets and underscoring apply to constitutional amendments. The last section of the resolution must contain a provision for approval or rejection by the people at the next general election or a special election. No matter how many sections there are in the resolution, the entire document is considered one amendment for the purposes of writing the election section.

- ▶ The resolving clause of a joint resolution proposing to amend the constitution begins at the margin two numbered lines below the title and is typed all in capital letters.

**Example:**

10 | A JOINT RESOLUTION  
11 | PROPOSING AN AMENDMENT TO ARTICLE 7, SECTION 1 OF THE CONSTITUTION  
12 | OF NEW MEXICO TO LOWER THE VOTING AGE TO EIGHTEEN YEARS.  
13 |  
14 | BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

- ▶ Only the title of the constitutional amendment appears on the ballot, which means it is all the voter has to go by when she is in the booth trying to decide how to vote. Absent the requester's request for an obscure title, it is incumbent upon the drafter to craft a title that clearly and fairly lets the voter know what the amendment does.
- ▶ Each section of the constitution proposed to be amended appears within a separate section in the body of the joint resolution.

**Example:**

17 | Section 1. It is proposed to amend Article 26, Section 3 of  
18 | the constitution of New Mexico to read:  
19 | "Each county [~~clerk must~~] sheriff shall be a qualified elector  
20 | in his county."  
21 | Section 2. It is proposed to amend Article 26 of the  
22 | constitution of New Mexico by repealing Section 4 and adding a new  
23 | Section 4 to read:  
24 | "Each county sheriff shall maintain his office at the county  
25 | seat of his county."  
26 | Section 3. It is proposed to amend Article 26 of the  
constitution of New Mexico by adding a new Section 5 to read:  
1 | "No person under the age of majority is eligible to serve as a

2 | county sheriff."

3 |       Section 4. It is proposed to amend Article 26 of the  
4 | constitution of New Mexico by repealing Section 6.

5 |       Section 5. The amendment proposed by this resolution shall be  
6 | submitted to the people for their approval or rejection at the next  
7 | general election or at any special election prior to that date that  
8 | may be called for that purpose.

► Drafters should be familiar with Article 19, Section 1 of the constitution of New Mexico, which requires that if two or more proposals are initiated by the legislature, they must be submitted separately so as to enable the electors to vote on each of them separately. This section imposes a single-subject requirement on constitutional amendments just as Article 4, Section 16 does for bills. The purpose of the provision is to prevent "logrolling", whereby the legislature joins two or more independent measures to coerce voters into accepting something they may not want in order to get something they do want. The latest court case on this issue was *Clark v. State Canvassing Board*, 119 N.M. 12, 888 P.2d 458 (1995). In that case, the court determined that a proposed constitutional amendment permitting lottery and certain games of chance was logrolling:

We hold that, because the rights created, the means of implementation, and the subject matter and purpose of the two prongs of Amendment 8 are not interdependent, and have no direct, necessary, or logical connection in their operation, they should have been submitted separately to the voters. See *Chavez*, 108 N.M. at 48, 766 P.2d at 308.

The court said that an overarching theme is not sufficient to demonstrate the needed "single object" of an amendment:

Although we agree that both prongs of Amendment 8 also relate to an overarching theme, more is required to demonstrate a single object. The *Chavez* Court noted, "We cannot ignore the **rational linchpin** that joins the qualifications and merit selection of judges, their numbers, their districting, and the selection of their chief administrative officers." *Id.* (emphasis added). In addition to relating to an overarching theme, the elements of the amendment in *Chavez* were all interdependent and each was necessary to effectuate the desired reform. The requirement of a rational linchpin joining the various elements of an amendment serves to prevent the linking of independent propositions simply by the selection of a sufficiently broad overarching theme.

In another lesson for drafters in that case, the court said:

. . . we also agree with the Arkansas Supreme Court that a ballot title should be intelligible, and impartial. '[I]t should be complete enough to convey an intelligible idea of the scope and import of the proposed law[,] and 'be free from any misleading tendency whether of amplification, of omission, or of fallacy.'

Amendments submitted by an independent commission created by law may be submitted by single ballot question.

► When the joint resolution ratifies an amendment to the federal constitution or approves the sale, trade or lease of state-owned real property, the resolving clause follows the "WHEREAS" paragraphs. See Chapter 9, *Examples and Forms*, for an example of a ratification and a sale of real property.

◆ *Standard Clauses for Joint Resolutions*

► *Resolving Clause for Proposed Constitutional Amendment:*

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO: [serves as the "enacting clause" of constitutional amendments]

► *Election Section for Proposed Constitutional Amendment:*

15 |       Section \_\_\_\_\_. The amendment proposed by this resolution shall  
16 | be submitted to the people for their approval or rejection at the  
17 | next general election or at any special election prior to that date  
18 | that may be called for that purpose.

► *Resolving Clause Ratifying Federal Constitutional Amendment:* (follows text)

19 |       NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE  
20 | OF NEW MEXICO that the proposed amendment be hereby ratified by the  
21 | state of New Mexico; and

22 |       BE IT FURTHER RESOLVED that certified copies of this resolution  
23 | be forwarded immediately to the administrator of general services,  
24 | Washington, D.C., and to the president of the senate and the speaker  
25 | of the house of representatives of the congress of the United  
   | States.

► ***Resolving Clause Approving Sale, Trade or Lease of State-Owned Real Property:***

(follows text)

15 | NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE  
16 | OF NEW MEXICO that. . .

◆ ***Concurrent Resolutions***

A concurrent resolution is a declaration by either house that is concurred in by the other house. This form is used for the adoption of joint rules of the legislature. The concurrent resolution begins with a series of "WHEREAS" clauses and ends with one or more resolving clauses. The main resolving clause is "NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES (or SENATE), THE SENATE (or HOUSE OF REPRESENTATIVES) CONCURRING THEREIN, that. . .".

Additional resolving clauses are "BE IT FURTHER RESOLVED that. . .".

◆ ***Simple Resolutions***

A simple resolution is a declaration by either house expressing the feeling of that body on some subject. It does not require participation by the other house. The resolving clause is "NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES (or SENATE) OF THE STATE OF NEW MEXICO that. . .".

This form is rarely used. Its customary use is as an internal request or expression within either the house or the senate. A simple resolution should never be used as a substitute for a memorial.

► Note that resolving clauses are written in the subjunctive mood ("be it. . ."); therefore, the resolution itself needs to be written in the subjunctive mood.

◆ ***Memorials*** ◆

A memorial is an expression of legislative desire, usually addressed to another governmental body, in the form of a petition or declaration of intent. Memorials are also used for encomia and condolences, but Joint Rule 6-1 militates against that use. Memorials can be either joint or simple and require no action on the part of the governor.

► Memorials, and certain resolutions, are generally written as requests, not demands.

► Like resolutions, memorials are written in the subjunctive mood.

### ◆ *Joint Memorials*

Joint memorials are memorials acted upon by both houses. The text of a joint memorial is a series of "WHEREAS" clauses that culminates in resolving clauses: "NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that. . ." and "BE IT FURTHER RESOLVED that. . .".

### ◆ *Simple Memorials*

Simple memorials are those of only one house and do not require the approval or acquiescence of the other house. The resolving clauses are "NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES (or SENATE) OF THE STATE OF NEW MEXICO that. . ." and "BE IT FURTHER RESOLVED that. . .".

► No matter the type of memorial, the last resolving clause must include the transmission instructions.

#### *Example:*

14 |           BE IT FURTHER RESOLVED that copies of this memorial be  
15 | transmitted to the secretary of economic development, the secretary  
16 | of finance and administration and the governor.

► For mass distributions, send the memorial to a single state agency for distribution by it. For example, if the memorial concerns school districts, have it transmitted to the public education department for distribution to school superintendents.

#### *Examples:*

14 |           BE IT FURTHER RESOLVED that a copy of this memorial be  
15 | transmitted to the secretary of public education for distribution to  
16 | school superintendents.

\* \* \*

14 |           BE IT FURTHER RESOLVED that copies of this memorial be  
15 | transmitted to the legislative education study committee and the  
16 | coalition of school administrators for appropriate distribution.

Do not send copies to all members of an interim committee; it is sufficient to send a copy to the director of the appropriate permanent committee, who will ensure proper distribution.

### ◆ *Processing of Resolutions and Memorials* ◆

Resolutions and memorials are prepared for introduction in the same manner as bills. The "original" is jacketed, and the required copies are included. Joint resolutions and joint memorials are usually printed, but frequently simple memorials will be ordered "not printed, not referred to committee" because of their limited function. Resolutions and memorials are enrolled and engrossed after passage, a printed cover page is prepared and E&E copies are sent to the secretary of state for distribution. Joint resolutions proposing amendments to the constitution of New Mexico are numbered consecutively by the secretary of state (example: C.A. 2), who arranges for them to be placed on the ballot for submission to the people.

### ◆ *Presentation Copies*

When a resolution or memorial directs that copies are to be sent to governmental agencies or individuals, special copies are prepared in addition to the E&E copies. These presentation copies are typed on heavy parchment paper, with a printed heading and the great seal of the state.

Whenever possible, the text should be contained on a single page because recipients of memorials may wish to frame the presentation copy for display. To accomplish this, the typist is allowed a great deal of leeway, and the general rules of spacing, indentation and capitalization do not apply to presentation copies. The typist may single space the lines, adjust the margins and, in general, make any adjustments necessary to achieve a dignified and impressive-looking document on a single page. If, however, the text is too long to be contained on a single page, continuation sheets are available.

## **CHAPTER 6**

### **OTHER LEGISLATIVE DOCUMENTS**

#### **◆ Amendments ◆**

During the legislative process, changes in the introduced bill are made by amendment.

Anyone can propose an amendment to a committee. There is no prohibition, either by law or rule, against citizens proposing amendments to a legislative committee; in fact, in the olden days, amendments were frequently proposed by lobbyists. However, tradition has changed and all amendments these days are sponsored by legislators, even if they have been drafted by lobbyists. Floor amendments, of course, can only be offered by legislators in their respective houses.

If a committee adopts amendments to a bill, they are included in the committee report for that bill. Proposed amendments have no weight unless they are included in a committee report adopted by the chamber. Likewise, floor amendments only count if they are accepted by majority vote of the chamber.

- ▶ Before drafting an amendment, the drafter checks the most recent issue of the *Daily Bill Locator* to find out where the bill is and what amendments have been previously adopted.
- ▶ If the bill has been amended previously, the drafter should mark the amendments into a copy of the printed bill along with the language he is proposing in his amendment, so he can see that everything fits properly into the bill. Once the new language has been determined, it is necessary to check the title and the remainder of the bill for any changes required by the amendment.
- ▶ There are several types of amendments:
  1. proposed amendments directed to a committee;
  2. committee reports with amendments;
  3. floor amendments; and
  4. conference committee reports with amendments.

