

CHAPTER SIX

ORGANIZING A BILL

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This chapter describes how to arrange the provisions of a bill. A drafter can help the reader understand a bill by presenting its provisions in a logical and orderly manner. Structure and organization are especially important when a bill is lengthy or complex.

Although a bill does not always fit a uniform pattern, the principles discussed in this chapter are suggestions that a drafter should follow unless there are valid reasons for departing from them in drafting a particular bill.

1. TYPICAL ORDER OF SECTIONS.

Sections of a bill ordinarily should be arranged as follows:

1. Definitions.
2. Short title (rare).
3. Statement of policy (rare).
4. The leading purpose of the bill.
5. Subordinate provisions; i.e., conditions, exceptions and special cases important enough to be stated as separate sections.
6. Administrative provisions; i.e., authority and responsibility for administration and procedure.
7. Subordinate (or “housekeeping”) amendments, ordinarily arranged in ascending order of ORS number. The arrangement may be varied, and amended sections may be interspersed with new sections if this arrangement is more conducive to a logical development of the bill.
8. Saving clause (rare).
9. Temporary and transitional provisions.
10. Penalties.

11. Specific repeals.
12. Operative or applicable date.
13. Emergency clause or nonstandard effective date.
14. Referendum clause.

A drafter should never place temporary material in the same section with permanent material. This can happen by adding material that expires by its own terms, as in ORS 465.507 (3) (1997 Edition). It can also happen if amendments to an ORS section are repealed by some other section in the bill. The repeal affects only the amendments and leaves the rest of the text unaffected.

When the ORS editors compile statute sections in *Oregon Revised Statutes*, the editors must compile each section that is of a general, public and permanent nature. If a section contains both permanent and temporary material, it may be impossible for the editors to avoid compiling the temporary part. The code then contains material that becomes obsolete in a relatively short time. If amendments are repealed, then the ORS section must be printed twice in ORS to show both versions.

The drafter can avoid placing temporary material in permanent law by setting forth the temporary provisions in a separate section. See, for instance, page 8.6 for examples of establishing staggered terms of office on a new board or commission. The technique employed in the staggered terms circumstance may be applied to similar situations in which provisions are intended to expire in a given period of time or when their limited purpose has been accomplished.

See Chapter 12, “ACTS OF LIMITED DURATION,” for a discussion of double amending permanent law. See “EXTENDING DURATION OF ‘SUNSETTED’ LEGISLATION” in that chapter for authorized sunset dates for temporary provisions.

2. LEADING PURPOSE.

Legislation generally takes the form of a bill stating a single leading purpose. The section expressing this leading purpose should be short, concise and as near the beginning of the bill as possible. If the leading purpose is expressed by an amendment to ORS, that section should appear first. When the reader understands the leading purpose from this early statement, the reader can proceed with greater ease to the details and special provisions.

The leading purpose is the rule of law to be observed. Other provisions create the agency to administer that rule and provide the procedure to be followed in administering it. In a bill regulating the practice of psychology (chapter 396, Oregon Laws 1963), the leading purpose of the bill is section 2, which prohibits the practice of psychology without certification. The other provisions concern the administrative machinery necessary to make the leading purpose effective. The reader wants to know what the bill does, and what it does is to establish a rule of law that a certificate is required to practice psychology. Only after

the leading purpose has been stated is the reader presented with material relating to the administering agency and the means by which the rule of law is given force.

In some bills, the provision creating an agency may express the leading purpose. An example is chapter 616, Oregon Laws 1967, creating a Division of State Lands. The purpose of the Act was to create a new agency to administer existing law, not to establish major new principles of substantive law.

These two examples illustrate how either the provision stating the law or the provision creating an agency for the enforcement of law may be predominant under different circumstances. Between these extremes, there are many bills in which the provisions for the new rule and its enforcement are more nearly equal in importance.

If practicable, the drafter should place the provisions stating the law before the administrative provisions. Frequently the statement of the law requires a reference to the agency enforcing it. The drafter can solve this problem by inserting a full statement of the name of the agency or by using a referential phrase such as “the board created by section 10 of this (year) Act.”

Sometimes the provisions creating an agency are shorter and less complicated than the statement of the legal rule. In that case, the drafter may state the less complicated proposition first and, having disposed of it, the drafter may proceed to the lengthier, more complicated provisions.

The subordinate provisions of a bill vary so much in character and the combinations are so numerous that rules cannot be laid down for their sequence. Here are some general suggestions that may be of assistance in particular cases:

- ◆ The drafter should give precedence to the more important provisions. Provisions of normal and general application should be placed first.
- ◆ If the provisions of a bill, or some of the provisions, set out successive steps in a procedure, the drafter should set out the provisions in the bill following the normal sequence of the procedure. For example, a provision authorizing issuance of a license should precede a provision describing the grounds for its denial, suspension or revocation.

It may be useful for the drafter to examine the arrangement of analogous laws already compiled in *Oregon Revised Statutes*.

3. BILLS WITHOUT SINGLE LEADING PURPOSE.

Although most bills that create new provisions of law state a single leading purpose, two other types of bills may be encountered.

The suggestions for arrangement of a bill stating one leading purpose apply to a bill that has several related main purposes, each of which has subordinate provisions. The bill may

be divided into parts corresponding to each of these main purposes. Each part can be drafted with its subordinate provisions separate from the other parts. Chapter 419, Oregon Laws 1967, creating a Department of Finance and a Department of General Services, is an example.

