



**BILL**

**DRAFTING**

**GUIDE**

2019

State of Washington

STATUTE LAW COMMITTEE

*Office of the Code Reviser*

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# BILL DRAFTING GUIDE

2019

## PREFACE

The office of the code reviser created this bill drafting guide for the preparation of bills for the Washington legislature. It consists of four parts:

Part I - Working Procedures provides a short, nontechnical explanation for submitting bill drafting requests to the code reviser's office.

Part II - Formal and Technical Requisites describes the technical drafting rules followed by the code reviser's staff (attorneys, editors, typists, and proofreaders) in the preparation of legislation. Many of these requirements are derived from constitutional provisions, statutes, legislative rules, or case law. Sources are cited if appropriate.

Part III - Avoiding Unintended Liability provides guidelines to follow when drafting legislation to avoid creating unintended tort liability for the state.

Part IV - Instructions on Style is a style manual used by the code reviser's office. Included are sections on voice, punctuation, numbers, capitalization, spelling, subsection numbering, and citations.

The code reviser's office maintains an audit file that documents the history and codification of all session law sections. We will furnish historical and cross-reference information as required and assist the drafter with questions of form or style that arise in the preparation of legislation.

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## PART I

### WORKING PROCEDURES

The bill drafting process includes preliminary work by legislative staff or other requesters and final preparation by the code reviser's office. The process typically begins by a requester bringing a written request or emailing the request (CROfrontdesk@leg.wa.gov) to the code reviser's office. The Revised Code of Washington is in computer-accessible form. The code reviser's office has bills from current and recent past legislative sessions available electronically that may be used for drafting purposes. It is not necessary to retype a previously computerized bill or an RCW section.

If you have computer access to the Revised Code of Washington and want to do your work electronically, clearly show us the deletions and additions on the computer version of your bill draft. If you expect extensive revision or restructuring of a bill or statute, you may request a computer printout, also known as a "pull," of those sections and do your drafting on the printout. In addition, you may order a "wide pull," which is done on continuous-feed 11 x 17-inch paper and has a large space beside the text that can be used for drafting.

Some other tips to move your request through our office as fast as possible:

(1) Get your bill request in as soon as you can, identifying who the request is for, such as a legislator, committee, or agency, who may be contacted to answer questions about the request, and who is authorized to pick up the draft or receive the draft electronically.

(2) Make sure your bill request is clear and complete. If submitted electronically, try to make your changes or edits to documents in MS Word format only, with changes clearly marked using colored fonts, and not in a .pdf style format. It is not necessary to give us retyped or perfected copy. If you are using a bill or law from another state, submit a copy of it with your request. Also, have an idea how the request will fit into current state law on the subject. Try to have the policy decisions worked out before bringing the request to us. We do not do substantive research and will rely on your expertise.

(3) Keep a copy of the request for any telephone discussion with the bill drafting attorney and for your own records as we keep the original for archive purposes.

(4) To revise existing drafts, make your changes on a copy of our latest draft. Using the marked-up copy and the computer version, our typists go directly in at the points of change to make revisions. This can save an enormous amount of time and improves accuracy.

Following these tips will reduce turnaround time, eliminate unnecessary typing, and provide a greater degree of accuracy in the drafting process.

## **BILL DRAFTING GUIDE**

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The bill drafting guide is also available on the office of the code reviser's web site at <http://www.leg.wa.gov/codereviser>. Contact the code reviser's office at (360) 786-6777 for further assistance.

**PART II**

**FORMAL AND TECHNICAL REQUISITES**

**(1) SAMPLE BILL**

AN ACT Relating to counties; amending RCW 36.82.040; adding a new section to chapter 36.82 RCW; and repealing RCW 36.33.220.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 36.82.040 and 2001 c 212 s 27 are each amended to read as follows:

For the purpose of raising revenue for establishing, laying out, constructing, altering, repairing, improving, and maintaining county roads, bridges, and wharves necessary for vehicle ferriage and for other proper county road purposes, the board shall annually at the time of making the levy for general purposes make a uniform tax levy throughout the county, or any road district ~~((thereof))~~ of the county, of not to exceed two dollars and twenty-five cents per thousand dollars of assessed value of the last assessed valuation of the taxable property in the county, or road district ~~((thereof))~~ of the county, unless other law of the state requires a lower maximum levy, in which event such lower maximum levy shall control. All funds accruing from such levy shall be credited to and deposited in the county road fund ~~((except that revenue diverted under RCW 36.33.220 shall be placed in a separate and identifiable account within the county current expense fund))~~.