► Amendments have a standard form and style just like bills. In addition to letting the legislature know what changes are being proposed for a bill, amendments instruct the E&E staff how to prepare the final version of the bill. E&E clerks are often new employees; it makes their job easier if they can depend on uniform instructions. There are, of course, times when form and style have to be violated, but the drafter should make every effort to conform amendments to the standard.

### ◆ *Amendment Form*

Following are the rules governing the form of amendments.

► Proposed committee amendments are prepared on white paper. At the upper margin the legislature and session is centered, then PROPOSED AMENDMENT DIRECTED TO A COMMITTEE is centered one or two spaces below. The date is flush right. In the legislative council service, committee amendments are always dated the day they are prepared by the office, not pre- or post-dated. Committee amendments are addressed to "Mr. Chairman" or "Madam Chairwoman". Most format spacing is a function of the length of the amendment; the point is to make the document look attractive.

#### *Example:*

FORTY-NINTH LEGISLATURE  
FIRST SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

February 3, 2009

Mr. Chairman:

► Floor amendments and committee reports are prepared on special paper with a blue (senate) or yellow (house) left margin. They are addressed to "Madam President" in the senate and "Mr. Speaker" in the house.

► If a bill has been amended previously, that fact must appear as part of the bill heading on the amendment.

#### *Examples:*

Mr. Chairman:

I propose to the HOUSE APPROPRIATIONS AND FINANCE COMMITTEE the following amendments to

HOUSE BILL 345, as amended

\* \* \*

Madam President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 27, as amended

► If the bill has been substituted, previous bill amendments no longer matter; however, if the substitute has been amended, that fact must be noted.

***Example:***

Madam Chairwoman:

I propose to the SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE the following amendments to

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 123, as amended

► ***Do not amend an amendment.*** Instead, strike all of a previously adopted amendment and then amend the original language in the bill.

***Example:***

1. Strike House Appropriations and Finance Committee Amendments 2 and 3.

2. Strike Items 3 and 4 of House Floor Amendment 1.

3. On page 8, line 5, strike "three hundred thousand dollars (\$300,000)" and insert in lieu thereof "five hundred thousand dollars (\$500,000)".

► Each numbered item on a proposed committee amendment or committee report is considered a separate amendment. Each numbered item on a floor amendment is considered an item of one amendment.

***Example:***

1. Strike House Judiciary Committee Amendment 2.

2. Strike Item 2 of House Floor Amendment 1.

### ◆ *Amendment Style*

There are also rules governing the style of amendments.

► Amendments are made to specified pages and lines of the introduced bill, memorial, resolution or substitute. Amendments must be in page/line sequential order; for example, do not amend page 3, then backtrack to page 1 for another amendment or make changes on line 15, then return to line 4 for other changes.

#### *Example:*

1. On page 5, lines 6 and 7, strike "five dollars (\$5.00)" and insert in lieu thereof "ten dollars (\$10.00)".
2. On page 6, line 1, strike "state of".
3. On page 6, line 4, after "filing" insert "after notice".
4. On page 6, line 23, strike "shall" and insert in lieu thereof "may".
5. On page 7, line 14, strike "may" and insert in lieu thereof "shall".

► Sometimes it is possible simply to identify what to strike; at other times some word or punctuation needs to be used as a point of reference, or marker. Additions must always be placed by the use of a marker.

#### *Example:*

Mr. Chairman:

I propose to the HOUSE APPROPRIATIONS AND FINANCE COMMITTEE the following amendments to

#### HOUSE BILL 43

1. On page 2, line 19, strike "eight" and insert in lieu thereof "nine".
2. On page 2, line 20, strike "one member" and insert in lieu thereof "two members".
3. On page 2, line 21, after the period insert "The public members shall have no interest in the business regulated.".

4. On page 2, line 22, after the second occurrence of "members" strike the remainder of the line, strike all of lines 23 and 24 and strike line 25 through the period.

5. On page 2, line 25, strike "Of" and insert in lieu thereof "of".

6. On page 5, line 3, before the period insert "; provided, however, that the secretary shall immediately notify the governor of the shortage".

► Strike only the material that needs to be struck, including punctuation; do not strike material and then reinsert it. The exception to this rule is that money, including words and figures, is struck in its entirety and reinserted.

***Incorrect:***

1. On page 1, line 16, strike "PRESCRIBING PENALTIES;" and insert in lieu thereof "PRESCRIBING CRIMINAL PENALTIES;".

***Correct:***

1. On page 1, line 16, after "PRESCRIBING" insert "CRIMINAL".

***Incorrect:***

1. On page 1, line 13, strike the period and insert in lieu thereof a semicolon and "DECLARING AN EMERGENCY.".

***Correct:***

1. On page 1, line 13, before the period insert "; DECLARING AN EMERGENCY".

► Generally, amendments are placed "after" a marker, rather than "before", simply as a matter of consistency. There are times, of course, when this format will not work, and the drafter should provide the instruction that will be the clearest one for E&E and other readers of the amendment.

► Do not use a phrase as a marker when a word will suffice.

***Example:***

***Incorrect:***

1. On page 7, line 13, after "deputies and" insert "all".

***Correct:***

1. On page 7, line 13, after "and" insert "all".

<or>

1. On page 7, line 13, before "assistant" insert "all".

► Do not use instructions such as "the word" or "the words and punctuation" when stating what to strike or insert. Nothing is added by saying "after *the word* "county" insert *the words and punctuation* ", special district"". State the instruction as simply as possible: after "county" insert ", special district".

► The only time bracketing and underscoring appear in an amendment is when an entire existing section of law is being added to the bill. Another change in amendment format that began in 1995 was that sections of law are not indented on the left and right margins and tabbing is the same as in bills. This change makes it easier for E&E to electronically lift material from committees or the legislative council service.

**Examples:**

1. On page 3, between lines 7 and 8, insert the following new section:

"Section 3. Section 2-1-4 NMSA 1978 (being Laws 1943, Chapter 18, Section 2, as amended) is amended to read:

"2-1-4. PAYMENT OF OTHER COMPENSATION TO LEGISLATOR FOR ACTING AS OFFICER OR EMPLOYEE OF STATE PROHIBITED.--It is unlawful for any officer of the state [~~of New Mexico~~] or a political subdivision of the state to pay to any member of the legislature during the term for which the member is elected compensation for services [~~rendered the state of New Mexico~~] performed as an officer or employee [~~thereof~~] of the state or political subdivision of the state except such compensation and expense money [~~which such~~] as the member is entitled to receive as a member of the legislature."

2. Renumber the succeeding sections accordingly.

\* \* \*

1. On page 6, between lines 17 and 18, insert the following new section:

"Section 8. A new section of the Trails Act is enacted to read:

"[NEW MATERIAL] SEPARATE TRAILS--MOTORIZED VEHICLES.--Separate trails may be established for motorized vehicles, but shall not be trails designated for horseback riding, hiking, bicycling or roller skating."".

2. On page 7, between lines 22 and 23, insert the following new section:

"Section 11. Section 72-111-7 NMSA 1978 (being Laws 1917, Chapter 290, Section 9) is amended to read:

"72-111-7. FINAL DESIGNATION PROCEDURE--HEARING.--Before making [~~an initial~~] a final designation of a trail, the commission shall:

A. hold a [~~publie~~] public hearing after proper notice within the affected regional planning and development [~~areas~~] district; and

B. as a result of the hearing, adopt a resolution approving or disapproving the trail."".

3. Renumber sections to correspond with these amendments.

► All beginning quotation marks must have ending quotation marks, regardless of how silly it looks. Notice the "." at the end of the section in the example above. The first period and first set of quotation marks are for the end of the section; the second quotation marks and period are for the end of the amendment. Amendments always end with a period as the last punctuation mark.

► To restore bracketed material to the bill, remove the brackets and the line through the word; to delete underscored material, strike the underscored word.

***Examples:***

1. On page 18, line 3, strike the underscored "and final results".

2. On page 21, line 4, after the period strike the remainder of the line and strike all of lines 5 through 17.

<or>

2. On page 21, lines 4 through 17, strike all underscored material.

3. On page 22, line 7, remove the brackets and the line through "public".

4. On page 31, lines 5 through 9, remove the brackets and the line through Subsection L in its entirety.

Always make sure the bill will "read" after making these changes.

- ▶ To strike all brackets and underscoring in a section, simply strike the section from the bill. By striking the section, the drafter leaves it as it stands in the law.
- ▶ When adding entire new sections or divisions, they usually go between lines.

**Example:**

1. On page 9, between lines 10 and 11, insert the following new subsection:

"C. Before allowing any potable water to be used as rig water, the commission shall:

(1) hold a public hearing after proper notice; and

(2) as a result of the hearing, adopt a resolution approving or disapproving the use of potable water as rig water.".

2. Reletter the succeeding subsection accordingly.

- ▶ An amendment at the end of the page is usually "after line 25"; however, there may be times it is appropriate to put the amendment "before line 1" on the next page.
- ▶ To insert something at the end of the bill, insert between the last line of text and the page number. For example, if the text ends on line 17 and the page number is on line 18, the amendment is inserted between lines 17 and 18, not after line 17.
- ▶ When striking or adding section divisions, it may be necessary to move the conjunction; this is done by striking and inserting.

**Examples:**

1. On page 4, line 15, strike "and".

2. On page 4, between lines 15 and 16, insert the following new subsection:

"D. one member who represents the public; and".

3. Reletter the succeeding subsection accordingly.

4. On page 6, line 22, strike "D" and insert in lieu thereof "E". [an example of the need to fix a cross-reference in another section.]

\* \* \*

1. On page 3, line 6, after the semicolon insert "and".

2. On page 3, strike lines 7 and 8 in their entirety.

3. Reletter the succeeding subsection accordingly.

► Strike specific committee amendments and strike specific items of floor amendments. Do these strikes first, regardless of where they fall in the bill. If there are several committee and floor amendments to strike, strike in referral order. See the *Daily Bill Locator* for referral order.

**Example:**

1. Strike House Energy and Natural Resources Committee Amendments 3, 4 and 7.

2. Strike Item 2 of House Floor Amendment 1.

3. Strike all of House Floor Amendment 2.

4. Strike all senate conservation committee amendments.

<or>

4. Strike Senate Conservation Committee Amendments 1 through 4.

5. On page 1, between lines 16 and 17, insert the following new section:

"Section 1. SECTION--WHATEVER IT IS.--The drafter puts in the section just as if it were being put into the bill itself."

