

## CHAPTER TWO

### STEPS IN DRAFTING A BILL

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This chapter gives a bird's eye view of the entire drafting process. Some of the subjects mentioned only briefly are dealt with in detail in subsequent chapters.

#### **1. TAKING A DRAFTING REQUEST.**

The Legislative Counsel's office furnishes bill drafting services at the request of legislators, legislative committees and, as time permits, state agencies (referred to categorically in this manual as "the requester"). Requests are submitted in various forms and with widely varying degrees of specificity. If the request is taken during an interview with the requester, the person taking the request, who may not ultimately have anything to do with the actual drafting, has an opportunity to elicit more details. This office uses a form to assist in obtaining suitable information, including the name of any person or agency that the requester desires to have consulted. Processing of these forms is described in Appendix G on office procedures.

## **2. CONFIDENTIALITY.**

### **a. Member Requests.**

A drafting request from a member of the Legislative Assembly received by the office of the Legislative Counsel will be treated as confidential and the name of the requester and nature of the request will not be revealed to any person except as follows:

1. Without revealing the identity of the requester, a drafter may consult with others to gain necessary background information for drafting.
2. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made, but may not inform the second requester of the name of the first requester without the authorization of the first requester.
3. A drafter may discuss the draft with any person the requester authorizes the drafter to consult in preparing the draft.

Each member of the staff who takes requests will make an effort to determine the names of other persons who may be contacted with respect to the draft. The draft request form will be marked to reflect the names of those persons. A drafter may presume that legislative aides and other persons on the member's staff have authority to discuss a draft requested by the member.

### **b. Committee Requests.**

A committee request is a publicly made request based on the authorization of a majority of the members of the committee. As a publicly made request, a committee request is not confidential. Committee requests are treated as follows:

1. A drafter may acknowledge receipt of a committee request and may reveal the nature of the request and the name of the committee. All inquiries as to the specifics of committee requests other than inquiries from members of the committee should be referred to committee staff.
2. The office will not supply a list of committee requests except to members of the committee. Persons seeking general information of this nature will be directed to committee staff. Persons other than members of the committee seeking copies of drafts prepared for committees will be directed to committee staff.
3. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made and may inform the second requester of the name of the committee that made the request without further authorization from the committee.
4. A drafter may discuss the specifics of a committee request with others to gain information needed to prepare the draft.

### **c. Agency Requests.**

An agency drafting request received by the office of the Legislative Counsel will be treated as confidential and the name of the requester and nature of the request will not be revealed to any other person except as follows:

1. Without revealing the identity of the requester, a drafter may consult with others to gain necessary background information for drafting.
2. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made, but may not inform the second requester of the name of the first requester without the authorization of the first requester.
3. A drafter may discuss the draft with any officer or employee of the Oregon Department of Administrative Services or the office of the Governor if the draft requires the approval of the Governor under ORS 171.133.
4. A drafter may discuss the draft with any person the requester authorizes the drafter to consult in preparing the draft.

It is presumed that all officers and employees of an agency have authority to discuss an agency draft.

### **3. THE PURPOSE OF THE REQUEST.**

Before beginning to prepare a bill, the drafter must determine what the requester wants to accomplish. A drafter's function is to devise appropriate statutory language to carry out requested objectives, and not to supply substance or policy. Obviously, a drafter is unlikely to achieve the objective of the requester in a satisfactory manner if the drafter has an imprecise idea of what the requester wants. This is why it is so important that the person taking the request ask the right questions.

Usually there is no one from the office of Legislative Counsel involved in taking a drafting request from a state agency. Therefore, prior to beginning work on an agency draft, the drafter should check with the person named as the agency contact to be sure that the drafter and the agency agree on what the agency is requesting. The Oregon Department of Administrative Services (DAS) requires executive agencies to submit suggested statutory language to DAS with each request; it is part of the DAS approval process. Remember that suggested language is usually written and reviewed by people with no drafting training who may be in a hurry. Agency employees sometimes have a stake in seeing their exact words in the final bill draft. Nonetheless, the drafter's obligation is to produce a draft that accomplishes what the agency wants to accomplish. The "how" – the actual drafting – is ultimately the drafter's responsibility.