NEW SECTION. **Sec. 2.** A new section is added to chapter 36.82 RCW to read as follows:

A board of county commissioners may spend up to one percent of the county road fund tax levy, and may rent county road equipment from the county road equipment rental and revolving fund, for the maintenance and operation of garbage disposal sites within the county.

NEW SECTION. **Sec. 3.** RCW 36.33.220 (County road property tax revenues, expenditure for services authorized) and 2001 c 212 s 25, 1973 1st ex.s. c 195 s 142, 1973 1st ex.s. c 195 s 32, & 1971 ex.s. c 25 s 1 are each repealed.

**Check session laws for examples of the many combinations of the various parts of a bill.**

**(2) AMENDATORY SECTIONS—BASIC LANGUAGE**

(a) **RCW as base for amendments.** Amendments of existing sections affect both the existing RCW section and the session laws that preceded the codified version. The amendatory heading, called the "jingle," must recite both the most recent session law and RCW citation. The base language in the body of the section being amended is that of the RCW, not the session law. As restored and reenacted, the only variances between code text and session law text are those that are authorized by chapter 1.08 RCW. See \*Joint Rule 13 and RCW 1.08.050.

**\*Note:** Joint rules have not been adopted as of the time of publication.

(b) **Code base must be current.** The use of outdated versions of the Revised Code of Washington as a basis for preparing amendatory or repealing legislation may result in the inadvertent deletion of current language, reenactment of obsolete language, and other serious consequences. The drafter must use the current code as a basis for amendatory or repealing legislation.

To determine if a section has been amended or repealed since the latest publication of the code, check the current RCW-to-session law table in the back of the session laws or the RCW-to-bill table in the Legislative Digest, as appropriate. If the section was amended after the latest code publication, obtain a copy of the session law, enrolled bill, or, if available, latest computer version of the code, and indicate changes on that copy.

(c) **Headings on amendatory sections.**

(i) **Codified.** The amendatory "jingle" is the heading that precedes the text of the section being amended in a bill draft. The jingle recites the RCW section and the most recent session law being amended. Example:

**Sec. 1.** RCW 15.13.480 and 2000 c 144 s 30 are each amended to read as follows:

(ii) **Uncodified.** If the section being amended is uncodified and therefore does not have an RCW section number, the amendatory jingle would read:

**Sec. 1.** 2001 1st sp.s. c 2 s 12 (uncodified) is amended to read as follows:

(iii) **History notes.** The jingle is constructed from the history note that appears at the end of each RCW section. The word "Prior" in a history note indicates a break in the statutory chain, usually as the result of a repeal, reenactment, or reenactment and amendment. In those cases, the citation immediately preceding the word "Prior" is treated as the original law. Similarly, amendatory jingles should not reflect history note citations to "RRS," which is Remington's Revised Statutes or "Rem. Supp.," which is Remington's Revised Statutes Supplement.

(iv) **Special sessions.** If the history note refers to a special session of the current year and it is still possible to convene another special session in that year, the use of "1st sp.s." instead of the phrase "sp.s." is proper. "Ex.s." refers to "extraordinary session," the phrase that was used until replaced with "special session."

(v) **Initiative or referendum.** Amendment of a statute originally adopted by initiative or referendum requires a two-thirds vote of each house of the legislature during the two years following its enactment. See Article II, section 41 of the state Constitution. Notation of the initiative or referendum number must be included in the amendatory jingle during this two-year period. Example:

**Sec. 1.** RCW 70.105E.020 and 2005 c 1 s 2 (Initiative Measure No. 297) are each amended to read as follows:

(vi) Double amendments. For a section amended more than once during a legislative session, each without reference to the other, see subsection (11)(i) of this part.