6. Renumber the succeeding sections accordingly.

7. On page 4, line 7, after the period insert. . .

Do not forget to include all amendments that pertain to the substantive amendment. For example, if the drafter strikes an amendment that inserts or deletes a section, he must strike the next amendment that provides for the renumbering of succeeding sections.

► When adding or deleting sections or divisions of sections, add the instruction to E&E to renumber or reletter the succeeding sections or divisions (plural if there are more than one, singular if there is only one).

**Example:**

1. On pages 7 through 9, strike Section 12 in its entirety.

2. Renumber succeeding sections accordingly.

This instruction is in lieu of having to go through the bill and change the letter or number of every succeeding division by amendment. Without this, a simple amendment to delete Section 12 could turn into a long list of amendments that does nothing but change section numbers.

Without such E&E instructions, the E&E committee would have to use a certificate of correction to fix the final bill.

► Drafters have always been required to fix internal cross-reference cites by specific amendment instead of a general E&E instruction. However, for several years drafters were able to ignore correct numbering or lettering within a given division when inserting after deleting. With the 1999 update to the *Drafting Manual*, the legislative council service reverted to its former style and drafters are required to calculate the correct section number or other division indicator when adding and deleting. For example, if the drafter strikes Section 12 and inserts a new section before the printed Section 15, the new section will be inserted as Section 14, not Section 15. Another example would be: if Subsections B and C are deleted, a new subsection before printed H would go in as Subsection F. The E&E instruction to reletter succeeding subsections would still be needed.

► When adding or deleting *several* sections or divisions, one blanket E&E instruction at the end may suffice. "The end" for subsections or lower divisions means at the end of the section; "the end" for sections means at the end of the amendment.

***Examples:***

1. On page 3, lines 12 through 14, strike Subsection C in its entirety.

2. On page 3, lines 17 and 18, strike Subsection E in its entirety.

3. On page 4, lines 3 through 7, strike Subsection H in its entirety.

4. Reletter subsections to correspond with these amendments.

5. On page 5, line 6. . .

\* \* \*

1. On page 5, lines 3 through 19, strike Section 4 in its entirety.

2. On page 6, between lines 22 and 23, insert the following new sections:

"Section 7. Section 1-1-1 NMSA 1978 (being Laws 1909, Chapter 222, Section 2205, as amended) is amended to read:

"1-1-1. ADDING SECTIONS.--When [~~subtracting or~~] adding sections to a bill, follow [~~normal~~] standard drafting rules."

Section 8. Section 1-1-2 NMSA 1978 (being Laws 1909, Chapter 222, Section 2212, as amended) is repealed and a new Section 1-1-2 NMSA 1978 is enacted to read:

"1-1-2. [NEW MATERIAL] AMENDMENTS--ENROLLING AND ENGROSSING INSTRUCTIONS.--

A. When adding or deleting sections in an amendment, the drafter may use the reletter or renumber instruction several times or once, depending on the structure of the entire amendment.

B. A blanket instruction is preferred for an amendment that adds or deletes several sections throughout the bill."".

3. On pages 7 through 13, strike Sections 8 and 9 in their entirety.

4. Renumber sections of the bill to correspond with these amendments."".

▶ When adding or deleting sections or divisions of sections, the drafter must be sure to check the bill for cross-references that need to be changed.

▶ Punctuation has to be deleted or added just as words do. Capitalization has to be fixed by amendment.

***Examples:***

1. On page 1, line 12, strike "MAKING AN APPROPRIATION;".

2. On page 3, line 9, strike the comma and insert in lieu thereof a semicolon.

3. On page 6, line 2, strike "--AUTHORIZATION".

4. On page 7, line 8, strike ". The" and insert in lieu thereof "; the".

<or>

4. On page 7, line 8, strike the period and "The" and insert in lieu thereof a semicolon and "the".

**◆ Committee Reports ◆**

After considering a bill, a committee may take any one of several actions:

1. recommend to the legislative body that the bill DO PASS;

2. recommend that it DO PASS, as amended;

3. recommend that it DO NOT PASS;
4. recommend that it DO NOT PASS, but that the committee substitute DO PASS;
5. recommend that it DO NOT PASS, but that the committee substitute DO PASS, as amended;
6. refer the bill back to the floor WITHOUT RECOMMENDATION; or
7. refer the bill back to the floor WITHOUT RECOMMENDATION, as amended.

In addition, the committee may let the bill die by not reporting it out of committee. All of the recommendations listed above are submitted to the house or senate by committee reports that are subject to adoption or rejection by the full body in open session.

If a committee is considering amendments to a bill, the proposed amendments offered by various sponsors are generally considered and voted upon separately. All the amendments that are adopted by the committee are then included in the committee report.

Committee reports are usually prepared by the committee secretary under the direction of the committee chairman. However, if accepted amendments are lengthy or require special attention, the legislative council service may be requested to draft or prepare the committee report.

After the chairman has signed the committee report, the jacketed bill and the committee report are released from the committee to the clerk's office. The committee secretary should consult the clerk's office for the proper procedures to follow when handling jacketed bills, including the committee's receipt, control of and release of jacketed bills. The secretary should retain one copy of the typed report for the committee files.

Assembly and distribution of the copies are done by the chief clerk after action is taken on the committee report. Distribution is the same as for bills.

#### **◆ Floor Amendments ◆**

Floor amendments are submitted after a bill has been placed on third reading and final passage and may only be proposed by members of the house considering the bill. Each floor amendment is taken up and voted on in the order that it is submitted and, if adopted, becomes a consecutively numbered floor amendment to the bill under consideration.

**Example:**

FORTY-NINTH LEGISLATURE  
FIRST SESSION

February 2, 2009

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 14, as amended  
Amendment sponsored by Representative Elaine Terrazo

1. Strike all house judiciary committee amendments.

For legislators who have time to request a floor amendment in advance, the amendment is typed on either blue- or yellow-margin paper, the color corresponding to the house that has the bill under consideration. Amendments are useless if they are not prepared on time. This is particularly true of floor amendments; many times there will be very little time to prepare an amendment and deliver it to the requesting legislator. The sponsor of the amendment should retain one copy and submit the other copies to the chief clerk for assembly and distribution after action is taken. Distribution of copies is the same as for bills.

Frequently, legislators draft and submit handwritten amendments directly from the floor on forms provided at their desks. If adopted, these amendments are recopied so that an official typed and signed original is attached to the bill.

When a complex amendment is proposed, the sponsor or chief clerk may request that copies be distributed to the members while the amendment is under consideration. If a legislative council service drafter believes his amendment will need to be distributed, he should instruct the bill clerk by writing a note on the file.

◆ *Conference Committee Reports* ◆

When the two houses fail to agree on certain amendments to a bill, a conference committee made up of members from each house is appointed to work out a version agreeable to both houses. The report of the conference committee is drafted as two identical reports, one to each house. At the end of the report is a place for conferees to sign; a majority of the conferees from each house must sign that house's report. Only representatives sign the house report; only senators sign the senate report. The report is read simultaneously in both houses, and the identical reports must be adopted by both houses in order for the bill to pass.

Conference committee reports are printed on blue- or yellow-margin paper and the distribution is the same as for other committee reports.

The legislative council service prepares most conference committee reports. The primary exception is the House Bill 2 conference committee report, which is prepared by the legislative finance committee.

### ◆ *Certificates of Condolence and Congratulations* ◆

Joint rules of the legislature prohibit the use of a bill, resolution or memorial for an official expression of condolence, congratulations or acknowledgment of achievement; the rules provide for the issuance of appropriate certificates for these purposes.

A legislator indicates the type of certificate required and submits to the chief clerk the name of the deceased or the honoree and the names and addresses of the recipients. The chief clerk prepares and numbers a "request" for a certificate of congratulations or condolence, enters it on an official register and transmits it to the rules committee of that house for verification. Upon verification of the request, the rules committee submits a committee report, which is read in open session, directing the chief clerk to prepare a suitable document. A copy of the committee report is given to the journal clerk for inclusion in the journal.

Frequently, the legislative council service is requested to draft language for the certificate of condolence or congratulations, so every drafter should be familiar with the form of certificates.

The certificate is prepared by the E&E clerk and mailed to the recipients. Certificate forms are available from the chief clerks or from the legislative council service.

### ◆ *Enrolled and Engrossed Bills* ◆

The term "enrolling and engrossing", commonly called "E&E", is used to describe the preparation of the final authoritative copy of a bill passed by both houses of the legislature. This preparation is performed by the house of introduction and incorporates all amendments adopted and agreed to by both houses.

The New Mexico supreme court has consistently ruled that in interpreting a law, it will not go behind the E&E bill even though the journal shows that through a clerical error the E&E bill does not correspond to the bill actually passed. For this reason, when enrolling and engrossing a bill, it is extremely important that the utmost care be taken to ensure that it reflects the exact legislative action on the original bill.

It is the responsibility of the committee charged with E&E to proofread the E&E bill to ensure that all amendments have been correctly inserted in the bill, to see that the bill has been properly prepared and to certify that the E&E version is an accurate copy of the bill as actually passed by both houses of the legislature.

No changes can be made in the bill at the E&E stage other than changes made to conform to legislative form and style and corrections of misspellings or other obvious typographical errors. Internal citations may be adjusted only if an amendment has directed it to be done. In short, changes in *form* are permissible; changes in *substance* are not permissible. All changes must be shown on a certificate of correction signed by either the chairman or vice chairman of the committee and attached to the E&E bill.

E&E bills are typed on special lined and numbered letter-sized paper (8½" x 11"). The title of the bill begins on line 1 with the words AN ACT, and the bill ends with a double line that

extends from the end of the last line of the text to the right margin. If there are fewer than five spaces at the end of the last typed line, two sets of double lines are used, with the second set one numbered line below the first, to seal off the end of the line and the bill.

**Examples:**

24 | this act take effect immediately. \_\_\_\_\_  
|  
| \* \* \*  
17 | Section 4. REPEAL.--Section 66-15-289 NMSA 1978 (being  
18 | Laws 1988, Chapter 80, Section 2, as amended) is repealed. \_\_\_\_\_  
19 | \_\_\_\_\_

An abbreviated bill number and the page number are typed on each page on the lower right corner to the right of the blue line. The bill number is on line 25 and the page number is one line below that.

**Example:**

23 | each quarter a detailed report of all expenditures made during the  
24 | prior quarter and shall submit to the fiftieth legislature, second  
25 | session, a report covering expenditures by each of the

SB 2  
Page 1

It is extremely important to observe margins on E&E bills. Before printing the session laws, the printer masks the numbers, margin lines and bill and page numbers so they will not appear in the printed text. If the typist types up to or across either marginal line, the printer has difficulty masking out the lines without obliterating the words. E&E typists should set the left margin two spaces in from the left marginal red line and should end each line two spaces in from the right marginal blue line. Since a photo-offset process is used in reproducing the E&E bills for the session laws, the copy must be clean and free of any marks or smudges.