The suggestions for arrangement of a bill stating one or several main purposes do not apply to a bill that is composed of provisions of equal importance relating to a common subject. Sometimes in a bill that consists of a series of related and equal provisions all dealing with the same subject, there is a natural sequence of steps that will suggest an order for the provisions. Many bills regulate procedural matters in their customary sequence, beginning with service of notice and ending with appeals. Another type of bill provides for a general change that applies to many agencies. Placing the affected sections in numerical order is probably as effective as any other sequence. In other cases, there is no natural sequence in the provisions and the drafter may have to adopt a somewhat arbitrary order. In a bill with no natural sequence, there are a number of advantages in keeping ORS sections in numerical order. One is that the sections are much easier to locate if they follow the same order as the title.

4. ONE SUBJECT.

A bill may contain any number of sections, ranging from one section having four words (chapter 140, Oregon Laws 1991) to 1,206 sections filling 613 pages (chapter 595, Oregon Laws 2009). There is no limit to the number of sections or number of details that may be incorporated in a bill. However, a drafter must be aware at all times of section 20, Article IV, Oregon Constitution, which provides in part that “every Act shall embrace but one subject, and matters properly connected therewith.” The Oregon Supreme Court has said that the object of this constitutional provision is

to prevent the combining of incongruous matters and objects totally distinct and having no connection nor relation with each other in one and the same bill, as well as to discourage improper combinations by the members of the legislature which would secure support for a bill of an omnibus nature with discordant riders attached, which, if acted upon singly, would neither merit nor receive sufficient support to secure their adoption. In short, as expressed by Cooley in his work on *Constitutional Limitations* §173, it was “to prevent hodge-podge, or logrolling legislations.” Northern Counties Trust Co. v. Sears, 30 Or. 388 (1895).

See also McIntire v. Forbes, 322 Or. 426, 439 (1996). “The principal purpose for the one-subject requirement of Article IV, section 20, for the **body** of an act is to guard against logrolling.” (Emphasis in original.)

The word “subject” is given a broad and extensive meaning, allowing a drafter full scope to include in one bill all matters having a logical or natural connection. Provisions that reasonably may be said to be subservient to the general subject or purpose are germane and may be included in the bill.

There are limits, however. In McIntire, the court considered an Act that attempted to (1) provide state funding (and land use procedures) for light rail, (2) expand the availability of card-lock service stations, (3) promote “regional problem solving” in land use matters, (4) regulate confined animal feeding, (5) preempt local pesticide regulation, (6) adopt new timber harvesting rules, (7) grant immunity to shooting ranges for “noise pollution,” and (8) protect salmon from cormorants. The Supreme Court was unable to find one subject in the body of the Act. In addition, the court found that the legislature, in its title, had failed to identify one subject. The title was “relating to activities regulated by state government.” That fails to state a single subject, said the court, because “a ‘subject’ must be narrower than the universe of those things with respect to which the legislature is empowered to act, or the [single subject] provision would be meaningless.” McIntire at 442.

In analyzing a one-subject challenge to the body of an Act, the court will:

(1) Examine the body of the act to determine whether (without regard to an examination of the title) the court can identify a unifying principle logically connecting all provisions in the act, such that it can be said that the act “embrace[s] but one subject.”

(2) If the court has **not** identified a unifying principle logically connecting all provisions of the act, examine the title of the act with reference to the body of the act. In a one-subject challenge to the body of an act, the purpose of that examination is to determine whether the legislature nonetheless has identified, and expressed in the title, such a unifying principle logically connecting all provisions in the act, thereby demonstrating that the act, in fact, “embrace[s] but one subject.” McIntire at 444. (Emphasis in original.)

Note that McIntire does **not** address the questions of how to analyze a challenge to the title of an Act or a challenge to the relationship between the title and the body. The McIntire court concluded that the Act challenged in the case violated the single subject requirement and thus the court struck down all parts of the bill over which it had jurisdiction. (The Act in question gave the Supreme Court exclusive and original jurisdiction to determine the constitutionality of parts of the Act.) This does not involve the part of section 20, Article IV, that says that an “Act shall be void only as to so much thereof as shall not be expressed in the title.”

The body of a bill cannot contain a provision that is not related to the single subject expressed in the title. Section 20, Article IV, Oregon Constitution, provides in part that “if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.” If the title of a bill is so specific or limited as to include only one particular of some general subject, the drafter must limit the body of the bill to the specific or limited particular expressed in the title and matters properly connected therewith. The bill cannot deal with other particulars of that general subject. See the discussion of titles in Chapter 5.

There is one exception to the general rule that any matter or thing properly may be included in a bill if it is germane to the subject. Section 7, Article IX, Oregon Constitution, provides: “Laws making appropriations for the salaries of public officers and other current expenses of the state shall contain provisions upon no other subject.” Under this provision, the Attorney General concluded that appropriations for capital construction and certain other purposes could not be included in a general appropriation bill. Op. Att’y Gen. No. 6388 (1967). However, the provision does not prevent including an appropriation when it is simply a part of the administrative provisions. The distinction relates primarily to the biennial appropriation bills introduced to implement the Governor’s budget. See Chapter 9 for further discussion of appropriations.