Because of the complexity of some requests, it often happens that the requester cannot give explicit instructions at first, nor can the person taking the request anticipate every question that will arise in the course of drafting. When the instructions are not precise, the

requester's objective and the various means by which that objective can be accomplished must be analyzed. Then the drafter can check with the requester so that the requester can consider and answer these questions. As drafting proceeds, the drafter may encounter additional questions that require subsequent contacts with the requester. However, these contacts **should** be kept to a minimum. Requesters, particularly legislators, generally are busy and are relying on the expertise of the drafter to isolate policy issues. It is sometimes better for the drafter to fill in the interstices and advise the requester in writing of the options used in the draft than to seek additional details from the requester during initial drafting.

#### **4. IS IT CONSTITUTIONAL?**

Legislation must conform to state and federal Constitutions. If the drafter fails to observe constitutional requirements prescribed for legislative Acts or constitutional restrictions imposed thereon, the bill will be invalid in whole or part.

The drafter must consider state constitutional requirements as to form. For example, does the proposed bill embrace more than one subject? (section 20, Article IV, Oregon Constitution) Constitutional requirements as to substance also exist. For example, does the proposed bill violate the requirement for uniformity of taxation? (section 1, Article IX, Oregon Constitution) A drafter ordinarily need not render a formal opinion on each constitutional issue. However, the requester has a right to expect that the drafter will point out any such issue and, if possible, indicate an alternative, constitutional means of accomplishing the objective. The drafter is wise to record in the file, however briefly, the nature of the problem and the fact that the requester has been notified of its existence.

Specific constitutional provisions are discussed at appropriate places in this manual. There is a brief discussion of constitutional limitations on legislation in Appendix B.

#### **5. WHAT IS EXISTING LAW?**

A drafter must become an expert on constitutional provisions, court decisions and statutes relating to the subject matter of each bill the drafter is requested to prepare. If the bill passes, it will take its place in the body of existing law. The drafter must be sure that the bill will not create conflicts or produce unintended results. It may appear to be saving time to neglect to search for conflicting provisions of existing law that should be amended or repealed. However, sooner or later individuals, agencies and the courts may have to spend much more time and money trying to resolve such conflicts.

To determine the application and meaning of existing statutes, the drafter may begin by using the ORS classification outline, index and annotations. Annotations that have been written but not yet published in the cumulative supplement to the ORS annotations are stored in a file in the computer and may be obtained by consulting the annotations staff.

Many statutory provisions are of general application. See, for example, ORS chapter 174. The drafter ought to be familiar with them so that the bill will not duplicate material already covered by general provisions.

Federal laws establishing standards for state programs in certain areas such as welfare, health, education and highways may limit state activities in these areas. A requester probably will not want to cause the state to lose federal funds through noncompliance with these standards. Other areas may be preempted by federal action. If there is suspicion that a bill may conflict with federal programs, the federal laws and regulations should be checked. This can be done most easily by a call to the appropriate federal or state agency. The call is subject to the rule on confidentiality.

## **6. USING OTHER LEGISLATION AS A BASIS.**

A drafter should avoid the temptation to re-invent the wheel. A drafter can avoid writing a bill “from scratch” if a law or a previously prepared bill that is similar or analogous to the one requested can be found. It may be possible to revise the previous bill or adapt the law in much less time than would be required to write a new bill. Also, the benefit of someone else’s thinking, perhaps even the drafter’s own on some occasion when more time was available, may be desirable. Problems and solutions that otherwise would be overlooked may be found. Some of the different types of material that may be helpful are explained below.

### **a. Other Oregon Statutes.**

The bill can be patterned on an existing Oregon statute, even though that statute is not precisely on the same subject. For example, if requested to draft a bill creating a board to license a certain profession, by examining ORS chapters 670 to 704, occupational and professional licensing laws, the drafter will probably find many provisions that suggest appropriate substance and language.