Every E&E bill is submitted to the governor with a printed cover page that contains the bill number and the names of the sponsors. The sponsors' names are typed in capital letters exactly as shown on the printed official listing of legislators, regardless of their signature forms on the bill. The secretary of state inserts the chapter number on the cover page if the bill becomes law. It is important that the cover page be filled out fully by the E&E typist because the printer uses this information for the session laws.



### ◆ *The Journal* ◆

The journals of the house and senate are the official records of all legislative action. Article 4, Section 12 of the constitution of New Mexico requires that each house keep a journal of its proceedings. In addition, the rules of the house and senate require the chief clerk to keep a correct journal of the proceedings in which are recorded in full, among other things, messages from the governor and titles of bills, resolutions and memorials.

The journal pages are typed on legal paper (8½" x 14"). Margins for the journal pages are as follows: left and right margins, 1¼" from the edge of the paper; top and bottom margins, 1" from the edge of the paper. Journal clerks should note that **all** text, including the page headings at the top and the page numbers at the bottom, must stay within 12" vertically.

### ◆ *Legislative Reference Documents* ◆

During the legislative session, the legislative council service publishes several reference documents, including a *Daily Bill Locator*, a *Subject Index*, a *Sponsors List* and a *Conflicts List*.

#### ◆ *Daily Bill Locator*

The *Daily Bill Locator* tracks every piece of legislation introduced into the legislature. It informs the reader of the date of introduction, committee referrals, dates of progress, whether the legislation has been amended, date of passage in each house and the vote, date of signature by governor and chapter number. Each locator includes instructions on how to read and use it.

#### ◆ *Subject Index*

The *Subject Index* indexes introduced bills by subject matter and is the primary resource for finding bills when the researcher does not know the number of the bill. There is a separate section for capital outlay certificates. A new subject index is published each week.

#### ◆ *Sponsors List*

The *Sponsors List*, also published weekly, shows all bills introduced by sponsor, with a separate section for capital outlay certificates.

#### ◆ *Conflicts List*

The *Conflicts List* shows how many bills include the same compiled sections, and the action taken by each bill. The purpose is to inform the legislature that it may be amending, repealing or enacting the same section of law more than once, thus creating a potential conflict. The legislature can ameliorate conflicts by substituting several bills into one or by passing one bill and letting similar or conflicting bills die.

## CHAPTER 7

### LEGISLATIVE STYLE AND LANGUAGE PROVISIONS

The legislative council service uses *The American Heritage Dictionary of the English Language* as its primary language authority. The legislative council service proofing office also uses *Fowler's Modern English Usage* for questions of grammar and syntax, making sure to convert British English to American English. Proofreaders also consult certain provisions of *The Elements of Style* by Strunk and White and *The Chicago Manual of Style*.

#### ◆ Capitalization ◆

The following rules of capitalization have been adopted by the legislative council as being the easiest to read, as well as the easiest and quickest for the typist.

#### ◆ Capitalize

- ▶ Every letter of the heading, title and enacting clause of a bill.
- ▶ Every letter of section headings.

#### **Example:**

Section 10. BOARD CREATED--APPOINTMENT--TERMS.--

- ▶ Every letter of the heading, title and resolving clause of memorials and resolutions and every letter of WHEREAS in memorials and resolutions.

- ▶ The first letter of:

#### **Proper names:**

United States

New Mexico

John Smith

Albuquerque

***Short titles of acts:***

Blue Sky Law                      Conflict of Interest Act              Sunset Act  
federal Clean Water Act (note that "federal" is not part of short title, so it is not capitalized)

***Specific divisions of the calendar:***

January, December, Monday, Tuesday

***Derivatives of proper names:***

Spanish, English, Indian, American

***Specific laws, articles, chapters, sections, subsections, paragraphs and subparagraphs:***

being Laws 1969, Chapter 62, Section 10  
Paragraph (1) of Subsection A of Section 2 of the Drafting Act  
Article 4, Section 1 of the constitution of New Mexico  
Paragraphs (4), (6) and (7) of Subsection C of this section  
Item 2) of Subparagraph (b) of Paragraph (4) of Subsection G of Section  
74-8-19 NMSA 1978  
Subsection B of this section  
Subsection A of Section 1 of Chapter 1 of Laws 1955  
Chapter 14, Article 5 NMSA 1978

**◆ *Do Not Capitalize***

- ▶ General political subdivisions or geographic areas, whether used in conjunction with a proper name or not:

state of New Mexico	county of Dona Ana
Chaves county	Pecos river
Elephant Butte lake	Navajo Lake state park
Elephant Butte Lake state park	Rocky mountains
university of New Mexico	Highlands university
eastern New Mexico university	west Las Vegas school district
middle Rio Grande conservancy district	

- ▶ Boards, commissions, institutions and other bodies:

New Mexico board of medical examiners	department of health
New Mexico legislature	bureau of land management
house of representatives	legislative health and human services committee
western New Mexico university	Santa Fe city council
New Mexico school for the deaf	New Mexico legislative council
United States department of agriculture	water and natural resources committee
taxation and revenue department	
congress	

- ▶ Titles of officials, whether elective or appointive, **unless** the title is used in addressing them:

Mr. President	director	secretary of state	judge
president	commissioner	Secretary Martinez	Judge Walters
governor	senator	attorney general	secretary
speaker	Mr. Speaker	Mr. Attorney General	

▶ Time of day:  
7:00 a.m.      6:30 p.m.      daylight-saving time      12:00 noon

▶ Derivatives of proper names with acquired independent meanings:

pasteurize	roman numerals	fahrenheit
watt	arabic numbers	good samaritan

▶ The first letter of the first word of subsections, paragraphs or subparagraphs following a colon.

Section 3. DEFINITIONS.--As used in the Game Act:

A. "game" means:

(1) animals; and

(2) fish; and

B. "hunter" means. . .

The rules of capitalization do not apply to presentation copies of memorials, resolutions and certificates of condolence or congratulations. In the final typed form for these, the typist may embellish the specially designed paper with as many capital letters as desired.

◆ **Punctuation** ◆

The following special rules of punctuation are specific to the legislative council service; other rules follow normal usage.

▶ Punctuation is placed outside the quotation marks unless the punctuation applies to the quoted material. This is known as the "logical", or "English", style of punctuation.

**Examples:**

In bills, memoranda, letters and "other documents produced by legislative staffers", when "the writer needs to quote", the punctuation is outside the quotation marks.

. . .the "Short Title Act".

". . .the "Short Title Act"." (amendatory act)

◆ **Comma**

- ▶ Use sparingly under rules of ordinary usage and with particular caution about changing meaning.
- ▶ Do not use commas before the conjunction in a series.

**Example:**

red, blue and green

◆ **Semicolon**

- ▶ In the title of an act, use semicolons to designate the break between one phrase and another.

**Example:**

10 | AN ACT  
 11 | RELATING TO ANIMALS; PROVIDING FOR THE CONTROL OF VESICULAR  
 12 | EXANTHEMA IN SWINE; PROHIBITING THE FEEDING OF UNCOOKED GARBAGE  
 13 | TO SWINE.

- ▶ Semicolons are used at the end of section subdivisions when following a colon.

**Example:**

7 | Section 10. CONTENTS OF POLICY.--Every policy shall  
 8 | specify:  
 9 | A. the names of the:  
 10 | (1) individual parties to the contract; and  
 11 | (2) corporate entities that may insure or  
 12 | reinsure the policy holder;  
 13 | B. the subject of the insurance; and  
 14 | C. the risks insured against.

- ▶ Use semicolons to separate a series in which a compound list occurs.

**Example:**

draft and working animals; zoo animals, including lions, tigers and ocelots; companion animals; and food animals.

◆ **Colon**

- ▶ The enacting clause is followed by a colon.
- ▶ Certain subdivisions of sections use colons (see the example under *Semicolon*).

◆ **Quotation Marks**

- ▶ Use quotation marks when amending existing laws to set off the actual statutory language. Also use quotation marks on new sections that have assigned compilation numbers or new sections that are to be part of an existing act. There is an easy way to remember this: use quotation marks on sections if the lead-in ends with a colon.

**Examples:**

13       Section 1. Section 23-1-5 NMSA 1978 (being Laws 1953,  
14 Chapter 15, Section 2) is amended to read:  
15       "23-1-5. DEPUTIES--POWERS AND DUTIES.--Deputies have all  
16 the powers and duties of state police officers and of  
17 conservation officers."

\* \* \*

21       Section 23. A new section of the Drafting Act is enacted  
22 to read:  
23       "[NEW MATERIAL] QUOTATION MARKS--WHEN USED.--...."

- ▶ Use quotation marks when defining or referring to a term in a definition section.

**Example:**

1 |           D. "shopper" means all persons who shop within  
2 | the exterior boundaries of the state, but "shopper" does  
3 | not include residents of the state who shop by catalogue;

- ▶ Use quotation marks in first stating the short title of an act or the name of a department, board, commission, program, position, fund or other thing created by an act.

**Examples:**

7 |           Section 1. PROBATE CODE COMMITTEE CREATED.--The  
8 | "Probate Code committee" is created as a joint interim  
9 | committee of the legislature.

\* \* \*

7 |           Section 1. FUND CREATED.--The "insurance  
8 | publications revolving fund" is created in the state  
9 | treasury.

\* \* \*

13 |           Section 1. SHORT TITLE.--This act may be cited as the  
14 | "Poor Examples Act".

**◆ Hyphen and Dash**

- ▶ Use a hyphen between compound numbers.

twenty-one           one hundred fifty-five           sixty-three and one-third percent

- ▶ Use a hyphen between elements of a fraction.

one-half           eighteen sixty-fourths           two-thirds' vote

- ▶ Use a hyphen within compilation numbers (called dashes in comp numbers).

Section 10-11-12 NMSA 1978

- ▶ Use a hyphen between compound adjectives.

forty-hour week                      three-year term                      ninety-day period  
record-keeping function              full-time employee

- ▶ Do not use a hyphen with adverb modifiers ending in "ly".

federally chartered                      manually operated

- ▶ Do not use a hyphen in compound words such as:

bylaws                      nonpayment                      semiannually                      percent                      statewide

- ▶ Please note the following usage:

out-of-state vehicle	going out of state
mid-April	non-Indian
serve ex officio	ex-officio member
co-chairman	vice chairman
right-of-way (adj.) acquisition	right of way (noun)
short- and long-term investments	state-supported and -financed

- ▶ Use a dash (actually two hyphens) with no spaces on either side between elements of a section heading and a period followed by a dash at the end of section headings to indicate the break between the section heading and the beginning of the text.

