

CHAPTER THREE

STYLE AND GRAMMAR

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A drafter must deal constantly with difficult problems of expression. The material in this and the next two chapters is intended to help a drafter write not only bills but other materials that reflect the A,B,C's of drafting: **accuracy, brevity and clarity.**

1. GENERALLY.

Drafters who resort to forms of stilted and foggy drafting do so because common words lack dignity; polysyllables lend distinction; precision is unsafe (loopholes in the form of vagueness or ambiguity); and simple writing is hard work (correct). However, the frequency of these forms is reduced by emphasis on plain language and plain English. Poor drafting may be very expensive because it produces a flood of inquiries, endless interpretations, repeated amendment, poor compliance and adverse court decisions.

At least seven types of word surplusage form part of usual legal writing. They are not necessarily incorrect, and they may not be unclear, but they do waste the reader's time and energy.

(1) Deadwood. Deadwood, by definition, should be eliminated. Vague, empty or pretentious words and phrases should be replaced by specific and direct language.

(2) Unnecessary repetition. Repetition is one means of achieving coherence in a written work, but if repetition does not contribute to the design, establish a pattern, emphasize important material or link parts, it is not functional and should be eliminated.

(3) Overuse of passives. The active voice is shorter and more direct than the passive voice.

(4) Weak intensifiers and qualifiers. Since legal propositions may have to include a number of modifying phrases or clauses, fitting them into the sentence simply and clearly is sometimes difficult. Words like “very,” “quite,” “rather,” “completely,” “definitely” and “so” can usually be struck from a sentence without loss.

Usually the best places to put modifying phrases and clauses are before the subject or after the predicate or, in cases where the modifier is short, next to the word being modified. The least desirable place to put a long modifying phrase or clause is between the verb and the predicate noun.

(5) Negative constructions. When an idea can be accurately expressed either positively or negatively, it should be expressed positively.

(6) Extra sentences and clauses. Sentences are sometimes wordy because ideas are given more elaborate grammatical constructions than they need. These constructions can be grammatically subordinated or reduced. Several rules help the drafter tighten the draft:

If two consecutive sentences have the same subject, they often can be combined.

If the idea at the end of one sentence is picked up as the subject of the next sentence, the two sentences can usually be combined.

Clauses beginning with “who” and “that” can be transformed to embedded phrases.

Sentences and clauses beginning with “it is,” “this is” and “there are” can be made more concise by eliminating those useless constructions.

(7) Long-winded introductions. Vague, empty words and phrases clog the beginnings of sentences. When the deadwood is cleared, the subjects appear early, and the main verbs appear close to them.

The following is a list of elements that will lead to good drafting practices:

- ◆ Short statements.
- ◆ Positive rather than negative statements.
- ◆ Active rather than passive voice.
- ◆ Present tense as much as possible.
- ◆ The indicative mood as much as possible.
- ◆ Simple, finite verbs rather than their infinitives, participles or gerunds.
- ◆ Singular rather than plural nouns.

- ◆ The same words consistently for the same meaning – avoidance of synonyms.
- ◆ Avoidance of unnecessary modifiers, unnecessary definitions, unnecessary references, long and unfamiliar words, legalistic expressions and circumlocutions.
- ◆ Words and forms of popular speech as much as possible.

2. CONSISTENCY.

A drafter must be consistent in the **use of words**. If a word or phrase is used more than once in a bill, there is a presumption that the word or phrase has the same meaning throughout. This presumption governs unless a contrary intent is clear. In view of this rule, two mandates can be framed:

- (1) The same word should **not** be used to convey different meanings.
- (2) Different words should **not** be used to convey the same meaning.

Consistency in **approach** also is important. For example, in drafting a statute to create an occupational licensing board, the drafter should check existing ORS chapters that provide for the licensing of particular professions, so that the draft will be consistent with the overall approach of existing law. In drafting a new section that will contain material similar to that in an existing ORS section, the new material should be arranged in the same way unless there is good reason to do otherwise. This does not mean that the arrangement and wording of an existing ORS statute must be imitated slavishly if the drafter finds a more precise and concise way to draft the material.

3. BREVITY.

Many statutes are ambiguous or obscure because of long and poorly constructed sentences. **The drafter must make a conscious effort to keep sentences short.** If each sentence expresses a single thought, it generally is easier for the reader to grasp that thought. It does not matter if the result sounds “choppy” so long as it is clear.

As a general rule, when both a short word and a long word have the same meaning, the short word should be used because it may be more easily understood.

By limiting a sentence to one or two thoughts and a paragraph to a single relationship of thoughts, the drafter can avoid the more thorny problems of ambiguity.

These suggestions help: Sentences of no more than 25 words; paragraphs of no more than 75 words.

Everyone wants a short bill. However, greater mischief may result from a bill that treats a complex subject briefly with vague provisions than from a bill that is lengthy but precise.

4. THE LEGISLATIVE SENTENCE.

The simplest legislative sentence consists of a **legal subject** and a **legal action**. These two parts together constitute the **rule**. In more complicated forms, the legislative sentence also may contain **exceptions, conditions** and **cases**.

a. The Legal Subject.

The legal subject identifies the person who is required or permitted to do something or prohibited from doing something. The legal subject determines the person to whom the law will apply. The legal subject must be used precisely to be sure that the rule confers rights or imposes duties on all of the persons whom the requester intends to obligate or benefit, and no others.

Legal duties, liabilities, rights, privileges and powers can reside only in **persons**. A **thing** cannot possess a right or be subject to a liability. However, there are times when stating the persons who constitute the legal subject would require extensive repetition or would result in awkward arrangement. In these instances, if the persons are definite, even though by implication, a thing as the subject of the sentence may be used.

When using descriptive language to limit the legal subject, the drafter should use the present or past tense of the verb and avoid the future and future perfect tenses; for example, “an employee who leaves” or “an employee who has left,” **not** “an employee who shall leave” or “an employee who shall have left.”

b. The Legal Action.

The legal action describes the particular act that a person is required or permitted to do or prohibited from doing. The legal action should stay close to its subject.

If the rule (legal subject plus action) is **permissive**, that is, confers a right, privilege or power that is to be exercised at the will of the legal subject, the word “may” is used in the legal action. If the rule is **imperative**, that is, imposes a duty or liability on the legal subject, the words “shall” or “may not” are used. “Shall” should never be used to express future action in stating the legal action. “May” or “shall” must never be used in any part of the rule except in the legal action.

The use of “will” results in the following kind of ambiguity: “Any employee of the department will be allowed to undergo courses of training.” Since a privilege is conferred and no duty is imposed, the action should read “may take,” i.e., “Any employee of the department may take courses of training.”

Even when no ambiguity results, use of “will” may cause a thing to be used as the subject. For example, “The duration of the courses will be determined by the administrator.” This example should read: “The administrator shall determine the duration of the courses.”