(d) **Reenactments and reenactments and amendments.** The jingle for reenactments and for reenactments and amendments includes the RCW section being amended and the session laws being reenacted. Example:

**Sec. 1.** RCW 19.28.161 and 2006 c 224 s 2 and 2006 c 185 s 6 are each reenacted and amended to read as follows:

### **(3) AMENDATORY SECTIONS—INDICATING DELETIONS AND ADDITIONS**

Article II, section 37 of the state Constitution declares "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." See discussion in subsection (12)(l) of this part. Senate Rules 26 and 57 and \*Joint Rule 13 specify the manner of compliance with this requirement through the use of the offset drafting method. Please use the following procedures in sections that amend existing law:

(a) Language and punctuation intended to be deleted is set forth in full, enclosed by double parentheses, and struck through with a solid line ((—)).

(b)(i) New material added to an amendatory section must be underlined.

(ii) The new material must follow the deletions: "in the sum of (~~ff~~~~ty~~) one hundred dollars."

(iii) To correct an error that is indicated in the RCW by bracketed material following the erroneous material, delete both the erroneous material and the bracketed material and insert the correct language as underlined new material: "~~(of [of])~~ or."

(iv) A change in legislative purpose will be presumed from a material change in the wording of a statute. *Childers v. Childers*, 89 Wn.2d 592, 596 (1978); *In re Bale*, 63 Wn.2d 83, 89 (1963); *In re Phillips' Estate*, 193 Wash. 194, 202 (1938). Generally, the drafter should minimize changes to the current code and keep words not affected by the proposed amendment. But if following these rules would result in difficult reading, it is permissible to delete an entire phrase and show the revised phrase as entirely new material even though this entails the simultaneous deletion and addition of words not strictly necessary to the proposed amendment. A similar situation involves a string of provisos that have become cumbersome to interpret. Provisos are ambiguous and antiquated and it might be necessary to restructure a paragraph of provisos into short sentences for clarity of meaning. See related discussions on gram-

matical changes in subsection (12)(n) of this part and provisos in subsection (12)(i) of this part.

**\*Note:** Joint rules have not been adopted as of the time of publication.

#### **(4) NEW SECTIONS**

A new section, whether set forth in a bill containing all new sections or in a bill that is partly amendatory, should be preceded by the caption "NEW SECTION." typed in capital letters and underlined, including the period. The caption "NEW SECTION." should be indented and precede the section number. Do not underline the text of these sections. See Senate Rule 57 and \*Joint Rule 13. All sections except amendatory sections are preceded by the caption "NEW SECTION."

**\*Note:** Joint rules have not been adopted as of the time of publication.

#### **(5) CODIFICATION DIRECTIONS**

New material intended to be codified should contain a legislative direction for placement as a new or in an existing chapter of the RCW. Each section to be added to the RCW is introduced with a heading in the following style:

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.22 RCW to read as follows:

Chiropractors may issue prescriptions in the practice of chiropractic.

If several sections are being added to the same RCW chapter or session law chapter, the codification direction need not be repeated in introducing each section but may be placed near the end of the bill as follows:

NEW SECTION. **Sec. 50.** Sections 1 through 13 of this act are each added to chapter 18.22 RCW.

Do not assign RCW numbers to new sections. The code reviser's office adds code numbers and section captions in the codification process.

RCW 1.04.010 declares that the Revised Code of Washington is intended to contain "all the laws of the state of a general and permanent nature." Codification directions are generally not given for the following types of sections:

- (a) Intent sections;
- (b) Codification direction sections;
- (c) Appropriations;
- (d) Repealers;
- (e) Effective date sections;
- (f) Severability clauses;
- (g) Emergency clauses;
- (h) Savings clauses;
- (i) Referendum clauses; and

(j) All other sections of a limited or temporary nature, including short-term studies and reports.