**Example:**

17 |                      Section 10. HOUSING PROJECTS--COOPERATION BETWEEN  
18 | AGENCIES.--The municipality and county. . .

◆ **Numbers, Formulas and Charts** ◆

- ▶ For amounts of money, spell out the amount, followed by figures and symbols in parentheses.

**Examples:**

Amounts less than one dollar (\$1.00):  
eighty-five cents (\$.85)  
eight cents (\$.08)  
one-half cent (\$.005)

Amounts from one dollar (\$1.00) through ninety-nine dollars ninety-nine cents (\$99.99):

four dollars seventy-eight cents (\$4.78)  
forty-seven dollars fifty cents (\$47.50)  
seventy-five dollars (\$75.00)

Amounts of one hundred dollars (\$100) or more:

one hundred one dollars (\$101)  
four hundred fifty dollars (\$450)  
three thousand dollars (\$3,000)  
ten thousand three hundred dollars fifty cents (\$10,300.50)

► Mills are spelled out:

a tax of twelve mills                      a twelve-mill tax

("Mill" is an obsolete term in drafting; the preferred use is " \_\_\_\_\_dollars (\$\_\_\_\_) per thousand dollars (\$1,000) of taxable value".)

► Dates:

October 5, 1987              January 31, 1995              the third Tuesday in January

► Reference to statutes and constitution:

Section 64-4-4 NMSA 1978                      Article 6, Section 23 of the constitution of New Mexico

► Numbers in the body of a bill are written out. Only money has the figure enclosed in parentheses.

**Examples:**

<i>Use</i>	<i>Do Not Use</i>
one-half acre	one-half (½) acre
sixty percent	sixty (60) percent
twelve members	twelve (12) members
five dollars fifty cents (\$5.50)	

► When writing numbers in text other than legislation, single-digit numbers are written out and double-digit numbers may be written in numerals.

**Example:**

Write out numbers one through nine and then 10, 14, 37, 189 and on through infinity.

► Formulas, charts, tables and forms should be indented five spaces and set forth as follows. Please note that single spacing is allowed and all numbered lines must be covered.

**Examples:**

15	COUNTY POPULATION ACCORDING TO	
16	THE LAST OFFICIAL UNITED STATES CENSUS	THE VOTES CAST FOR GOVERNOR
17	_____ COUNTY VOTE FOR GOVERNOR IN	X IN EACH PRECINCT IN THE MOST
18	THE MOST RECENT GENERAL ELECTION	RECENT GENERAL ELECTION

\* \* \*

14	B. Schedule 1			
15	Column 1	Column 2	Column 3	Column 4
16	Basic Program Staff Categories	Category Divisor	Category Maximum	Salary Unit
17	(1) Teachers	Determine from Schedule 2	none	\$ 7,762
18	(2) Aides	200	none	4,274
19	(3) Coordinators	1,500	none	8,151
20	(4) Superintendent	250	1	10,701
21	(5) Financial Manager	6,000	1	9,506
22	(6) Secretarial	300	none	6,270.

\* \* \*

15	B. The following fees shall be collected:		
16	Resident, ibex . . . . .		\$50.00
17	Resident, javelina . . . . .		10.00
18	Special gerbil license, valid for use on Friday only		5.00.

► When creating forms, it is important to remember to place the parenthetical information **below** the lines to avoid confusion with underscored language.

**Example:**

10 | "DECLARATION OF CANDIDACY  
11 | I, \_\_\_\_\_,  
12 | (Candidate's name on affidavit of registration)  
13 | being first duly sworn, say that I am a voter of precinct  
14 | \_\_\_\_\_ of the county of \_\_\_\_\_, state of New Mexico.  
15 | \_\_\_\_\_  
16 | (Declarant)  
17 | \_\_\_\_\_  
18 | (Mailing Address)  
19 | Subscribed and sworn to before me  
20 | this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
(Notary public)  
My commission expires:  
\_\_\_\_\_."

◆ **Court Cases** ◆

► Use italics to set out the citation to a specific court case:

*Wood v. United States*

*State ex rel. Coll v. Carruthers*

◆ **General Language Suggestions** ◆

Every drafter should be familiar with the rules of statutory construction (Sections 12-2-3 and 12-2A-1 through 12-2A-20 NMSA 1978).

► The singular includes the plural.

Use "person", never "person or persons".

- ▶ Pronouns are problematic and should be avoided because they can be sexist, they can be misunderstood and they can be the wrong form. Do not write a tortured sentence, however, simply to avoid using a pronoun; lack of clarity is the greater sin.

The masculine includes the feminine. Use "he", not "he or she" or "(s)he".

Use nouns, even if repetitive, unless doing so would lead to artificiality or confusing structure.

Never use a plural personal pronoun with a singular noun as a means to avoid gender-based pronouns.

Avoid gender-based pronouns when possible by omitting them, rewriting the sentence or repeating the noun.

***Avoid:*** A juror is entitled to ten dollars (\$10.00) for each day *he* serves.

***Use:*** A juror is entitled to ten dollars (\$10.00) for each day *of service*.

Use gender-neutral terms when possible, such as "worker" for "workman" or "drafter" for "draftsman".

- ▶ Statutes are written in the present tense, not the future tense.

***Use:*** "it is unlawful".

***Do not use:*** "it shall be unlawful".

***Use:*** "The Safety Act applies".

***Do not use:*** "The Safety Act shall apply".

- ▶ Never use "and/or".

If the intent is that any of several items, including all items, is sufficient, use the disjunctive "or".

If the intent is that all items are necessary, use the conjunctive "and".

Said another way, the idea of "and/or" is contained in the single word "or".

If it is possible that confusion can result from the use of the disjunctive, use "this **or** this **or both**" to clear up the confusion.

- ▶ Use short sentences rather than long, drawn-out phrases or paragraphs.

- ▶ New Mexico law is written in complete, grammatically correct sentences, even when subdividing into subsections, paragraphs and subparagraphs. The rules of parallel construction must be obeyed even in lists.
- ▶ Avoid the phrase "this act". See the section on *Use of "This Act", "Herein" and Other Meaningless Phrases*.
- ▶ Avoid internal cross-references such as "as provided in this act" or "as defined in the Blah Blah Act". Even with a short title, these phrases are superfluous and meaningless and should be omitted.
- ▶ Reference to "the state of New Mexico" is unnecessary. New Mexico cannot legislate for another state. When necessary to refer to the state, use either "New Mexico" or "state". A good rule of thumb is to use "state" when referring to government and "New Mexico" when referring to geography.
- ▶ Use "shall" to indicate mandatory language.  
The board shall promulgate rules in accordance. . .
- ▶ Use "may" to indicate permissive language.  
The director may appoint a deputy director who. . .
- ▶ Avoid the use of "will".
- ▶ Do not abbreviate except a.m., p.m. and NMSA 1978.
- ▶ Use the active form of verbs rather than the passive form whenever possible.
- ▶ Money is always written in the singular, regardless of the amount. Never use "moneys" or "monies".
- ▶ Use "money" when talking about dollars; use "funds" when talking about accounts or revenue sources.
- ▶ Use "percent", not "per cent" or "percentum".
- ▶ Use "a year", not "per annum".
- ▶ Use "attorney fees" rather than trying to figure out whether the word should be singular or plural possessive.
- ▶ Do not use "such" as a substitute for "the", "that", "it", "those", "them" or similar words.
- ▶ Do not use "any", "each", "every", "all" or "some" if "a", "an" or "the" can be used with the same result.

- ▶ Do not use "said", "aforesaid", "whatsoever" or similar words of reference or emphasis.
- ▶ "Utilize" means to use something in a new and different way; most times, "use" is the correct word.
- ▶ "Presently" means future; "at present" or "currently" means now.
- ▶ "Insure" means insurance; "ensure" means to make certain.
- ▶ Avoid the use of British spelling. "Canceled", "traveler" and the like are spelled with one "l" and "judgment" does not have a middle "e".
- ▶ Avoid "that" at the beginning of a section or sentence.
- ▶ Do not use roman numerals. Most people cannot decipher roman numerals above 10, and in any case they are confusing. Even when referring to the articles of the constitution of New Mexico, arabic numerals should be used. Also convert federal title numbers and other cites from roman to arabic numerals.
- ▶ Do not use acronyms in the law.
- ▶ Use of "ex officio": the phrase "ex officio" indicates only that a person holds one office by virtue of holding another office. A law saying that the governor is ex-officio president of the board of finance means that any person holding the office of governor automatically becomes president of the board of finance. The phrase does not restrict any powers or duties of an officer while serving in his ex-officio capacity; in particular, the phrase has nothing to do with the ability to vote. The drafter must specify that the ex-officio member cannot vote if that is the intent. Often, the term is not needed, because it is a given that the person serves ex officio — if the *governor* is president of the board of finance, it is obvious that the *person* changes with who holds the office of governor.
- ▶ "Rule" is the defined term in both the Uniform Statute and Rule Construction Act and the State Rules Act to mean a rule, regulation, order, standard or statement of policy. Use "rule" instead of "rules and regulations" or "regulation". On the question of "adopt" vs. "promulgate", the legislative council service recommends "promulgate" as the more inclusive term.
- ▶ Never use a phrase when a word will suffice.

**Examples:**

<i>USE</i>	<i>AVOID</i>
void .....	absolutely null and void <or> is null and void and of no effect
may <or> shall <or> is authorized .....	is hereby authorized and empowered to

**USE**

**AVOID**

evidence of indebtedness . . . . .	bonds, notes, checks, drafts and other evidences of indebtedness
on June 15, 1990 . . . . .	on and after June 15, 1990
June 15, 1990 . . . . .	the fifteenth day of June, 1990 <or> June 15th
January 1 . . . . .	on or before the first day of January
if . . . . .	in the event that
because . . . . .	due to the fact that <or> because of the fact
may . . . . .	he shall in his discretion <or> it shall be lawful
consider . . . . .	give consideration to
applies . . . . .	is applicable
when he retires . . . . .	at the time of his retirement
adjudged . . . . .	adjudged, ordered and decreed
sole . . . . .	sole and exclusive
is . . . . .	be and the same is hereby
fail . . . . .	fail, refuse and neglect
means . . . . .	is defined and shall be construed to mean
about . . . . .	with reference to
in force . . . . .	in full force and effect
do . . . . .	do and perform
by <or> with . . . . .	by and with
each <or> every . . . . .	each and every
evidence . . . . .	evidence, documentary or otherwise

**USE**

**AVOID**

shall .....	it shall be his duty to <or> is ordered and directed to <or> is hereby vested with power and authority and it shall be his duty in carrying out . . .
conclusive .....	final and conclusive
valid .....	currently valid
trustee .....	trustees of trust estates created by will, contract or by declaration of trust or by implication of law
the <or> that .....	such, said, aforesaid <or> same
before .....	prior to
after .....	subsequent to <or> from and after
any person who violates this section shall be punished by .....	If any person shall violate this section, he shall be punished by

**◆ Hyphenation ◆**

The legislative council service does not use syllabic breaks in bills, resolutions, memorials and amendments because it shares those automated documents with other users. However, when hyphens are used in other documents, the following rules of hyphenation should be observed.