The drafter ought to be wary of such constructions as “The department shall be compensated for expenses incurred in the performance of its duties under this section.” Does

the sentence impose a legal action or is the action simply cast in the future passive? One assumes the former is intended, since the latter would be mere narrative. Upon whom, then, is the duty of compensating the department imposed? Who or what is the legal subject? Cast the sentence in the active voice, and not only is the legal subject immediately apparent, but the imperative is established: “A corporation shall compensate the department for expenses incurred by the department in the performance of its duties under this section.”

The drafter also should avoid constructions that use “shall” purportedly to impose a requirement on an entity that is not of a type that can logically fulfill a requirement. An example is “The member appointed under subsection (1) of this section shall be licensed by the Oregon State Boxing and Wrestling Commission.” Does this mean the commission shall license the appointee? Probably not. Some drafters attempt to avoid this error by replacing “shall” with “must.” While the substitution is arguably preferable to the original, it still does not address the issue, which is one of statutory function. The statutory function in this instance is not to authorize, require or forbid a legal action, but to impose a condition upon the appointment, and “shall” can readily perform its accepted role if the sentence is recast with that function in mind: “The (appointing authority) shall appoint a person licensed by the Oregon State Boxing and Wrestling Commission.”

c. The Case.

The extent or application of a legal rule can be limited by stating the case in which it operates. In other words, the case sets out the state of facts upon which the rule is to operate. Ordinarily “**when**” introduces the case. Cases may be stated in the alternative.

Generally, the case should be stated at the beginning of the legislative sentence. The reader has immediate notice that the law is limited in application, and is informed promptly whether the rule deals with a state of facts in which the reader is interested.

The case should not be introduced by words such as “in case,” “in the event,” “whenever,” “where” (meaning “when”) or similar phrases. The present or past tense of the verb should be used in stating the case, never the future; for example, not “where the director shall have found”; but “when the director finds” or “when the director has found,” depending on whether the facts stated in the case must occur before or at the same time as the legal action.

Sometimes a single rule applies to numerous cases. It may be more convenient to list numerous cases **after** the statement of the rule, rather than before.

d. The Condition.

Sometimes the legal rule applies only upon the fulfillment of stipulated conditions. Ordinarily, “**if**,” “**until**” or “**unless**” introduces the condition.

The logical position for a condition is directly after the statement of the case. Since the rule is suspended until the condition is fulfilled, the condition should be placed before the rule. If there are several conditions, they can be listed in the chronological order in which they are to be performed or occur.

As in the case of other parts of the legislative sentence, the future tense of a verb must not be used to state a condition.

It is sometimes difficult to determine whether something is a case or a condition; indeed, perhaps there is no significant difference. In determining whether to use “when” or “if,” the following examples, drawn from the Wisconsin drafting manual, might be helpful:

- ◆ When you are expressing a condition that may never occur, use ‘if’ to introduce the condition, not ‘when’ or ‘where.’

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

- ◆ If the condition is certain to occur, use “when,” not “if,” “where” or “whenever.”

Correct: When this section takes effect, the court shall dismiss all pending proceedings.

e. The Exception.

An exception is used to exempt from the application of the law some matter that otherwise would be within the scope of the rule. An exception is introduced by “except,” but care must be exercised that all of those items following the word “except” are intended to be governed by it.

An exception may be used to incorporate by reference exemptions that have been stated in other provisions to avoid an overly complex sentence. For example, “Except as provided in sections 2 and 3 of this (year) Act, a person who. . . .” Ordinarily this type of exception should **precede** the case and condition, if any, and the rule.

Probably no single element contributes more to confused legislation than the inept use of exceptions, especially in the form of provisos, when the matter should be covered by a direct statement. Provisos are archaic, confusing and consistently misused. An exception, limitation or condition should be introduced by “except that,” “but” or “however,” or by a new sentence or paragraph. To avoid pitfalls, a drafter may consider the following techniques:

1. If certain persons are to be excluded from the operation of the rule, the language of the legal subject must be adjusted.
2. If limitations on time, place, manner or circumstance in the operation of the rule are to be made, the language of the legal action must be adjusted.
3. If dispensing with particular conditions is desired, the statement of the condition must be qualified.
4. All other limitations on the application of the rule are placed in the case.

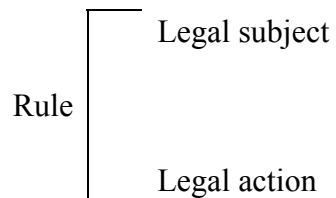
f. Putting the Parts of the Legislative Sentence Together.

A legislative sentence in its most complicated form is made up of the following parts:

EXCEPTION

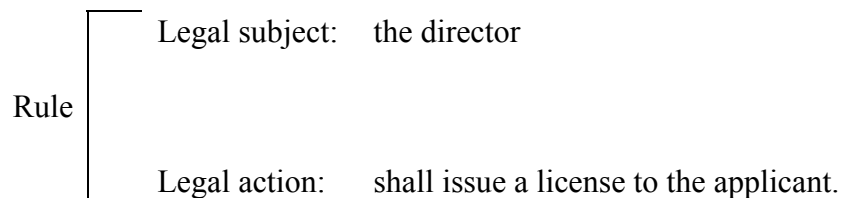
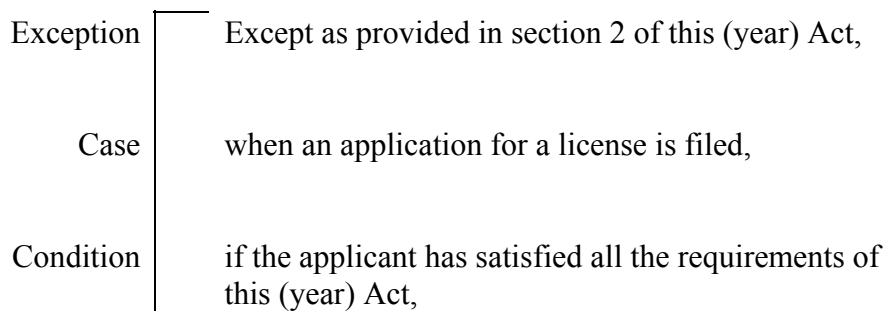
CASE

CONDITION

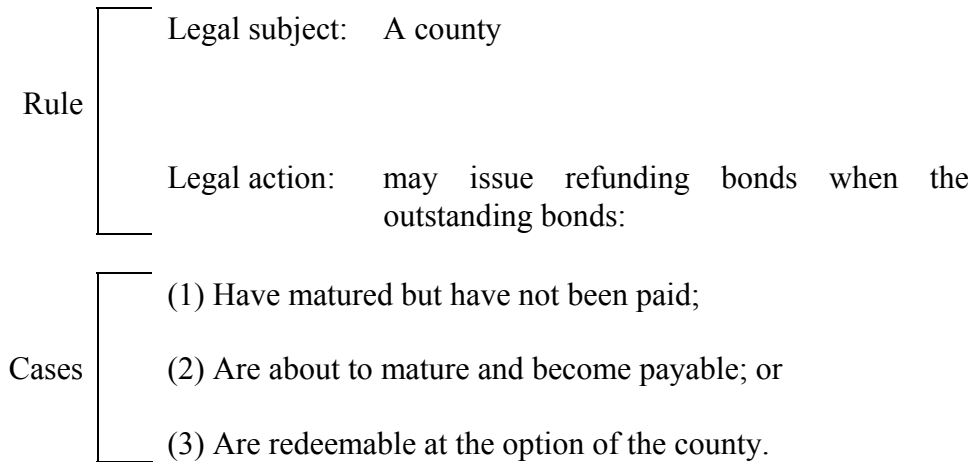


Normally these parts should be stated in the order given, because it is best to state the circumstances in which the rule is to apply before stating the rule itself.