In general, see RCW 1.08.017.

Subchapter headings

If an RCW chapter is divided by subchapter headings, it is advisable to give the codifier directions as to which subchapter the new sections are to be added. See chapter 42.17A or 46.61 RCW for examples of subchapters. Example:

NEW SECTION. Sec. 1. A new section is added to chapter 46.61 RCW under the subchapter heading "stopping, standing, and parking" to read as follows:

To create a new subchapter heading, the following language may be used:

NEW SECTION. Sec. 11. Sections 1 through 10 of this act are each added to chapter 46.61 RCW and codified with the subchapter heading of "\_\_\_\_\_."

**(6) ADDING CHAPTERS TO RCW**

If a bill only consists of new material, the decision on whether to add it to a specific title of the RCW largely depends upon its relevance to statutes already in existence. Wholly new acts may be drafted and enacted without a codification direction and the code reviser's office will decide where to place the new act after it is enacted. If the drafter desires the act to be added as a new chapter in a certain title of the RCW, this direction should be given in a section near the end of the bill, directing the creation of a new chapter in the selected title to encompass the new sections:

NEW SECTION. Sec. 13. Sections 1 through 12 of this act constitute a new chapter in Title 4 RCW.

**(7) RECODIFICATION DIRECTIONS**

In some situations it may be desirable to move an RCW section from one chapter to another. Because of the various problems that can arise, the requester should consult with someone familiar with the codification process. Example:

RCW 41.33.010, 41.33.020, and 41.33.030 are each recodified as sections in chapter 41.32 RCW.

If an RCW section is recodified in an act and also referenced in amendatory or new sections within the act, internal reference cites must be followed by "(as recodified by this act)."

If a section is both amended and recodified in an act, it will be noted in the title as being amended, as being recodified, and as adding a new section to the chapter into which it is recodified.

**(8) BILL TITLES****(a) Title Rule**

The subject of the bill must be stated in the title of the bill. The title is the part of the bill that begins with "AN ACT Relating to. . ." and ends before the phrase "BE IT ENACTED. . ."

(i) Article II, section 19 of the state Constitution declares, "No bill shall embrace more than one subject, and that shall be expressed in the title." While this requirement is liberally construed, the purposes of the constitutional provision are to: (A) Protect and enlighten members of the legislature; (B) apprise the people generally concerning the subjects of legislation being considered; and (C) prevent hodge-podge or logrolling legislation. *Rourke v. Dept. of Labor & Ind.*, 41 Wn.2d 310, 312 (1952). The first two purposes relate to the title rule, the third to the one subject rule.

Merely referring to other legislation in the title of a bill does not state a subject for constitutional purposes. *Fray v. Spokane County*, 134 Wn.2d 637, 654-55 (1998). The title of the bill at issue in *Fray* was "AN ACT Relating to making technical corrections to chapter 35, Laws of 1991; . . ." *Fray* cited *State ex rel. Seattle Electric Co. v. Superior Court*, 28 Wash. 317 (1902), which determined that "mere reference to a section in the title of an act does not state a subject." As in *Fray*, the act challenged in *Seattle Electric* merely provided a numbered section of the code in its title. The *Seattle Electric* court found this untenable, stating that "[w]e therefore see no escape from the conclusion that the title of an amending act must contain some words which indicate the theme or proposition of which the act sought to be amended treats." *Seattle Electric Co.*, 28 Wash. at 326.

(ii) Generally a title should be broad and comprehensive. Restrictive titles should be avoided, unless a sponsor's strategy is to avoid amendments. The state supreme court on several occasions has declared that a broad title will be liberally construed, while a restrictive title will cause the bill to be carefully scrutinized, and "provisions which are not fairly within such restricted title will not be given force." *State ex rel. Toll Bridge Authority v. Yelle*, 32 Wn.2d 13, 26 (1948). Words in the title must be given their common and ordinary meaning. *DeCano v. State*, 7 Wn.2d 613, 626 (1941).