The procedure prescribed by an existing law **usually** can be assumed to be workable. The language used in an existing law often has been construed administratively or judicially. Consequently, it may be preferable to use the “tried and tested” procedure and language rather than take chances on something new. However, existing laws are not always perfect in form, style or substance, and must be adjusted in all cases to fit the needs of the present bill. The drafter should check the workability of an existing statute with the appropriate state agency before using it as the basis for a new bill. The drafter should also review the annotations for court cases and Attorney General opinions that may suggest problems with the proposed model.

### **b. Bills of Past Sessions.**

Use the checklist in Appendix E, Redrafts of Bills from Previous Sessions, to prepare redrafts. A bill introduced but not passed, or a draft prepared by the Legislative Counsel office but never introduced, may help in preparing a new bill. However, the drafter should **never use a bill drafted for an earlier session without checking for amendments or other changes in existing statutes after it was prepared.** The drafter should also consider any amendments proposed to the bill itself. Dates appearing in the draft may need to be revised. Usually the style and substance of a previous draft can be improved.

The drafter cannot assume, merely because the bill was introduced at a prior session, that it is satisfactory for present purposes. It may have failed to pass because of its inadequacies.

Bills introduced at a previous session can be found by using the subject matter approach, employing the indexes in the final Legislative Calendar, or the sections-amended-or-repealed-by-bills approach using tables in the final Legislative Calendar.

If a bill of a past session was prepared by the Legislative Counsel's office, the bill request file may contain helpful information. For bills introduced in 1953 and at subsequent sessions, the LC file numbers are entered on the printed bills or in conversion tables located in the LC library. To find bills prepared in the office, the drafter may use the subject matter approach by using the bill request index file or the requester approach by using the requester index file, both in the office.

Time can often be saved if the bill contains many new sections of law by obtaining an office printout from Publication Services for the immediate preceding session or copies of last session's printed bills from Publication Services or the Distribution Center or by photocopying old bills from the LC library or by obtaining copies from the Oregon State Library (earlier sessions). Copy can then be prepared by marking the required changes, using the most recent version of ORS for amendments to statutes. It is helpful to Publication Services if the source of the material is given. For example, the bill number and session year or ORS citation should be retained.

### **c. Bills of Current Session.**

As a legislative session progresses and the number of bill introductions increases, it becomes more important for the drafter to check the weekly cumulative bill index or various computer sources of similar information. The drafter may find bills similar to the one requested by using the topical index, the table of sections amended, repealed and "added to," the STAIRS search program for bills or possibly the Legislative Counsel docket. If a similar bill already has been introduced, the drafter must call that fact to the attention of the requester. Sometimes the requester's objective can be more easily accomplished by amendment of a bill already introduced. However, a drafter should not undertake to draft amendments instead of a bill without first consulting the requester. If a similar bill already has passed both houses, it may be necessary to adjust the bill being drafted to make it consistent with the earlier bill. The weekly cumulative legislative calendars and their daily supplements contain detailed information on the progress of all bills. The information is also available on the computer. Drafters should consult Publication Services personnel for instructions on how to access current bill information.

### **d. Laws and Bills of Other States.**

If legislation similar to the bill being drafted has been presented in another state, that bill (or law, if it was enacted) often is helpful. Sometimes a similar law can be found by checking the codes of other states in the Supreme Court Library or on the Internet. However, unless the drafter is prepared to check 49 codes, some ingenuity must be

exercised in selecting those states more likely to have confronted the same problem. For example, if the drafter is drafting a bill relating to commercial fishing, it is unlikely that anything useful will be found among the Utah statutes.

In adapting a measure from another state for purposes of legislation in Oregon, the drafter must be sure that necessary changes are made to conform to terminology and procedure used in other Oregon statutes. A drafter must remember, too, that a bill may be perfectly constitutional in another state but unconstitutional in Oregon. Therefore, bills from other states should usually be used only as general guidelines to regulatory approaches and direction, and not as copy to be followed in detail.