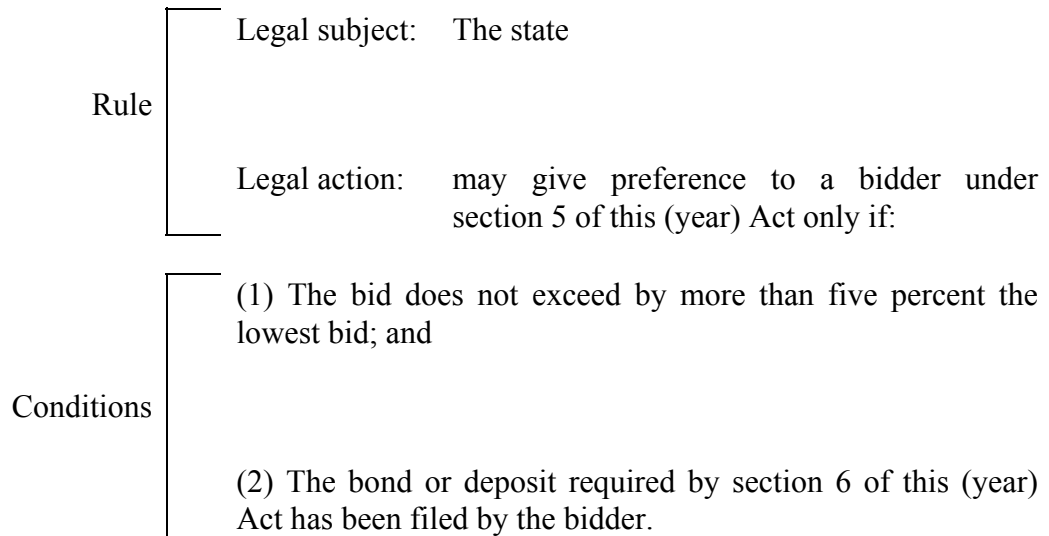
For example:



If the rule is to apply under several cases or conditions, the rule may be stated first followed by the cases or conditions.



Another example:



5. TENSE.

The law is considered as speaking continuously. In other words, a statute is a continuing command. Language used in the present tense is construed as referring to the time when the statute is applied, not to the time it is drafted or enacted. There is a natural temptation to regard the time when a statute is being drafted as the present and to cast legislative sentences in the future tense.

Use of the future tense results in statements like the following:

DON'T

Any person who **will drink** intoxicating liquors on a common carrier or who **will use** profane or obscene language thereon **will be** guilty of a misdemeanor.

Since the law is considered to be speaking continuously, it is much more natural and more concise to state the prohibition as follows:

DO

Any person who **drinks** intoxicating liquors on a common carrier or who **uses** profane or obscene language thereon **is** guilty of a misdemeanor.

The past tense may be used when the present tense also is used and an expression of the time relationship between two or more activities is desired. Facts concurrent with the operation of the law should be recited as if they were present facts, and facts precedent to the law's operation as if they were past facts. However, there is reason to be wary of the past tense. One court found that the use of the past tense caused the statute in which it was used to operate retrospectively. See State ex rel. Dwight v. Justice, 16 Or. App. 336, 518 P.2d 679 (1974).¹

Use of the word "shall" must be limited to statutory commands. This is the prevailing usage in *Oregon Revised Statutes*, in uniform and model Acts and in other well-drawn statutes.

A drafter should not use "shall be" where "is" or "are" fits. For example, there is a definite difference in meaning between "every partner is an agent" and "every partner shall be an agent."

A drafter should also avoid using "shall" when "must" is meant. For example, ORS 573.096 (repealed in 1973) provided in part:

If such person does not pay both the license fee plus the penalty fee during the first month in which the license fee is delinquent, thereafter the applicator shall not only pay both amounts but he **shall** also receive a passing grade in a reexamination given by the department for pesticide applicators as prescribed in ORS 573.056.

This provision is absurd unless one assumes that "shall" in the latter clause means "must."

Although the expression "no person shall" is hallowed by long and extensive usage, literally the expression is equivalent to saying "no person is required to," and therefore is not

¹ The statute in question was amended in 1971 to say: "The issue of a wife cohabiting with her husband who **was** not impotent or sterile at the time of conception of the child is legitimate." Prior to the amendment, the statute said, "The issue of a wife cohabiting with her husband, who **is** not impotent, is legitimate." Note that the drafter could have resolved all ambiguity – regardless of tense – by adding an applicability clause to the bill that amended the statute.

truly a prohibition. Use instead “a person may not.” A more extensive discussion on the use of “shall,” “may,” “must,” “shall not” and “may not” appears in Chapter 4.

6. VOICE.

Use the active voice rather than the passive voice, if the active voice can be used. If a drafter writes in the passive voice, ambiguities may be created by neglecting to identify the person who is given the right, power or privilege or is subjected to the duty or liability. See Arlington Educ. Ass’n v. Arlington School Dist. No. 3, 177 Or. App. 658, 34 P.3d 1197 (2001).

“Notice of the meeting shall be given at least 10 days in advance,” fails to specify who is responsible for giving the notice. The same mandate written in the active voice requires that the responsible person be designated. The attempt to change something written in the passive voice into something written in the active voice may illuminate gaps that need to be filled by policy decisions before a complete bill can be drafted.

Don’t use the passive voice with a double negative; for example, “The powers set out in section 4 of this (year) Act **may not be exercised** by the director **without** the prior approval of a majority of the members of the board.” Rather, the sentence should be written: “The director **may** exercise the powers set out in section 4 of this (year) Act **only with** the prior approval of a majority of the members of the board.”

7. NUMBER; GENDER; PERSON WITH DISABILITY.

Number. When possible, **use the singular number instead of the plural.** The singular usually makes the meaning clearer. Under ORS 174.127, the singular number may include the plural and the plural number may include the singular.