- ▶ Words are hyphenated at syllabic breaks. Proper names cannot be broken.
- ▶ One-letter syllables at the beginning or end of a word are never broken.

**Example:**

**Incorrect:**    *o-bit-u-ary*                      *a-ne-mi-a*

- ▶ Two-letter breaks, either at the beginning or end of a word, should be avoided.

**Example:**

When hyphenating words, do not break a word so that municipality would look like this. The other type of error, breaking municipality like this, is also unacceptable.

- ▶ Pay special attention to syllabication when words vary because of different parts of speech.

**Examples:**

pre-sent (v. give)	pres-ent (adj., n. gift or presence)
min-ute (n. time)	mi-nute (adj. small)

- ▶ The legislative council service uses *20,000 Words*, published by McGraw-Hill, Inc., as its primary hyphenation resource.

## **CHAPTER 8**

### **WORD PROCESSING AND FORMAT**

#### **◆ *Special Instructions* ◆**

The word processor should be familiar with the material contained in the previous chapters of this manual. Many questions may also be answered by the examples and forms in Chapter 9.

Bills, resolutions and memorials are all typed the same, so, for simplicity's sake, this section will use bills as examples.

► Type on one side of each page only. Bills are double-spaced except for certain charts, forms, tables and formulas that may be single-spaced. The only lines that may be blank in a bill are:

- (1) the numbered lines between INTRODUCED BY and AN ACT;
- (2) the numbered line between the end of the title and the enacting clause; and
- (3) the numbered lines between the page number and the 202 number on a multi-page bill.

Other legislative documents are single-spaced. These include amendments, committee reports and legislative correspondence.

► The beginning of sections, subsections, paragraphs and subparagraphs are indented in increments of five spaces.

#### **◆ *Paper* ◆**

► Bills are typed on 25-numbered-line, double-spaced, letter-sized paper (8½" x 11"). The legislative council service can provide instructions for creating a bill paper shell in WordPerfect or provide prepared bill paper if an outside drafter does not want his draft prepared by the legislative council service. If the legislative council service is asked to prepare the draft, it is recommended that outside drafters not use bill paper.

- ▶ Floor amendments and committee reports are printed on special paper with a colored left border (blue for senate, yellow for house). Paper is available from the chief clerks.

**◆ Margins ◆**

- ▶ The heavy black vertical line that divides bill paper numbers from the text space is 1¼" from the edge. A correct left margin for bills can be achieved by setting the left margin two spaces to the right of that black line on the bill paper.
- ▶ The right margin should be 1¼" from the right side of the page. To check if the right margin is correct, place an upside-down piece of bill paper behind the draft; if the typing extends past the black line, the margin is too wide.
- ▶ It is important that margins be correct, because when the bill is printed or the law is bound all the text should be visible. (See the bill form at the beginning of Chapter 9 for an illustration of proper margins.)

**◆ Page Numbering ◆**

**◆ Bills**

- ▶ No page number appears on the first page of a bill since the title identifies it as page 1. The page numbers of the succeeding pages are centered at the bottom of the page two spaces (one double-space) below the text.
- ▶ The number is typed between two hyphens.

**Example:**

24	a quitclaim deed signed by the ex-spouse to the seller and a
25	copy of the settlement.
- 3 -	

\* \* \*

15	Section 23. EMERGENCY.--It is necessary for the public
16	peace, health and safety that this act take effect immediately.
17	
- 76 -	

**◆ Reports and Amendments**

For committee reports or amendments, the second and succeeding pages are numbered at the top of the page on the right side, two single spaces below the printed heading.

**Examples:**

FORTY-NINTH LEGISLATURE  
FIRST SESSION

HAFC/HB 43

Page 2

This example shows a house appropriations and finance committee report on HB 43.

\* \* \*

FORTY-NINTH LEGISLATURE  
FIRST SESSION

HAFC/SJC/SB 113, aa

Page 2

This example shows a house appropriations and finance committee report on Senate Judiciary Committee Substitute for Senate Bill 113, as amended.

\* \* \*

FORTY-NINTH LEGISLATURE  
FIRST SESSION

SF1/HB 435, aa

Page 2

This example shows a senate floor amendment to House Bill 435, as amended.

**◆ Slug Lines ◆**

Slug lines are typed on substitute bills on the outer margin of each page, alternating with left margin for even pages and right margin for odd pages. The slash indicates "substitute for". See *Substitute Bills* in Chapter 4.

**Examples:**

HGUAC/SB 3  
SFC/SCONC/SB 3, 4 & 7 and HB 4, 27, 66 & 112  
HJC/HBIC/HB 76, 137 & 285 & SB 4 and SB 5

◆ *Copies* ◆

The rules of each house specify the number of copies (in addition to the originals) of bills, memorials and resolutions to be delivered at the time of introduction. Additionally, the legislator introducing the bill usually wants a copy. The legislative council service also keeps two or three copies in the file for later use. Other copies may be provided at the request of the houses.

◆ *Colors* ◆

By tradition, the color yellow is associated with the house of representatives and the color blue with the senate. For example, the yellow line on the left side of committee report/floor amendment paper immediately identifies it as a house document, and an amendment photocopied on blue paper identifies it as a senate amendment. These colors are used on legislative documents whenever possible, including calendars, committee agendas, amendments and the like. Printed house bills are green and printed senate bills are white.

◆ *Bill Jackets* ◆

Each bill, memorial, resolution and substitute must have a bill jacket when introduced. These blue or goldenrod jackets are letter-sized file folders with the state seal on the front and a brief bill action form on the back for the chief clerks to record the history of the legislation's passage through the legislature. The original is assembled, punched and inserted in the bill jacket before introduction. The session designation is stamped on the foldover tab, and the typist prepares a white gummed label to identify the bill. This label is attached to the folder tab on the right.

*Examples:*

HOUSE BILL \_\_\_\_\_

SENATE JUDICIARY COMMITTEE  
SUBSTITUTE FOR SENATE BILL \_\_\_\_\_

The typist is limited to three single-spaced lines starting at the top of the label. If it is necessary to abbreviate, the following form is suggested:

HOUSE APPROPRIATIONS & FINANCE  
COMMITTEE SUBSTITUTE FOR SFC SUBSTITUTE  
FOR SENATE BILLS \_\_\_\_\_ & \_\_\_\_\_

### ◆ *Assembly* ◆

The pages of each of the copies of a bill, memorial or resolution are stapled at the upper left corner, not more than one-half inch from both the top and left edges.

The unstapled introductory copy is punched and inserted in the bill jacket using a 2-3/4" metal Acco fastener.

The assembler must carefully check both the introductory copy and copies to make sure that each page is a clean copy and that pages are in order.

### ◆ *Sponsors' Names* ◆

Legislators sign their names in black ink on the jacketed bill, memorial or resolution and the required copies. The signatures need to be legible on the printed bill. The person signing directly below "INTRODUCED BY" is considered the prime sponsor.

### ◆ *Standard Committee Abbreviations* ◆

Although not allowed in legislation, there are many times when abbreviations are used in the session, for example, bill labels, E&E pagination, slug lines, calendars and the bill locator.

The legislative typist might see HVEC/HB 76 as a slug line on a substitute bill. This says that house voters and elections committee substituted House Bill 76. Note that the / stands for "substitute". There are times, such as succeeding pages of floor amendments, when the / simply serves as a dividing device. Careful study is the only help to this problem.

Typists are expected to know and use the standard abbreviations.

### *House Committees*

HAFC = APPROPRIATIONS & FINANCE	HHGUAC = HEALTH & GOVERNMENT AFFAIRS
HAGC=AGRICULTURE & WATER RESOURCES	HJC = JUDICIARY
HBIC = BUSINESS & INDUSTRY	HLC = LABOR & HUMAN RESOURCES
HCPAC = CONSUMER & PUBLIC AFFAIRS	HPSC = PRINTING & SUPPLIES
HCW = COMMITTEE OF THE WHOLE	HRC = RULES & ORDER OF BUSINESS
HEC = EDUCATION	HTPWC = TRANSPORTATION & PUBLIC WORKS
HE&EC = ENROLLING & ENGROSSING	HTRC = TAXATION & REVENUE
HENRC = ENERGY & NATURAL RESOURCES	HVEC = VOTERS & ELECTIONS

### *Senate Committees*

SCC = COMMITTEES' COMMITTEE	SFC = FINANCE
SCONC = CONSERVATION	SIAC = INDIAN & CULTURAL AFFAIRS
SCORC = CORPORATIONS & TRANSPORTATION	SJC = JUDICIARY
SCW = COMMITTEE OF THE WHOLE	SPAC = PUBLIC AFFAIRS
SEC = EDUCATION	SRC = RULES



**CHAPTER 9**

**EXAMPLES AND FORMS**



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# **APPENDICES**



## ***APPENDIX A***

### ***PROVISIONS OF COMMON BILLS***

There are several types of bills that are so common that a discussion of required contents will be helpful to the seasoned pro as well as the beginning drafter. The items listed should not be considered exhaustive; their inclusion or exclusion depends upon the request.

#### ***◆ Boards and Commissions***

A drafter is frequently called upon to create a board or commission to carry out some function of state government. The following are some of the issues to be determined prior to drafting. "Board" is used for purposes of brevity, but the same considerations apply to commissions.

- ▶ Is the name of the board as short and simple as possible?
- ▶ Will the board be autonomous or advisory to an agency of the state? Will it be administratively attached to a state agency or have administrative independence?
- ▶ Is the board a policymaking board whose staff is a state agency? Examples of this type of board are the environmental improvement board and the water quality control commission, which oversee certain staff and functions of the department of environment; and the state game commission, which oversees the department of game and fish. The oil conservation commission has concurrent jurisdiction and authority with the oil conservation division of the energy, minerals and natural resources department over matters in its domain.
- ▶ How many members are on the board? What qualifications must members demonstrate? Are there ex-officio members? Is there a need to provide for geographical representation or limit partisan participation?
- ▶ How are members appointed? What are their terms? If terms are staggered, does the bill provide for initial appointments? Are there term limitations? How are vacancies filled?