Copies of **bills** from other states usually are furnished promptly by the legislative service agencies of those states. The text of **statutes** of other states may be obtained in the same manner but often statutes can be found more quickly by consulting computer legal research databases or the codes and session laws in the Supreme Court Library. Since many experiences are common to the states and the various Canadian provinces, a drafter should not overlook provincial legislation for assistance.

#### **e. Constitutional Provisions of Other States.**

For up-to-date versions of other states' Constitutions, check the computer legal research databases. The Constitutions of all the states are printed in full in *Constitutions of the United States, National and State* (1962), published by the Legislative Drafting Research Fund, Columbia University. The various constitutional provisions are summarized in the Index Digest volume of the same publication. However, the index has not been maintained up to date. A copy of this reference work is in the LC library.

#### **f. Uniform and Model Acts.**

A drafter may find that a bill similar to the one being drafted has been prepared by the National Conference of Commissioners on Uniform State Laws. The conference prepares uniform Acts that are intended, for the most part, to be followed exactly. The text of any such uniform Act can be found in *Uniform Laws Annotated* at the Supreme Court Library or at [www.nccusl.org](http://www.nccusl.org) (National Conference of Commissioners on Uniform State Laws.)

Model Acts, intended merely as guides for legislation in areas where uniformity is not necessary, come from a variety of sources, including trade groups, occupational associations, etc.

A drafter should be familiar with an annual publication of the Council of State Governments titled *Suggested State Legislation*. Another annual publication of value is the State Legislative Program of the Advisory Commission on Intergovernmental Relations. Copies of most of these works are in the LC library.

### **g. Interim Committee Bills.**

Legislative interim committees and task forces usually recommend legislation, drafts of which sometimes are printed in their reports. Copies of all interim committee reports submitted in recent years are in the LC library; earlier reports are available from the State Library.

### **h. Oregon State Bar Bills.**

Committees of the Oregon State Bar frequently propose legislation. The reports of these committees, including in most cases the full text of their proposals, are published each year for consideration by the annual meeting of the Bar. Copies of these publications from 1953 to date are in the LC library; copies for earlier years are in the Supreme Court Library.

### **i. Other Sources.**

Federal legislation often suggests approaches to be taken in drafting but a drafter should take careful note that the mere existence of federal legislation on a subject suggests either preemption or supremacy. Further, federal legislation rarely provides a desirable drafting model.

Local ordinances may be used as samples. There are two caveats: (1) If the matter can properly be subject to local ordinance, is the matter within the authority of the Legislative Assembly or is the matter a subject of home rule; and (2) Ordinances are usually not good drafting models.

Quasi-public associations such as those at the Local Government Clearing House in Chicago may be good sources for suggested legislation. The League of Oregon Cities, the Association of Oregon Counties and the Oregon School Boards Association are examples of local contacts for these types of associations.

Trade associations are also sources for draft legislation on the subjects affecting their interests. The State Library can usually provide addresses if there are no local affiliates.

## **7. USE OF LIBRARY FACILITIES AND COMPUTER RESOURCES.**

The drafter should become thoroughly familiar with the research and reference tools available on the computer and in the Legislative Library, Supreme Court Library and Oregon State Library. A visit to each of the libraries is the best way to find out what is available. The Legislative Librarian and the Documents Librarian at the Oregon State Library have information on types of materials of special interest to the drafters. The research and reference tools available on the computer include Lexis, STAIRS, Oregon LegisLaw, Loislaw, Shepards and the Internet.

Lexis is the preferred online research service for the office of the Legislative Counsel. The preferred research service for federal income tax is RIA Checkpoint. The office maintains one subscription to RIA checkpoint.