Gender. ORS 174.127 also provides that words used in the masculine gender may include the feminine and neuter, but the 1979 Legislative Assembly enacted the following:

174.129. It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender.

Use of “he or she” or other similar devices should be avoided because they are not sex neutral.

Person with disability. It is the policy of the Legislative Assembly to use “person with a disability” and similar terminology that places the person before the disability, to the extent consistent with state and federal law and as described in ORS 182.109.

8. TABULAR ARRANGEMENT.

The readability of a legislative sentence often can be improved by breaking it down into its parts and presenting them in tabular form. If a number of rights, powers, privileges, duties or liabilities are granted to or imposed upon a single subject, a drafter often can save space and make meaning clearer by using the tabular form. A provision should be arranged in this way whenever the subject matter makes short sentences or independent phrases impossible.

Ordinarily, the tabular form is achieved by arranging the material in the form of subsections and paragraphs, as in ORS 205.160, or even lists, as in ORS 475.940. It may be necessary to use a table arranged in columns, as in ORS 825.476.

9. SECTIONS.

A separate, numbered section is needed in the bill for each new section that is created and for each existing ORS section that is amended. The word “**SECTION**” must be inserted before each section number. The repeals may be grouped together in a separate, numbered section. The sections of a bill are numbered consecutively. However, during the session when amendments make consecutive renumbering of sections in a lengthy bill impractical, sections may be inserted in proper order by numbering “**SECTION 1a**” or “**SECTION 11a**” as necessary. Similarly, sections may be deleted and a note inserted in the bill that reads: “**NOTE:** Section 2 was deleted by amendment. Subsequent sections were not renumbered.”

How much material should go into a section? There is no definite answer to this question. Generally, the contents of a section should correspond to the contents of a paragraph in ordinary English composition. This means that each distinct concept should be a separate section, except that the drafter may divide a concept into a series of sections to avoid a section of excessive length.

If sections are short, the bill is easier to organize. This practice also reduces the length of any future bill amending the section, because the amendment must conform to the constitutional requirement that the section amended be set forth at length. Short sections also are easier to compile in ORS and to index and annotate.

One test that many drafters use to determine whether a section is too long or too short is mentally to compose a leadline (section caption) for the section. If it is impossible to write a concise leadline that covers all the contents of the section, the section probably is too long. Conversely, the drafter should consider consolidating a series of short sections if it is found that a single, concise leadline covers the entire series. If a series of separate sections covers relatively minor matters that could be described generically by a single leadline, they may be combined.

10. NUMBERING AND DESIGNATION OF SUBSECTIONS AND PARAGRAPHS.

a. Form.

When numbering subsections and paragraphs, the drafter must observe the following rules:

If a section consists of two or more independent subsections, each is numbered with an Arabic numeral in parentheses: “(1)”, “(2)”, etc.

If a section is unitary in its grammatical construction but includes dependent subsections in parallel construction, a numeral is not placed before the introductory clause, but the dependent subsections are numbered with Arabic numerals in parentheses. For example:

SECTION 1. The commissioner shall:

- (1) Issue licenses;**
- (2) Hold hearings; and**
- (3) Enforce the law.**

If a section contains more than one subsection, and any one of the subsections includes subordinate paragraphs, the subordinate paragraphs are identified by means of lowercase letters in parentheses. However, “(L)” is used to identify the paragraph between “(k)” and “(m)” to avoid confusion with the designation of subsection “(1)”. Example:

SECTION 5. The board shall:

- (1) Hear appeals; and**
- (2) Issue orders relating to:**
 - (a) Revocation of licenses; and**
 - (b) Suspension of registration.**

As a general rule, tabulation should not go beyond subsections and paragraphs. If a section being written seems to require further subdivision, it should be reconstructed or split. In those rare cases where it is not possible to avoid further subdivision, as in certain tax laws, capital letters are used in parentheses for subparagraphs and small Roman numerals in parentheses for sub-subparagraphs.

It is generally preferable to avoid the use of numbers or letters in parentheses in the body of a section without indentation to designate clauses. If such separation appears necessary, the clauses probably are of sufficient importance to be designated as separate subsections or paragraphs.

The use of numbered paragraphs or subsections in the middle of running text, the device commonly known as “flush left” or “blank slug flush,” must be avoided. An example of this **improper** device is as follows:

SECTION 3. Any person under 21 years of age who:

- (1) Consumes alcoholic beverages in a public place; or**
- (2) Operates a school bus without a valid driver’s license,**

is guilty of a misdemeanor.

For a number of reasons, sections arranged in this manner are confusing when set out in type. The proper procedure is:

SECTION 3. A person commits a misdemeanor if the person is under 21 years of age and:

- (1) Consumes alcoholic beverages in a public place; or**
- (2) Operates a school bus without a valid driver’s license.**

b. Conjunctive-Disjunctive Tabulation.

When two or more subsections or paragraphs are set out, the drafter must indicate whether they are conjunctive or disjunctive. See Martinez v. Heckler, 735 F.2d 795 (C.A. Tex.) (1984). Note the effect of using an “and” or an “or” in the following:

SECTION 4. The board may revoke the license of any person who shoots a duck:

(1) Out of season.

(2) On public land.

In this example, there are four possible combinations of circumstances:

1. A person might shoot a duck out of season and on public land;
2. A person might shoot a duck out of season and on private land;
3. A person might shoot a duck in season and on public land; and
4. A person might shoot a duck in season and on private land.

If the tabulation is conjunctive (“and”), the board may revoke the person’s license in only one of the four circumstances: The duck is shot out of season and on public land.

If the tabulation is disjunctive (“or”), there are three circumstances in which the board may revoke the person’s license: The duck is shot:

1. Out of season and on public land;
2. Out of season and on private land;
3. In season but on public land.

By longstanding usage in the ORS, the “or” in tabulation is always “inclusive.” That is, “(1); or (2)” means “Either (1) or (2) or both”; it does not mean “either (1) or (2) but not both.” If a drafter wants to say “either (1) or (2) but not both”, the drafter needs to find a way other than tabulation to do so.

The ambiguity caused by failure to use an “and” or an “or” is obvious in this example, but may not be so obvious in more complex sections. It is well to form the habit of inserting “and” or “or,” even when one can infer from the context whether the disjunctive or conjunctive sense is intended, to avoid the possibility of creating ambiguity by tabulation. An alternative is to preface the tabulation with “any of the following” (for “or”) or “all of the following” (for “and”). ORS form is to use the “and” or “or” only after the penultimate phrase in the series.

c. Internal References.

The following rules apply in referring to subsections and paragraphs:

Whether a section contains independent or dependent subsections, if they are numbered “(1),” “(2),” etc., they are referred to within the section and in new sections of a bill as “subsections.” Lesser divisions are referred to as “paragraphs,” “subparagraphs” and “sub-subparagraphs.” However, references to these divisions in a bill are made differently.