- ▶ How are officers selected? How often will the board be required to meet? How are meetings called? What constitutes a quorum?
- ▶ How are board members compensated? As a general rule, board members receive no compensation other than per diem and mileage. Usually, state officers or employees are excepted from this provision in the bill under the assumption that their agencies will pay their compensation.
- ▶ What are the powers and duties of the board? (It is good drafting practice to separate the "housekeeping" functions, e.g., how members are appointed, terms, meetings and payment, from the purpose, e.g., the powers and duties, of the board.)
- ▶ How will the board carry out its powers and duties? Is it granted the right to hire staff? How is staff organized?
- ▶ Will the board have access to an earmarked source of revenue? Does the board have the right to expend money or is that function given to its staff? Will the board or the staff agency receive an appropriation in the general appropriation act? The expenditure of state money may best remain with a state agency. Giving citizens the right to expend state money is a topic that needs careful thought by the drafter.

#### ◆ *Licensing Acts*

Licensing acts for professions and occupations are found in Chapter 61 NMSA 1978. There are several decisions to be made and provisions that must be covered when providing for licensure of a profession or occupation; following are some of the typical policy questions that must be answered before a good draft can be written.

#### *Licensing Board:*

- ▶ Is the name of the board as short and simple as possible?
- ▶ Will the board be autonomous or advisory to an agency of the state?
- ▶ Will the board be administratively attached to the regulation and licensing department or some other state agency or will it have administrative independence?
- ▶ How many members on the board? How many of those will be professional members and how many will be public members? What qualifications must members demonstrate? For several years, it was the practice of the legislative finance committee during sunset hearings to increase public members on all boards to a majority of the membership.
- ▶ How are members appointed? What are their terms? If terms are staggered, does the bill provide for initial appointments? Are there term limitations? How are vacancies filled?

- ▶ How are officers selected? How often will the board be required to meet? How are meetings called? What constitutes a quorum?
- ▶ How are board members compensated?
- ▶ What are the powers and duties of the board? (It is good drafting practice to separate the "housekeeping" functions, e.g., how members are appointed, terms, meetings and payment, from the purpose, e.g., the powers and duties, of the board.)
- ▶ Will the board terminate pursuant to the Sunset Act?

***Licensure:***

- ▶ Is the profession or occupation defined sufficiently? Are there persons who are exempt from the provisions of the act? Need there be a prohibition against using the professional or occupational name without licensure? Is a grandfather clause required?
- ▶ Is there a distinction between licensure and registration? Is that distinction maintained throughout the bill?
- ▶ Is the process of application clear? Are the qualifications for licensure explicit? Is an examination required? Is reciprocity allowed? Are there limits to reciprocity? What is required for license renewal? Is there provision for inactive status of a license?
- ▶ Are there levels or categories of licensure? Are the distinctions between the categories clear?
- ▶ Are there schools or courses to be licensed for this profession or occupation?
- ▶ Upon what grounds may a license be denied, suspended or revoked? What are the procedures? Usually, disciplinary and administrative matters conform to the Uniform Licensing Act.
- ▶ Are there crimes created as a result of this profession or occupation being recognized? What are the penalties for violation of the act?
- ▶ What is the fee structure for application, licensure, examination, renewal, etc.?
- ▶ Avoid redundant phrases like "*certification as a certified yo-yo stringer*".

### ***Miscellaneous Considerations:***

- ▶ Is there a fund to which fees and other revenues are deposited? Does the interest on investment go to the fund or to the general fund? How are funds expended? Who signs the vouchers?
- ▶ Is a licensee required to post bond for any reason?
- ▶ Do local governments have any control over the profession or occupation or its activities?
- ▶ Are inspectors required?
- ▶ Does Section 61-1-2 NMSA 1978 need to be amended to include the new board in the Uniform Licensing Act?

### **◆ *Executive Reorganization***

Most executive organization provisions are found in Chapter 9 NMSA 1978, although the drafter will probably have to amend other sections of law to correspond with changes contemplated by the request.

### ***Creating or Reorganizing Department or Agency:***

- ▶ Has the drafter read the Executive Reorganization Act preparatory to drafting?
- ▶ Does the name of the department follow general state form, i.e., placing "department" at the end of the name to contrast with the federal habit of placing "department of" at the beginning of the name?
- ▶ Is the department to be a cabinet-level department?
- ▶ Are positions exempt or classified in conformance with the State Personnel Act and Executive Reorganization Act? If not, does the bill create an exception?
- ▶ Are the secretary's powers enumerated? Are powers and duties given to lower organizational units?
- ▶ Are organizational units enumerated?
- ▶ If reorganizing an agency with statutory powers and duties into another agency, do those powers and duties need to be expressly exempted from the secretary's authority? (See EIB and WQCC as examples, Sections 9-7A-12 and 9-7A-13 NMSA 1978.)

- ▶ Are advisory committees needed? Are policymaking boards or commissions created? If so, are relationships with department staff clearly delineated?
- ▶ Are there administratively attached agencies? Is the agency being created to be administratively attached to another governmental unit or is it an adjunct agency?
- ▶ What other statutes need to be amended to comply with the new organization?
- ▶ Does the bill need to transfer functions, property, money, employees, legal references and contracts?
- ▶ Will the new department or agency need an appropriation?

### ◆ *Capital Outlay*

Capital outlay projects are funded by the legislature either by direct appropriation or the issuance of bonds. See the *Appropriations* heading in Chapter 3 for a discussion of what must be contained in an appropriation section, regardless of whether the money is for capital outlay or operational expenses.

By rule, capital outlay proposals are presented to the legislature as capital certificates instead of bills, but the same questions remain.

#### *General Issues:*

- ▶ Is the money to be expended solely for construction or can equipment and furnishings be bought? What about purchase of property?
- ▶ Is the money to remodel or renovate? Usually, renovation is considered to be more extensive.
- ▶ Is the appropriation under the control of the state? Will the state need to be given title to land?

#### *Authorization for Bonds:*

- ▶ Is the correct agency certifying the bonds to the state board of finance? Is the appropriation given to the correct agency?
- ▶ Is there provision for balances to revert?
- ▶ Is there a limitation on how long the authorization is effective?
- ▶ When changing the purpose of a previously authorized bond, the drafter should know if the bond has been issued and the specificity of the bond as to purpose. If a specific purpose bond was issued, the drafter may want to inform the requester of potential

problems with changing the purpose. *[This may be of concern only if current bond counsel thinks it is, but it does not hurt to provide the information to the requester.]*

#### ◆ *Tax Bills*

Tax bills have a strong potential for litigation, so the drafter must be very careful when drafting this kind of legislation. Constitutional issues are critical in tax legislation, including proper titles and unlawful delegation of the legislative power to tax. It is recommended that the uninitiated seek the advice of the legislative council service drafter responsible for drafting tax legislation.

#### ◆ *Motor Vehicle Code*

- ▶ If creating a crime, will the penalty be pursuant to Section 66-8-7 NMSA 1978 or will another penalty be established? If creating a penalty assessment misdemeanor, the crime will need to be added to the schedule of assessments sections (Section 66-8-116, 66-8-116.1 or 66-8-116.2 NMSA 1978).

#### ◆ *Funds*

- ▶ Is the name of the fund as short as possible? Has the drafter checked the funds index to ensure that the name is not taken or that it is not too similar to an existing fund?
- ▶ Does each fund have its own section? Amend and use cross-references where necessary, but do not create funds in another fund's section.
- ▶ What is the source of income for the fund? Does the bill provide a direct appropriation or an earmarked revenue source?
- ▶ What happens to the investment income of the fund?
- ▶ Does the fund ever revert? To what source?
- ▶ What agency will administer the fund? Are there requirements or restrictions on administration?
- ▶ How will money be expended? Normally, money is expended by warrant issued by the secretary of finance and administration upon vouchers signed by the administrator. It is very rare, and dangerous, to give check-writing powers to an agency other than the department of finance and administration, because of the loss of executive and legislative control.
- ▶ What is the basis for expenditure?
- ▶ If creating a loan fund, how is money paid back?

### ◆ *Judgeships*

- ▶ When is the judgeship to be filled? If it is a magistrate position, does the requester want an interim appointment or will the new judge start January 1 after the next general election? Does that general election fall in line with when all other magistrates stand for election? If not, should the appointment extend until the general election in which all magistrates are elected for a four-year term?
- ▶ Even with merit selection, there should be an appointment and election section for justices and appeals, district and metropolitan judges.
- ▶ How are the judge and his staff to be paid? Usually the bill requires an appropriation section.
- ▶ Is the election section included in the bill?



## ***APPENDIX B***

### ***ASSIGNMENT OF COMPILATION NUMBERS***

The assignment of compilation numbers is a function of the compilation commission acting through the official compiler. The drafter should not assign compilation numbers as a matter of general practice. Not only is the drafter who elects to assign a compilation number usurping a function of the compilation commission, in certain cases, such as repeal and reenactment, he may be risking conflicts and confusion in statutory cross-references, court cases or agency rules. The responsible drafter can find and fix statutory cross references in the same bill; however, court cases and agency rules are beyond his purview.

Gratuitous assignment of a compilation number by the technique of repealing that section and enacting a new section with the same number is a form of blind legislation. The legislator may be lulled into thinking he is reading an amendment to the old section; it is difficult for him to determine the actual extent of the changes without laborious comparison with the text of the old section. On occasion, this technique of repeal and reenactment has made the legislature angry even though it was not used for devious purposes. Assignment of compilation numbers should *never* be used as a lazy device to avoid the bracketing of old material and the underscoring of new material.

Assignment of compilation numbers by the drafter should be done only on those rare occasions where *not* to do so would result in confusion or misunderstanding of the law. For example:

1. the section is all new law intended to become an integral part of a sequence of compiled sections and there is a strong possibility that the bill will not give the compiler a clue as to where the section should be compiled;
2. the section has either been repealed previously or is being repealed by this bill and the new material needs to become an integral part of the sequence of compilation sections in a particular order; or

3. a substantial revision of the section is involved that is long and requires so many changes that to use brackets and underscoring would make it almost impossible to read and understand the changes.

If it is absolutely necessary to assign a compilation number, [NEW MATERIAL] is used to indicate an entirely new section to which a compilation number has been assigned, and each section of the bill is placed in numerical sequence by compilation number.