If an act violates the title rule, the court may sever the portion of the act not covered by the title. *State ex rel. Distilled Spirits Institute, Inc. v. Kinnear*, 80 Wn.2d 175, 176-77 (1972).

In connection with titles of acts, see: *Maxwell v. Lancaster*, 81 Wash. 602 (1914); *State ex rel. Bugge v. Martin*, 38 Wn.2d 834 (1951); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951); *Naccarato v. Sullivan*, 46 Wn.2d 67 (1955); *Price v. Evergreen Cemetery Co.*, 57 Wn.2d 352 (1960); *Stuart v. E. Valley Consol. Sch. Dist.*, 61 Wn.2d 571 (1963); *State v. Lounsbery*, 74 Wn.2d 659 (1968); *Flanders v. Morris*, 88 Wn.2d



183 (1977); and *Amalgamated Transit Union v. State*, 142 Wn.2d 183 (2000).

(iii) RCW numbers of sections to be amended, reenacted and amended, recodified, decodified, or repealed are listed individually in the title.

As a general rule, the material that appears after the semicolon in most bills is based solely on custom, not constitutional requirements. Items that are not constitutionally required include: Amendatory sections, penalties, emergency clauses, and repealed sections. See *Sorenson v. Kittitas Reclamation Dist.*, 70 Wash. 528 (1912), *State ex rel. Matson v. Superior Court*, 42 Wash. 491 (1906); *State v. Montgomery*, 57 Wash. 192 (1910), *State ex rel. Henry v. MacDonald*, 25 Wash. 122 (1901); *State ex rel. Anderson v. Howell*, 106 Wash. 542 (1919); *State v. Winters*, 67 Wn.2d 465 (1965).

(iv) The parts of a bill title and their order of appearance in the title are as follows:

(A) A statement of subject matter, with capitalization as shown:

"AN ACT Relating to motor vehicles; . . ."

(B) The recitation of the RCW numbers of the sections amended, if any, in the order they appear in the bill:

"amending RCW 46.08.150, 46.08.170, and 46.08.172; . . ."

You do not need to write out the citations of sections amended when you bring us your request. This will be done by the code reviser's office.

If a codified section is being amended, only the RCW number is recited in the title, not the session law. If an uncoded section is amended, it is recited in the title in the same form as in the jingle.

(C) The recitation of the RCW numbers of sections reenacted and amended:

"reenacting and amending RCW 46.37.010; . . ."

(D) The recitation of the RCW numbers of sections reenacted:

"reenacting RCW 70.05.010; . . ."

(E) The recitation of sections or chapters added, in the order they appear in the bill:

"adding a new section (or "adding new sections") to chapter 46.08 RCW; adding a new chapter to Title 50 RCW; . . ."

(F) The creation of new sections that are not expressly added to the RCW, with the exception of the severability clause and codification directions, which are not reflected in the title:

"creating new sections; . . ."

(G) The recitation of the RCW numbers of sections being recodified:

"recodifying RCW 11.98.130; . . ."

(H) The recitation of the RCW numbers of sections being decodified:

"decodifying RCW 3.20.100; . . ."

(I) The recitation of the RCW numbers of sections repealed, according to the order that they appear in the bill:

"repealing RCW 46.08.070; . . ."

(J) The recitation of uncodified sections being repealed:

"repealing (list all session laws); . . ."

(K) If the act prescribes or modifies civil or criminal penalties or penalty amounts, the phrase:

"prescribing penalties; . . ."

(L) If the act appropriates money, the phrase:

"making an appropriation; . . ."

(M) If the act provides an effective date, the phrase:

"providing an effective date; . . ."

"providing a contingent effective date; . . ."

(N) If the act provides an expiration date, the phrase:

"providing an expiration date; . . ."

"providing a contingent expiration date; . . ."

(O)(I) If the act provides for a referendum, the phrase:

"providing for submission of this act to a vote of the people; . . ."

(II) If the act provides for submission of only specific sections of the act for a referendum, the phrase:

"providing for submission of certain sections of this act to a vote of the people; . . ."

(P) If the act carries an emergency clause, the phrase:

"and declaring an emergency."