Referring to an ORS section: ORS 171.122 (2)(c).

Referring to a new section: “section 4 (2)(c) of this (year) Act” or “paragraph (c) of this subsection” if the reference appears in subsection (2).

The correct reference to a series of new subsections or paragraphs is “section 3 (1) to (6) of this (year) Act.” When referring to a series of subsections in an ORS section, the reference is “ORS 164.362 (2) to (6).” The word “inclusive” is not necessary because ORS 174.100 provides that the reference includes both the subsections or paragraphs listed and all intervening ones.

For discussion of references to “this (year) Act” and ORS series, see Chapter 13.

11. PUNCTUATION.

Good drafting requires the barest minimum of punctuation. A short sentence limited to the clear expression of a single idea will go a long way toward meeting this requirement. Punctuation considered essential in other forms of writing is usually excessive in a bill.

Punctuation, although a proper guide to interpretation, will be disregarded by a court if it defeats clear legislative intent. Pilgrim v. Clatskanie People’s Utility Dist., 149 Or. App. 234, 942 P.2d 821 (1997). No more punctuation should be used than is necessary for clarity. Sentences must be constructed so that their meaning does not depend on punctuation. This requires skillful phrasing to avoid ambiguity and to ensure exact interpretation. A statute that applies to “salaried elected and appointed officials” (no comma) is quite different from one that applies to “salaried, elected and appointed officials.” The following rules are designed to promote uniformity in punctuation:

The **period** should be used as frequently as possible. The comma or semicolon can and should be avoided. The long, rambling, “run-on” sentence, somewhat like this one, held together by “ifs,” “ands” and “buts,” requiring innumerable commas and other little marks to give it meaning should never be employed by a bill drafter.

The **comma** is omitted before the conjunction within a series of words, phrases or clauses. For example, “men, women and children”; **not** “men, women, and children.”

The subject of a sentence is never separated from its verb by a single comma. The “all or nothing” rule: A single comma is not used in a parenthetical phrase or clause. For example, “The amendment, which had been approved by the committee was accepted.” A comma must be placed after the word “committee” so that the parenthetical phrase “which had been approved by the committee” is isolated from the rest of the sentence, if the intent is to isolate the phrase. If it is not the intent to isolate the phrase, “that” should be substituted for “which” and the comma should be omitted: “The amendment that had been approved by the committee was accepted.”

A **colon** is used in the text of a section only to introduce a series of subelements. Usually, within the series, a **semicolon** is used except after the last item. For example:

SECTION 8. The department shall:

- (1) Adopt rules;**
- (2) Prosecute violators; and**
- (3) Disseminate information.**

If a sentence consists of two clauses, either of which requires a comma, a semicolon is used to separate the two clauses. However, in such circumstances it is preferable to use two sentences. If a sentence consists of two independent clauses connected by a conjunction, a comma is used before the conjunction, as in the following circumstance: “The department has jurisdiction, and it may issue appropriate orders to compel obedience.” A compound predicate is not separated by a comma: “The department has jurisdiction and may issue appropriate orders to compel obedience.”

The **apostrophe** shows possessiveness of nouns and indefinite pronouns. The apostrophe is omitted if the proper name of an entity omits it, e.g., Veterans Administration. Possessive personal pronouns (its, their) never take an apostrophe.

An **apostrophe** is properly used in measure of time and space in the genitive form, e.g., two weeks’ pay. If “of” cannot be used in place of the apostrophe, then the apostrophe is misplaced. When there is no genitive relation between the time or quantity and the noun, the apostrophe is not used, e.g., three-day seminar.

Since drafting is formal expression, apostrophes for contractions, as reflecting speech patterns, are not used.

For purposes of consistency, periods and commas are placed inside **quotation marks**. Other punctuation marks should be placed inside quotation marks **only** if the punctuation marks are part of the matter quoted. **Exception:** In writing amendments to bills, no punctuation marks are placed inside the quotation marks unless they are a part of the text of the amendment.

Material in **parentheses** should be avoided in the **text** of a bill because the use may be confused with brackets indicating material to be deleted. Usually it is possible to substitute commas for parentheses; if not, perhaps the sentence needs to be rephrased or split. Em dashes, double dashes, should not be used in a bill in place of parentheses for any reason. Parentheses are used to indicate matter to be completed in a statutory form.

Brackets [] indicate the deletion of material by amendment and are used for **no other purpose** in bill drafting.

To indicate blank lines in a form prescribed by statute, **underscoring** is used rather than dots or dashes. ORS 107.718 is an example.

If a section prescribes a form or sets out a table, the form or table is separated from the body of the text by a line drawn above and below the form (**hairline rules**). ORS 479.090 is an example.

Commas and the last antecedent:

When adjectives or other qualifying words are intended to apply either to one or to all of a group of nouns, care must be exercised in the construction and punctuation to express the intent clearly. In the following example, does the 3,000 pound limit apply to trailers and semitrailers or only to pole trailers?

Trailers, semitrailers and pole trailers of 3,000 pounds gross weight or less are not required to be licensed.

If the 3,000 pound limit **is not** intended to apply to trailers and semitrailers, the provision should read:

Pole trailers of 3,000 pounds gross weight or less and trailers and semitrailers are not required to be licensed.

If the 3,000 pound limit **is** intended to apply also to trailers and semitrailers, the provision should read:

A trailer, semitrailer or pole trailer is not required to be licensed if it has a gross weight of 3,000 pounds or less.

The drafter should **avoid** reliance on the punctuation rule of the last antecedent because, although cited in grammar books, its use has generated much litigation.

Here is what the Oregon Supreme Court (quoting Sutherland) said about the doctrine of the last antecedent:

The doctrine of the last antecedent, however, provides:

"Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is "the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." Thus a proviso usually is construed to apply to the provision or clause immediately preceding it.

* * *

"Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma."

In State v. Webb, 324 Or 380 (1997), the question arose in the context of a statute that said: "District courts shall have the same criminal and quasi-criminal jurisdiction as justice courts and shall have concurrent jurisdiction with the circuit courts of all misdemeanors committed or triable in their respective counties where the punishment prescribed does not exceed one year's imprisonment in the county jail or a fine of \$3,000":

The court said the statute “contains two grants of jurisdiction. District courts have (1) the same criminal and quasi-criminal jurisdiction as justice courts and (2) concurrent jurisdiction with circuit courts over misdemeanor cases. The disputed issue is whether the clause ‘where the punishment prescribed does not exceed ... a fine of \$3,000’ limits both grants of jurisdiction or only the latter.”

The court held that under the doctrine of the last antecedent (which they are treating as “a grammatical principle used in interpreting statutes” and which they use on the first level of PGE analysis), the clause refers only to the last antecedent (the second grant of jurisdiction), not to both.

If there were a comma between “counties” and “where,” the clause would be read to apply to both grants of jurisdiction.