## ***APPENDIX C***

### ***INTERNAL CITATIONS***

There are occasions when the drafter must cite materials within a bill, resolution, memorial or memorandum. Rigid rules on citation style are difficult to develop and may create more confusion than resolution. Some suggestions, however, are offered for the most common situations.

#### ***Constitutional Provisions:***

When cited or referred to in a bill, resolution, memorial or memorandum:

##### ***Preferred Citation***

Article 4, Section 3 of the constitution of New Mexico

14th Amendment to the United States constitution

##### ***Reference***

Article IV, Section 3 of the constitution of New Mexico

XIV Amendment to the constitution of the United States

Notice that roman numerals are converted to arabic numbers.

#### ***Statutory Materials:***

There are numerous ways that federal statutory materials may be cited: short title, U.S.C. number, USCA number, P.L. (public law) number, statutes at large and acts of congress. Statutes at large and act of congress cites are rare and usually found only in very old laws. Similar to citing New Mexico law, short titles and USCA numbers are the preferred citations. When citing a federal short title, the drafter should indicate that it is a federal cite if the title does not include that knowledge. For example, the Clean Air Act could be either state or federal legislation; the drafter should state "the federal Clean Air Act" (federal is in lower case since it is not part of the short title).

##### ***Preferred Citation***

##### ***Reference***

Veterans' Health Care Act of 1984  
<or>  
38 USCA 101 et seq. (or specific cite)

P.L. 98-528  
98 Stat. 2686 et seq.

***Other Examples:***

28 U.S.C. Section 2201  
Section 511 (a) of the Internal Revenue Code of 1986  
title 20 funds (the roman numeral is converted to arabic for New Mexico style)  
Title 20 of Some Federal Act

State statutory materials are normally cited to the latest official compilation. When compiled New Mexico laws are cited or referred to in the text of a bill, resolution, memorial or memorandum and the reference is to a specific section, the official citation form is used.

***Example:***

Section 12-2-19 NMSA 1978

If the law has not been compiled, a citation to the session law is used.

***Example:***

Laws 1973, Chapter 4, Section 1

Appropriate abbreviations of these citations may be used in footnotes and parenthetical citations in memoranda.

***Example:***

§12-2-19 NMSA 1978

L. 1973, Ch. 4, §1

Official short titles of laws, in precisely their most recently amended form, are sometimes cited when a reference to a complete act is needed, e.g., "as provided in the Per Diem and Mileage Act", but use of short titles when specified sections of the law are intended is not encouraged.

***Example:***

Section 13-14-45 NMSA 1978 (or, if not compiled, Laws 1972, Chapter 97, Section 45) rather than "Section 45 of the Children's Code".

Of course, there is an exception to this rule. When drafting original legislation with a short title, if it is necessary to cross-reference within the bill, the reference is to the section number and the short title.

***Example:***

". . .as provided in Section 4 of the Drafting Act. . ."

It is permissible to cite articles and chapters of the NMSA 1978 and to cite chapters of the session laws when such a broader reference is appropriate.

***Example:***

Chapter 14, Article 3 NMSA 1978  
Laws 1992, Chapter 345

***Judicial Decisions:***

It is often necessary to cite judicial decisions in memoranda. Suggested style of citation for the following types of decisions is:

<b><i>Court of Decision</i></b>	<b><i>Cite As</i></b>
United States Supreme Court	Name of case as it appears in official reporter, volume and page of the United States Supreme Court Reports and the year of decision. Example: <i>State v. Jones</i> , 254 U.S. 668 (1972)
United States Court of Appeals	Name of case as it appears in official reporter, volume and page of West's Federal Reporter, the deciding court and the year of decision. Example: <i>State v. Jones</i> , 298 F.2d. 301 (10th Cir. 1972)
United States District Court	Name of case as it appears in official reporter, volume and page of the Federal Supplement, the deciding court and the year of decision. Example: <i>State v. Jones</i> , 566 F. Supp. 692 (D.N.M. 1972)
New Mexico Supreme Court	Name of case as it appears in official reporter, volume and page of the official state reports, volume and page of the unofficial West regional reporter and the year of decision. Example: <i>State v. Jones</i> , 82 N.M. 781, 256 P.2d 499 (1972)

For a detailed authority on citation style, the legislative council service reference is *A Uniform System of Citation* by the Harvard Law Review Association.



## *APPENDIX D*

### *THE GENERAL APPROPRIATION ACT*

The general appropriation act follows, as well as it can, the style and standards adopted for all other bills. However, there are certain requirements peculiar to this important piece of legislation, particularly those stated in the constitution and those necessary because of the space allotted for columnar material. Some deviations from accepted style are necessary. Following are facts and foibles about House Bill 2.

- ▶ The general appropriation act is traditionally introduced in the house of representatives as House Bill 2. The original House Bill 2 is usually an executive measure and is introduced by the chairman of the house appropriations and finance committee at the request of the governor. That bill is prepared by the legislative council service. The bill is substituted in HAFC.
- ▶ In recent years, the governor and the legislature have agreed to allow the introduction of an incomplete bill to save money and trees, since the bill will be substituted in committee.
- ▶ The short title of the general appropriation act includes the current year, e.g., the General Appropriation Act of 1993. If referring to a specific general appropriation act, the year must be included and the short title is capitalized; if referring generally to the act, do not capitalize.
- ▶ The general appropriation act is of limited duration, i.e., one fiscal year.
- ▶ Article 4, Section 16 of the constitution of New Mexico sets out what a general appropriation act is and what appropriations can be made in that act. The drafter will probably want to remind the sponsor of an enabling act that general appropriation acts are not intended to fund new programs.
- ▶ Article 4, Section 23 of the constitution of New Mexico provides that the general appropriation act take effect immediately upon passage and approval; therefore, it is not necessary to use an effective date or emergency clause.

▶ Typically, there are twelve sections in House Bill 2:

1. short title
2. definitions
3. general provisions
4. upcoming fiscal year appropriations for all branches
5. special appropriations
6. deficiency and supplemental appropriations
7. data processing appropriations
8. compensation appropriations
9. additional current year budget adjustment (BAR) authority
10. upcoming fiscal year BAR authority
11. transfer authority
12. severability.

There may be other sections in what is known as "the back of the bill", depending on the particular demands of a particular session.

▶ House Bill 2 is printed in "landscape", which means it is printed sideways. The bill paper looks the same as other bill paper until Section 4; after that, there is a header on each page that divides the page into columns.

▶ Amounts set out under column headings are expressed in thousands of dollars; for example, \$4,825,600 is written as "\$4,825.6". Amounts set out in the narrative text are stated as in other bills, that is, in words and figures.

▶ The legislative finance committee is responsible for drafting House Appropriations and Finance Committee Substitute for House Bill 2; it also prepares the senate finance committee report and the conference committee report. However, legislative council service drafters should be familiar with the form and format of the document.

▶ At this time, amendments for the senate finance committee are prepared electronically and only selected drafters have to prepare them.

▶ Beginning in fiscal year 2001, the state move to performance-based funding instead of categorical funding; however, there are still broad categories of funding, including personal services and employee benefits, contractual services, other and other financing uses.

## **BUDGET CHART OF ACCOUNTS**

Following is the list of line items in each budget category.

200 PERSONAL SERVICES & EMPLOYEE BENEFITS	4312 maintenance grounds & roadways
2011 exempt	4322 maintenance — furniture, fixtures & equipment
2021 term	4332 maintenance — buildings & structures
2031 perm full time	4341 maintenance — property insurance
2041 perm part time	4351 maintenance — maintenance supplies
2051 temp	4362 maintenance — laundry/dry cleaning
2061 paid unused sick leave	4372 maintenance — maintenance services
2071 overtime and other premium pay	4392 other maintenance
2081 annual and comp leave paid at separation	4411 office supplies
2091 differential pay	4421 medical, lab & personal supplies
2111 group insurance	4431 drugs
2121 retirement contributions	4441 field supplies
2131 FICA	4451 food
2141 workers' compensation	4461 kitchen supplies
2151 unemployment comp	4471 clothing, uniforms & linen
2161 employee liability insurance	4481 educational & recreational supplies
2171 retiree health care	4491 inventory exempt
2191 other employee benefits	4562 reporting & recording
300 CONTRACTUAL SERVICES	4572 ISD services
3512 medical services	4582 radio communications services
3522 professional services	4592 printing & photographic services
3532 other services	4612 postage & mail services
3542 audit services	4621 bond premiums
3552 attorney services	4632 utilities
400 OTHER	4642 rent of land & buildings
4211 in-state mileage/fares	4652 rent of equipment
4212 reportable in-state mileage/fares	4661 telecommunications
4221 in-state meals and lodging	4662 reportable telecommunications
4222 in-state lodging	4671 subscriptions & dues
4231 board/commission in-state travel	4681 employee training & education
4232 reportable board/commission in-state travel	4682 reportable employee training & education
4251 fuel & oil	4692 reportable advertising
4261 parts & supplies	4721 grants to individuals
4262 maintenance & repair services	4731 care & support
4271 transportation insurance	4732 reportable care & support
4282 state transportation pool charges	4741 grants to organizations
4291 other travel	4751 purchases for resale
4292 reportable other travel	4752 reportable purchases for resale
4311 grounds & roadways	

4771 debt service — principal  
4781 debt service — interest  
4791 miscellaneous expenses  
4792 reportable miscellaneous expenses  
4811 land  
4812 reportable land  
4821 furniture & fixtures  
4822 reportable furniture & fixtures  
4831 information technology equipment  
4832 reportable information technology  
equipment  
4841 other equipment  
4842 reportable equipment & machinery  
4861 animals  
4871 library & museum acquisitions  
4881 automotive & aircraft  
4891 buildings & structures  
4892 reportable buildings & structures  
4961 employee out-of-state mileage &  
fares  
4962 reportable employee out-of-state  
mileage & fares  
4971 employee out-of-state meals &  
lodging  
4972 reportable employee out-of-state  
meals & lodging  
4981 board/commission out-of-state  
mileage & fares  
4982 reportable board/commission out-of-  
state mileage & fares  
4991 board/commission out-of-state meals  
& lodging  
4992 reportable board/commission out-of-  
state meals & lodging

500 OTHER FINANCING USES

5511 other financing uses

600 NONBUDGETED EXPENDITURES

6031 refunds — member contributions  
6351 annuity payments  
6521 distributions to beneficiaries  
6531 distributions to state general fund  
6611 reversions

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Note: examples listed are only those in Chapter 9, "EXAMPLES AND FORMS". Other examples are contained in the text in the pages listed for the subject.

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NUMBERS REFER TO PAGES OF DRAFTING MANUAL.

ARTICLE AND SECTION REFERENCES UNDERSCORED ARE TO STATE CONSTITUTION.

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