Sometimes another state, or a private group in Oregon or in another state, has made a comprehensive study of the problem being worked on and has collected comparative legislation and expert opinion in a published report. A drafter may find a report on the effectiveness and background of a law that is being used as a model in preparing a bill for introduction in Oregon. If there is reason to believe some other state or group may have made such a study, the Research Librarian at the State Library or the Legislative Librarian for the Legislative Administration Committee can make a search.

The drafter should periodically examine the materials in the LC office library so that its contents are familiar.

A variety of resources are available on the computer. STAIRS may be used to research ORS, session laws, Attorney General opinions and other databases. Lexis also may be used to research ORS, as well as Oregon case law, United States Supreme Court case law and other databases. Shepards may be used to shepardize a particular case. The Internet is useful for researching the laws of other states, federal laws and policies, Oregon Administrative Rules and other topic areas.

The computer resources available in the office for research frequently change. The drafter should periodically review them.

The State Archivist has the records and files of standing committees and interim committees of recent legislative sessions. A check of the State Archives may provide background on an existing Oregon statute. The Chief Clerk of the House and the Secretary of the Senate retain all tapes of the floor debates. The Legislative Library has committee minutes for the preceding session.

The State Library, Supreme Court Library and the Willamette Law School Library have facilities to photocopy pages of books and other library materials. For the drafter's convenience, the Legislative Counsel office has "charge cards" available for copying purposes at these libraries (fees charged to this office). A charge card can be checked out at the Legislative Counsel front desk and must be returned by the end of that day.

## **8. CONSULTATION WITH EXPERTS.**

Sometimes a drafter will not be sufficiently familiar with a given area to determine the practical effect of a new procedure or change in the law. In these cases, **if the requester consents** and if time permits, the drafter may consult experts in the area to be affected. For example, if the bill being drafted would impose new duties and powers on a state agency, it would be proper to confer with appropriate personnel of that agency. Problems of a practical nature may occur to them that would not occur to others. However, the drafter must protect the requester from possible agency lobbying attempts by protecting the requester's identity unless **specific** permission has been given to reveal that identity.

Usually it is easy to find the appropriate official for consultation if a state agency is involved. More difficulty will be experienced with respect to city or county officials. However, the League of Oregon Cities or the Association of Oregon Counties can provide useful information concerning procedures and operations of the local governments represented by each.

The Legislative Fiscal Officer and the Legislative Revenue Officer may be able to assist in problems concerning state revenues, expenditures and fiscal matters generally.

## **9. REVIEWED FOR FORM AND STYLE ONLY.**

Do not caption a draft “Reviewed for Form and Style Only.” A drafter may receive a bill draft request with instructions that no changes are to be made or for which there is not sufficient time before the draft is due for the drafter to examine the draft, much less rewrite it.

In either case, consult with the Legislative Counsel or Chief Deputy Legislative Counsel instead of adding a caption that reads “Reviewed for Form and Style Only.”

## **10. ANALYZING PROVISIONS TO BE IN BILL.**

After completing the necessary background research, the drafter must begin to visualize the elements of the bill to be drafted. While the bill may embrace only one general subject, it will do so by doing one or more of the following:

- 1. Creating new law.**
- 2. Amending existing law.**
- 3. Repealing existing law.**

If an existing statute is not found that can be amended to accomplish what is desired, the bill must **create new law** (new sections) imposing duties, conferring powers, granting privileges, decreeing prohibitions, prescribing penalties, making appropriations, etc., as necessary to accomplish its purpose.

Research may indicate that there are existing statutes dealing with the subject covered by the request and that a change in or an addition of language to one or more of these existing statutes will accomplish the requester’s purpose. If so, the bill will need to **amend existing sections**. Language may be taken from other statutes to express the changes in or additions to the section amended. It is important to harmonize the language added with that already used in the section amended, and to avoid creating inconsistencies and conflicts with unamended portions of the law. Because it is more important to maintain consistency of language between the new material and the unamended existing law than to create a “pearl,” the drafter may need to exercise particular self-restraint.