The point of the (much simpler) examples dealing with trailers, semitrailers and pole trailers is that drafters need to watch for modifying, referential or qualifying words and phrases and try to write the sentence in such a way that its interpretation does not turn on the presence or absence of a comma. But if the interpretation is to turn on that, the drafter must be aware of how the presence or absence of the comma affects the meaning of the sentence.

12. CAPITALIZATION.

CAPITALIZE:

- ◆ Proper names.
- ◆ Derivatives of proper names used with a proper meaning.
- ◆ Common nouns or adjectives forming an essential part of a proper name, such as Marion County, Circuit Court for Baker County, Board of County Commissioners of Lane County, City of Salem, Columbia River, State of Oregon or State Capitol.
- ◆ The full official title of an officer or agency at the state level, such as Governor, Secretary of State, Water Resources Director, Supreme Court, Seventy-second Legislative Assembly, Legislative Assembly, Senate, Senator, House of Representatives, Representative, Senate Committee on Agriculture and Natural Resources, Department of Revenue or State Fish and Wildlife Commission.
- ◆ See Appendix E for ORS citations designating official titles of state officers, agencies, boards, commissions, committees, councils, funds and accounts.
- ◆ Months and days of the week.
- ◆ The proper name of a state fund or account, such as Geology and Mineral Industries Account, State Highway Fund or the General Fund.

- ◆ The words “Miscellaneous Receipts” in appropriation bills.
- ◆ The word “Act,” meaning a legislative Act.
- ◆ Names of historic events, such as World War II.
- ◆ References to the Constitution, such as “Constitution and laws of Oregon” or “Constitutions of the United States and Oregon.”
- ◆ References to a particular Act by its popular name, such as Uniform Commercial Code or State Personnel Relations Law. However, do not capitalize a general reference to a law on a particular subject, such as “motor carrier law” or “insurance statutes.”
- ◆ The word “Class” when used to describe a type of felony or misdemeanor, such as Class B felony or Class C misdemeanor.
- ◆ The first word in a sentence, the first word following a colon and the first word in an enumeration or schedule paragraphed after a colon.

DO NOT CAPITALIZE:

- ◆ Substitute words that are used for second and subsequent references, such as the secretary, the director, the court, the legislature, the committee, the department or the commission.
- ◆ The word “federal,” except when it is part of a proper name, such as Federal Land Bank.
- ◆ The word “state,” except when it is part of a proper name, such as State of Oregon, State Apprenticeship and Training Council or State Banking Board. Do not capitalize “state” in such uses as “this state,” “state highway” or “the state is not liable.”
- ◆ Words indicating geographic position, such as “southern Oregon.”
- ◆ The words “chapter” or “section” in a reference to a particular chapter or section within a sentence, for example, “as provided in ORS chapter 12” or “under section 36 of this (year) Act.”

13. ABBREVIATIONS AND ACRONYMS.

Use abbreviations and acronyms sparingly and only if they have been defined. Examples of acronyms that have been defined and used in ORS include “HIV,” which means human immunodeficiency virus, and “DNA,” which means deoxyribonucleic acid.

Exceptions include acronyms such as “radar” and “laser” that have passed into common usage.

“ORS” is the official citation for *Oregon Revised Statutes* (see ORS 174.510) and “ORCP” is the official citation for Oregon Rules of Civil Procedure (see ORCP 1 F) and do not require further definition.

To avoid confusion between a section of law being amended and the section of the bill that is doing the amending, abbreviate the word “**SECTION**” to “**Sec.**” when a section of session law is set forth for amending in a bill. For example:

SECTION 49. Section 4, chapter 1190, Oregon Laws (year), is amended to read:

Sec. 4. Sections 2 and 3, **chapter 1190, Oregon Laws (year)**, [*of this (year) Act*] are repealed on January 2, [2008] **2010**.

When a section of the Oregon Constitution is set forth for amending in a joint resolution, abbreviate the word “**Section**” to “**Sec.**” For example:

PARAGRAPH 1. Section 14, Article IV of the Constitution of the State of Oregon, is amended to read:

Sec. 14. The [*deliberations*] **meetings** of each house, of committees of each house or joint committees, and of committees of the whole, [*and of political party caucuses*] shall be open. Each house shall adopt rules to implement the requirement of this section and the houses jointly shall adopt rules to implement the requirements of this section in any joint activity that the two houses may undertake.

14. NUMBERS AND FIGURES.

Express numbers in figures, not in words. Exceptions:

- ◆ **Cardinal and ordinal numbers less than 10** are expressed as words (six, sixth). However, all numbers in connected groups should be in figures if any number in the group, standing alone, would be in figures (1, 2, 3, 15 or 1st, 2nd, 15th).
- ◆ **Numbers beginning a sentence** are expressed in words. At the beginning of tabulated items, figures may be used.
- ◆ **Fractions.** Spell out fractions for amounts less than one, using a hyphen between the words (one-half, three-fifths, two-thirds). Use figures to express precise amounts greater than one, using a hyphen between the whole number and the fraction (2-2/5, 33-1/3).

- ◆ **Percent** is expressed by the word “percent.” The symbol “%” may be used in tables. Use a zero before the decimal point for percentages less than one (such as “0.08”), to avoid computer coding problems.

Numbers should not be expressed both in words and figures. **Right:** \$100. **Wrong:** \$100 (one hundred dollars).

15. MONETARY SUMS.

Monetary sums should be expressed as follows:

one cent	\$2,000 (comma)
10 cents	\$160,000
\$3 (no decimal point)	\$3 million
\$3.65	\$3,504,282
\$115	

16. DATES, TIME, AGE AND TIME PERIODS.

DATES: Dates should be expressed as follows:

June 2001 (no comma)
June and July 2001 (no comma)
June 29, 2001 (not June 29th)
June 29 to July 6, 2001, and (comma)
January 15 (not the 15th day of January)
June 19, 2001, and (comma)
2001-2002 (not 2001-02)
21st century

TIME: Time should be expressed as follows:

4:30 p.m.
10 p.m.
1:00 p.m. (colon and double 00 only with the hour “1”)
12 noon
12 midnight

AGE: Age should be expressed as “18 years of age” or “age of 18 years.”

TIME PERIODS: Normally, a period is to be measured in whole days only, and not in elapsed time less than whole days. Unless the drafter intends otherwise, this distinction is made in the following example: “The appeal must be filed not later than **the 90th day after** the judgment was entered.”

If an action must be completed by the end of a designated period that begins in the future, the drafter should indicate whether the action:

1. **May** be done **before** the designated period **begins**, as in “not later than the 90th day after the end of the tax year”; or

2. **Must** be done **within** the designated period, as in “within the 90-day period immediately following the end of the tax year.”