Often a bill must **repeal existing law** (removing sections). It is important to check a statute carefully prior to its repeal, to be certain that nothing in the statute should be in force after the bill being drafted becomes law. In addition, internal references to the repealed law may exist in sections not otherwise being amended. These references must be reconciled. **STAIRS** (Storage and Information Retrieval System) is available on the computer for checking on repealed sections and renumbered subsections. See the STAIRS training and reference manuals for information on how to use STAIRS.

## **11. OUTLINING A BILL.**

For many bills, a mental or written outline of a bill, prepared before writing the bill itself, is a necessity. The outline should express the results of the analysis of provisions to be included in the bill, following the suggestion in Chapter 6 of this manual with respect to arrangement. For a simple bill, an outline may be unnecessary. Probably there will be less need for a detailed written outline for an experienced drafter, but some advance planning for drafting a bill will always be required.

A carefully structured outline, based on a sound analysis of the required provisions, is a good basis for dividing a lengthy or complex bill dealing with many aspects of the subject into smaller, manageable units.

## **12. WRITING A BILL.**

After completing an outline, a drafter must begin to write. Writing should never be delayed until all research is completed. Research is **never** completed. Judgment is necessary to distinguish between the research effort necessary to produce a draft and research for its own sake or as a tactic to delay drafting.

An outline is useful in preparing the first draft. Form and style can be imposed later, but on a first draft the drafter should concentrate on getting the **substance** of the bill down on paper.

If the bill amends current ORS, read the entire ORS section before inserting the amendments and again after inserting the amendments. Many drafting mistakes can be avoided, or will be caught, if you read the entire section.

After completing the first draft and letting a day or two elapse, if time permits, for a fresh look at it, the drafter can reread and rewrite the bill as many times as necessary to:

- ◆ Attain clarity, giving careful attention to style and grammar and the use of specific words.
- ◆ Arrange the provisions in the most useful order. The organization initially should have followed the outline. When a rough draft is completed, the drafter is able to reconsider arrangement.
- ◆ Ensure constitutionality or, if not ensured, review and comment upon it.

- ◆ Take into account statutory and common law rules for interpreting statutes.
- ◆ Comply with mechanical, formal and substantive requirements.
- ◆ Ensure that there is no conflict with or duplication of constitutional or statutory provisions of general application.
- ◆ Resolve “birds in flight,” i.e., actions and proceedings already under way or to be initiated that may be affected by the bill.

Finally, when the body of the bill is complete, the drafter drafts an appropriate title. If the draft is “**final**,” the drafter should also prepare a measure summary.

### **13. TIPS THAT SAVE TIME.**

In drafting a lengthy bill, the drafter may be wise not to number sections or insert section numbers in internal references until the final arrangement of sections is determined. If the bill is exceptionally long, it may be helpful to make a cross-reference card file to help keep track of internal references.

### **14. COMPILATION IN ORS.**

The bill should be drafted in such a way that it will fit into *Oregon Revised Statutes*. To anticipate codification, the drafter must understand the system of classification and arrangement of ORS.

During the drafting of a bill, the drafter should examine ORS to discover whether there is an affirmative reason to direct that new provisions of the draft be placed in a particular place in ORS. If there is an adequate reason to do so, the direction is accomplished by saying that the new section is “added to and made a part of . . .” an existing series or chapter or code in ORS. There are two basic requirements for adding something to and making it a part of: There must be an affirmative reason to do so; and the series, chapter or code added to must exist as something more than an editorial convenience. For a more detailed discussion of adding a new section to an existing ORS series, chapter or code, see “DRAFTING NEW SECTIONS,” Chapter 13.

### **15. NUMBERS-REFERRED-TO SEARCH.**

When amending or repealing an existing ORS section, the drafter must **ALWAYS** do a computer search (STAIRS) of ORS for all references to the amended or repealed section. See “Editorial Substitutions” under “ALTERNATIVES TO AMENDMENTS,” 13, for discussion of editorial substitutions that may be effected in lieu of extensive “housekeeping” amendments and of situations that may require the drafter to scrutinize more carefully those sections in which reference is made to the amended or repealed section in the bill. See also “NUMBERS-REFERRED-TO PROCEDURES,” Chapter 13.