The words “**heretofore**” and “**hereafter**” must not be used, particularly to refer to events taking place before or after the effective date of an Act. In a new enactment, “before the effective date of section 10 of this (year) Act” is used instead of “heretofore,” and “after the effective date of this (year) Act” is used instead of “hereafter.”

The combination of “heretofore and hereafter” is sometimes used to make clear that the bill has application to situations occurring before as well as after its effective date, if one otherwise could infer that it lacked retrospective operation. However, a separate section clarifying retrospective application is decidedly preferable.

17. SPELLING.

Merriam Webster’s Collegiate Dictionary, Tenth Edition, and Webster’s Third New International Dictionary, Unabridged, should be followed in the spelling, compounding and dividing of words, except when otherwise provided in the *Form and Style Manual for Legislative Measures* or in Rules of the Legislative Assembly or by legislative usage.

Use of Hyphens. Hyphens should not be used after the prefixes **co, de, inter, intra, multi, non, pre, pro, re, semi, sub or un** (copayment, decentralize, interagency, intrastate, multistate, nonzoned, preempt, proactive, readmit, semiannual, subparagraph, undocumented). Use a hyphen after any one of these prefixes to join the prefix to a capitalized word or a number (inter-American, pre-1989). Also use a hyphen to prevent misinterpretation (re-mark, meaning to mark again; remark, meaning a comment).

Always use a hyphen after the prefixes **ex, post, quasi** and **self** (ex-offender, post-conviction, quasi-judicial, self-propelled). Hyphenate the words “post office” only when they are used as an adjective (post-office address).

Do not hyphenate foreign phrases that are used as adjectives (prima facie evidence).

Compound Modifiers. Hyphenate a compound modifier when the hyphen is needed to avoid misinterpretation or when the modifier is a compound word (such as “cost-effective”) that requires a hyphen as indicated in *Merriam Webster’s Collegiate Dictionary* (10th Edition). Always check definitions and existing usage in ORS for exceptions, such as “first class mail” and “long term care facility.”

Also hyphenate a compound modifier when a number is part of the modifier, such as “three-year plan” and “10-year projections.”

Do not hyphenate adjective forms of compound modifiers that include the adverb “very” or an adverb that ends in “-ly,” such as “privately owned.”

Required Spellings. Extensive usage in existing Oregon statutory law requires the following words to be spelled as indicated:

attorney fees
cross-claim
ground water

insanitary
rescission
right of way
rights of way

rulemaking
up to date (adv)
up-to-date (adj)
X-ray (n, v, adj)

Required Cyberspace Spellings. The following spellings for computing and electronic telecommunications terms have been established for Oregon statutory law:

bandwidth
cellular telephone (not cell phone)
database
disc (for compact discs, etc.)
disk (for hard drives and floppies)
electronic commerce (not e-commerce)
electronic mail (not e-mail)
facsimile (not fax or FAX)

file name
home page
Internet
online
voice mail
webpage
website
World Wide Web

Plurals. For nouns that have a choice of endings, one English and the other foreign, the English ending is generally preferred. However, some nouns that are used in statutory language require the Latin ending. These nouns include, but are not limited to:

Singular	Plural
biennium	biennia
curriculum	curricula
memorandum	memoranda
referendum	referenda

Words with Similar Spellings. The meanings of certain words with similar spellings are frequently confused. For example:

- ◆ “Affect” when used as a verb imports action against or upon a person or thing, while “effect” when used as a verb indicates accomplishment or achievement of a result.
- ◆ “Appellant” is a noun that means the party who is appealing a decision; “appellate” is an adjective that means having jurisdiction to review decisions of a lower tribunal.
- ◆ “Biennially” means once every two years; “biannually” means twice a year.
- ◆ “Capitol” means the statehouse; “capital” means the capital city.
- ◆ “Disburse” means to pay out, while “disperse” means to cause to break up or spread out.
- ◆ “Endorse,” in Oregon’s statutory law, means to approve, to add a notation to a document or to publicly express support; “indorse” means to sign or to place a signature on a negotiable instrument or to amend an insurance policy by adding or subtracting a type of coverage.

- ◆ “Ensure” means to make certain or guarantee; “insure” means to procure insurance for something; “assure” means to make certain or to try to increase another’s confidence. Of these terms, use “ensure” in drafting unless the topic is insurance.
- ◆ “Farther” indicates distance; “further” indicates time, quantity or degree.
- ◆ “Forego” means to precede; “forgo” means to do without.
- ◆ “Moneys” means sums of money; “money” means currency.
- ◆ “Payer” and “payor” both mean the individual or entity that pays a bill or note. The secondary spelling, payor, is used throughout the Uniform Commercial Code (ORS chapters 71, 72, 72A, 73, 74, 74A, 75, 77, 78 and 79) and the Bank Act (ORS chapters 706 to 716). The primary spelling, payer, is used in the remaining ORS chapters.
- ◆ “Practicable” means feasible or possible to practice or perform; “practical” means can be actively put to use.
- ◆ “Prescribe” means to establish authoritative rules; “proscribe” means to prohibit or forbid.
- ◆ “Stationery” means paper and envelopes used for letter writing; “stationary” means immobile.
- ◆ “Therefore” indicates a conclusion; “therefor” indicates in place of, in return for or because of.

Words with Special Connotations. The word “to” means “to and including” when used in reference to a series of statute sections, subsections or paragraphs or references to *Oregon Revised Statutes*. The word “person” means individuals, corporations, associations, firms, partnerships and joint stock companies. See ORS 174.100 for these and other definitions generally applicable to the statute laws of this state.

Gender. The 1979 Legislative Assembly enacted the following:

174.129. It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender.

The 1985 Legislative Assembly adopted chapter 578, Oregon Laws 1985:

SECTION 1. (1) For purposes of harmonizing and clarifying statute sections in Oregon Revised Statutes, the Legislative Counsel may substitute sex neutral nouns or articles for nouns or pronouns that are not sex neutral or delete pronouns that are not sex neutral except in cases where the substitutions or deletions would alter the meaning or substance of the section.

(2) The Legislative Counsel Committee shall cause to have prepared and submitted to the regular session of the Legislative Assembly measures necessary to achieve with ORS 174.129 and this section that cannot be achieved for reasons stated in subsection (1) of this section.

Be advised that Legislative Counsel will change submitted copy that is not sex neutral unless it is necessary for the purpose of the bill “that it be expressed in terms of a particular gender.”

18. OFFICIAL TITLES OF PUBLIC OFFICERS AND AGENCIES.

The official and correct title for a public officer or agency is used when referring to that officer or agency within the text of a bill. The official title should be set out once at the beginning of each section. The advantages to such practice outweigh the alternative of relying on definitions. Use of the official title not only expedites computer searches but enables the reader to identify more readily the agency or officer referred to when the section is set forth alone and outside its context.