## **16. SECTIONS AMENDED, REPEALED OR ADDED TO.**

Legislative Counsel's office maintains information on sections amended, repealed or added to for each current legislative session. This information is available on-line and in the tables printed weekly. These tables contain an entry for each ORS section, ORCP section, uncodified Act section or Oregon Constitution section for which an amendment or repeal has been proposed, and for each series of sections or chapter of ORS or Article of the Constitution to which one or more sections has been proposed to be added by a measure introduced at the session. See "CONFLICTING AMENDMENTS," Chapter 13, for further discussion of "A and R" tables.

## **17. SPECIAL ATTENTION NOTES.**

Since 1949, Legislative Counsel's staff has accumulated a large number of notes concerning ambiguities, conflicts and defects in the statutes. These notes, commonly referred to as "special attention notes," are kept in loose-leaf binders in the office and are noted on the computer printout of the appropriate section as follows: "**NOTE:** This section has an SA note."

Unfortunately, not all defects in the statutes have been noted in the special attention file. Part of the job of a drafter is to discover and record additional ambiguities, conflicts and defects. Special forms, known as "pink sheets," have been provided to record these. The notes should be prepared even though the draft cures the problem, in case the draft does not become law.

When encountering a special attention note in ORS retrieval, a drafter should check the pink sheets to determine whether the special attention note may be addressed in the bill.

## **18. RETRIEVAL NOTES.**

Retrieval notes appear on the computer printouts of ORS sections affected by phased-in amendments, repeals of amendments, delayed repeals and similar anomalies that require a drafter's attention. The note sets forth the timelines affecting the section and may suggest ways to deal with its various versions. In the example that follows, ORS 326.111 was amended by section 1, chapter 757, Oregon Laws 1991, to provide authority to the Office of Community College Services to negotiate for federal funds. That amendment is repealed in 1993. ORS 326.111 also was amended by section 2, chapter 886, Oregon Laws 1991, to delete reference to the State Textbook Commission. That amendment is repealed in 1996. The note suggests that in the meantime the drafter should amend both "temporary" versions, as well as the version of ORS 326.111 as it appears when the repeals have taken effect. The disclaimer sections indicate that the amendments presently added by the drafter are not intended to affect the repeals of the previous amendments.

**SECTION** . . . . ORS 326.111 is amended to read:

**NOTE:** Amendments repealed 6/30/93 and 1/1/96. Safest to amend all three versions and use two disclaimers.

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education . . . :

(a) The State Board of Education . . . ;

(b) The State Textbook . . . ;

(c) The Office of Community . . . ;

(d) Such other agencies and officers . . . ; and

(e) The administrative organizations and staffs . . . .

(3) All administrative functions of the State Board . . . .

**SECTION XX.** ORS 326.111, as amended by section 1, chapter 757, Oregon Laws 1991, is amended to read:

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education shall consist . . . :

(a) The State Board of Education . . . ;

(b) The Office of Community College Services which shall . . . ;

(c) Such other agencies and officers . . . ; and

(d) The administrative organizations and staffs . . . .

(3) All administrative functions of the State Board of Education shall . . . .

**SECTION XXX.** Nothing in the amendments to ORS 326.111 by section XX of this Act affects the provisions of section 14, chapter 474, Oregon Laws 1987, as amended by section 8, chapter 757, Oregon Laws 1991.

**SECTION YY.** ORS 326.111, as amended by section 2, chapter 886, Oregon Laws 1991, is amended to read:

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education . . . :

(a) The State Board of Education . . . ;

(b) The Office of Community College . . . ;

(c) Such other agencies and officers . . . ; and

(d) The administrative functions of the State Board of Education shall be exercised . . . .

**SECTION YYY.** Nothing in the amendments to ORS 326.111 by section YY of this Act affects the provisions of section 16, chapter 886, Oregon Laws 1991.

Note that as of the 1999 legislative session the Legislative Counsel's office no longer routinely uses these disclaimers.

## **19. REVISER'S BILL.**

The Reviser's Bill amends ORS sections to correct errors in syntax, internal references, gender references, etc. ORS retrieval printouts for affected sections contain notes after the amending clause and before the text as follows: "**NOTE:** This section is amended in the Reviser's Bill."

When encountering such a note in retrieval, check the Reviser's Bill change and, if there is no conflict, do not make the Reviser's Bill change to the ORS section in the current draft. In cases of conflict between the Reviser's Bill and the current draft, see the conflicts team.

## **20. CHECKING FINAL DRAFT.**

When a draft is finished, the drafter should check it carefully. No matter how experienced in drafting bills, a drafter will never cease to be amazed at how often errors that escape repeated checks will be ridiculously obvious when the draft is reviewed.

Several **separate** readings are advisable to check arrangement, style, grammar, use of specific words, definitions, incorporations by reference, internal references to other sections, etc. As a final check, there is a Checklist for Drafters inside the request folder. The drafter should consider each point in this checklist and not mechanically check items in the list if the item has not been separately considered.

## **21. THE REQUEST FOLDER.**

The bill request folders should be maintained in good order at all times. The Legislative Counsel or some other drafter may need to refer to one of them instantly, and under severe limitations of time, when the drafter is not available.

Ordinarily a drafter should arrange the material in each folder in chronological order, latest material on top, but in a way that associates each draft with the notes and correspondence relating thereto. The drafter or some other person may have to refer to the file several years after the session is over.

## **22. TRANSMITTAL.**

Often a drafter will want to point out important features of a bill, or problems not dealt with therein, in a letter of transmittal or a note accompanying the draft. If a handwritten note is used, a copy should be retained in the file. A drafter should preserve for the record any constitutional or other legal objections that might be raised against the bill, even though the requester has been advised of them orally.

Having been advised of serious difficulties, the requester may still choose to adhere to original instructions. A drafter must accept that decision with good grace. Because of staff limitations during sessions, a drafter need not and should not send a formal, nonsubstantive letter of transmittal with each draft.

## **23. SUMMARY.**

In performing the duties of a bill drafter, a drafter must:

1. Ascertain the exact purpose the requester has in mind, and the means by which that purpose can be accomplished.
2. Explore in detail alternative approaches and, by pointing out the policy questions involved, help the requester think the problem through and decide the issues.

3. Find out which constitutional provisions and existing statutes relate to the subject of the proposed bill, and what adjustments, if any, must be made in existing law.
4. Develop a plan for the organization and arrangement of the bill.
5. Prepare a draft in a form meeting legal and technical requirements.
6. Check doubtful substantive matters with experts (unless the requester directs otherwise) or by independent research.
7. Check with the requester on further questions of policy.
8. Reread and revise the draft as many times as necessary to produce a satisfactory result.
9. **Recheck** the draft for arrangement, consistency, coherence and clarity.
10. **Re-recheck** the draft, using the **Checklist for Drafters** inside the request folder.

## **24. REVIEW**

(Taken from: *Applied Imagination* by Alex F. Osborn; published by Charles Scribner's Sons, p. 125, 1953 ed.)

1. Phases of Creative Procedure.
  - a. Orientation: Pointing up the problem.
  - b. Preparation: Gathering pertinent data.
  - c. Analysis: Breaking down the relevant material.
  - d. Hypotheses: Piling up alternatives by way of ideas.
  - e. Incubation: Letting up, to invite illumination.
  - f. Synthesis: Putting the pieces together.
  - g. Verification: Judging the resultant ideas.
2. Devices Designed to Help Activate Imagination.
  - a. Make a start.
  - b. Make notes and use checklists.
  - c. Set deadlines and quotas.
  - d. Set time and place (for thinking).