Official titles ordinarily are set out in the constitutional or statutory section that created the agencies or positions. Appendix E includes a list of state officers, agencies, boards, commissions, committees, councils, funds and accounts and their corresponding ORS citations.

Note that members of the Supreme Court are “judges,” not “justices,” except for the “Chief Justice,” who is the presiding judge of the Supreme Court and the administrative head of the state Judicial Department. Members of the Court of Appeals, Oregon Tax Court and circuit courts are judges.

19. CITATIONS.

a. Citing Oregon Constitution.

In the text of a bill, the Oregon Constitution is referred to as, for example, “sections 2 and 3, Article III, Oregon Constitution, provide. . . .” or “sections 2 and 3, Article III, of the Oregon Constitution, provide. . . .”

A new Article VII has been adopted, but the original Article VII has not been repealed. The original is referred to as “section 15, Article VII (Original), Oregon Constitution,” and the new as “section 4, Article VII (Amended), Oregon Constitution.”

In the text of a section of the Constitution itself, another section is referred to as, for example, “sections 2 and 3, Article III of this Constitution” or “section 2 of this Article.”

b. Citing Session Laws.

Session laws are referred to in the text of a bill as follows:

Generally, “Oregon Laws 1995” or “Oregon Laws 1995 (special session),” denoting the year of the session in which the laws were enacted. If a special session is held in an even-

numbered year, the reference is to “Oregon Laws 1996” or if there is more than one special session in an even-numbered year, “Oregon Laws 1996 (second special session).”

Chapter: “chapter 27, Oregon Laws 1991.”

Section: “section 1, chapter 27, Oregon Laws 1991.”

Subsection: “section 1 (2), chapter 27, Oregon Laws 1991.”

Paragraph: “section 1 (2)(a), chapter 27, Oregon Laws 1991.”

If an Act already adopted at the current session of the Legislative Assembly is to be referred to after it has been filed in the Secretary of State’s office, the session law chapter assigned in that office and the enrolled bill number are cited. For example, “chapter 16, Oregon Laws 1999 (Enrolled Senate Bill 85).” Reference to the enrolled bill is useful in this case, because many persons who have copies of the bill will not know the session law chapter number that has been assigned.

c. Citing Other Bills.

If a bill refers to another current session bill, the following form should be used if a chapter number has not been assigned:

section 1, chapter ____, Oregon Laws 1999 (Enrolled Senate Bill 3),

If a chapter number has been assigned, the proper reference is:

section 1, chapter 47, Oregon Laws 1999 (Enrolled House Bill 2005),

If referring to a resolution, the proper reference is:

Senate Joint Resolution 32 (1999)

d. Citing Oregon Revised Statutes.

The general statute laws of Oregon, as enacted in 1953 and subsequently amended, are known and cited as *Oregon Revised Statutes*, for which the abbreviation “ORS” may be substituted (ORS 174.510). ORS parts in the text of a bill are cited as follows:

Complete chapter: “ORS chapter 97.”

Particular section: “ORS 97.190.” The word “section” or the symbol “§” is unnecessary. A statement that the ORS section is amended “as amended by” some previous law is unnecessary when reference to the latest version of the section printed in ORS is intended. A simple reference to “ORS 97.190,” for example, means the section as it reads after the 1959, 1965 and 1977 amendments to that section.

Two ORS sections: “ORS 97.180 and 97.190.” “ORS” is not placed before the second section number.

Three ORS sections: “ORS 97.170, 97.180 and 97.220.”

Series of ORS sections: “ORS 97.010 to 97.130.” It is not necessary to say “inclusive” or “to and including,” because the series reference, as provided in ORS 174.100, includes both sections mentioned and, usually, all intervening sections. An intervening section is not included in the series if it was not legislatively enacted as part of the series or added to and made a part of the series. If a section has been editorially placed in a series, the fact that it is not legislatively part of the series is so indicated by a note following the section. A different form of citing series may be used in correspondence, since the reader probably does not have access to ORS 174.100.

The drafter should avoid referring to a string of ORS sections as “ORS ____ to ____” unless the numbers referred to are an existing series that can be confirmed either by STAIRS or the numbers-referred-to cards. To inadvertently create a series by reference without regard to the creation’s relationship to existing series or series within series permits future drafters to compound the problem by further adding to the creation. Sacrificed, then, to “convenience” is the integrity of the preexisting series as they related to definitions, procedures, penalties, etc.

If the drafter determines that a new series *must* be created by referring to “ORS ____ to ____,” the new series will not include any intervening sections that were not previously legislatively part of a smaller series within the newly created series. If the drafter wishes to include those intervening sections in the new series, they must be legislatively added to and made a part of the new series. For a discussion of adding a section to a series, see Chapter 13, “DRAFTING NEW SECTIONS.”

List of ORS sections and subsections: “ORS 97.020, 97.030, 97.134 (2), 97.141 and 97.145.” (Preferably in numerical order.)

Subsections, paragraphs, etc.: See page 3.11.

Title numbers in ORS are not used in citing parts; only chapters, series of sections, sections or parts of sections are used.

If a particular ORS section, as it read before a current session has amended it, is to be referred to, the date of the ORS edition in which the section was compiled just prior to the amendment should be used. For example, “ORS 97.190 (1991 Edition).” The drafter also may refer to “the provisions of ORS 97.190 in effect immediately before the 1989 amendment to that section,” if only one Act amended ORS 97.190 in 1989. If more than one Act amended the section in 1989, the reference should be to “the provisions of ORS 97.190 in effect immediately before its amendment by section 13, chapter 221, Oregon Laws 1989.” Note that a parenthetical reference [“(1999 Edition)”] freezes the reference in time.

e. Citing Oregon Rules of Civil Procedure.

The designation “ORCP (number of rule)” is used to cite a specific rule of the Oregon Rules of Civil Procedure. For example, Rule 7, section D, subsection (3), paragraph (a), subparagraph (i) is cited as ORCP 7 D(3)(a)(i). Any changes to leadlines or rule names in ORCP must be done by amendment, boldfacing new material and bracketing existing material to be deleted.

f. Citing Oregon Administrative Rules.

Oregon Administrative Rules are cited as OAR followed by the number of the rule, but it is definitely preferable to avoid citing an administrative rule in a statute.

g. Citing United States Constitution.

Provisions of the United States Constitution are cited as follows:

section 3, Article I, Constitution of the United States

section 2, Amendment XX, Constitution of the United States.

h. Citing Federal Statutes.

There is no uniform method of citing federal statutes. The cite must be accurate and contain as much material as is available. For example, National Historic Preservation Act of 1966 (P.L. 89-665, 16 U.S.C. 470).

i. Citing Ballot Measures

Cite ballot measures by number and election year: Ballot Measure 11 (1994).

j. Citing Within Bill

Always include the session year when an Act (bill) refers to itself. For example:

... this (year) Act

... section 1 of this (year) Act

... sections 2 to 10 of this (year) Act