(v) If all of the components in (a)(iv) of this subsection were used, the title would look like this:

AN ACT Relating to motor vehicles; amending RCW 46.08.150, 46.08.170, and 46.08.172; reenacting and amending RCW 46.37.010; reenacting RCW 70.05.010; adding a new section to chapter 46.08 RCW; adding a new chapter to Title 50 RCW; creating new sections; recodifying RCW 11.98.130; decodifying RCW 3.20.100; repealing RCW 46.08.070; prescribing penalties; making an appropriation; providing an effective

date; providing an expiration date; \*providing for submission of this act to a vote of the people; and declaring an emergency.

**\*Note:** In an actual bill a referendum clause is incompatible with an emergency clause. See Article II, section 1(b) of the state Constitution.

(b) One Subject Rule

"No bill shall embrace more than one subject . . ."

A bill may contain a general subject and incidental subdivisions without violating the one subject rule. There must be some "rational unity" between the general subject and the incidental subdivisions. The subdivisions must be naturally and reasonably connected with the general subject. *Water Dist. No. 105 v. State*, 79 Wn.2d 337, 341-42 (1971).

If an act violates the one subject rule but not the title rule, the entire bill fails. The court will not select one portion of the bill over another. *Power, Inc. v. Huntley*, 39 Wn.2d 191, 199-204 (1951).

**(9) ENACTING CLAUSE**

The enacting clause is found immediately following the title of the bill and before the first section. Article II, section 18 of the state Constitution declares:

The style of the laws of the state shall be: "**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:**" And no laws shall be enacted except by bill.

In a bill, the enacting clause appears in capital letters, followed by a colon. See the sample bill in subsection (1) of this part.

Initiatives to the legislature and initiatives to the people both begin with "**BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:**"

**(10) REPEALERS**

(a) **Use of history notes.** The repealer is constructed from the history note that appears at the end of each RCW section. The word "Prior" in a history note denotes a break in the statutory chain, usually as the result of a repeal, reenactment, or reenactment and amendment. In these cases, the citation immediately preceding the word "Prior" is treated as the original law. Similarly, repealers should not reflect history note citations to "RRS" or "Rem. Supp."

Example of a history note for RCW 43.88.120:

[2000 2nd sp.s. c 4 s 13; 1991 c 358 s 3; 1987 c 502 s 6; 1984 c 138 s 10; 1981 c 270 s 8; 1973 1st ex.s. c 100 s 7; 1965 c 8 s 43.88.120. Prior: 1959 c 328 s 12.]

A repealer must cite the entire series of session law amendments, while an amendatory jingle must cite only the most recent session law.

(b) **Repealing sections of RCW.** Cite the RCW section to be repealed, the section caption, and its session law history, from most current to original (see RCW 1.08.050). For example:

NEW SECTION. Sec. 1. RCW 43.88.120 (Revenue estimates) and 2000 2nd sp.s. c 4 s 13, 1991 c 358 s 3, 1987 c 502 s 6, 1984 c 138 s 10, 1981 c 270 s 8, 1973 1st ex.s. c 100 s 7, & 1965 c 8 s 43.88.120 are each repealed.

(c) **Repealing more than one section of the RCW.** Use subsection groupings, cite each RCW section to be repealed, the section caption, and its session law history, from most current to original. For example:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 70.95A.035 (Actions by municipalities validated) and 1975 c 6 s 4;

(2) RCW 70.95A.040 (Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms) and 1983 c 167 s 174, 1975 c 6 s 3, & 1973 c 132 s 5;

(3) RCW 70.95A.045 (Proceeds of bonds are separate trust funds—Municipal treasurer, compensation) and 1975 c 6 s 2; and

(4) 2002 c 301 s 1 (uncodified).

(d) **Repeal of a repealer.** The repeal of a repealer does not revive the underlying act. *In re Williamson*, 116 Wash. 560, 565 (1921). If a repealer has a delayed effective date, the session law section that contains the repealer may be repealed, but only if the repeal of the session law section with the delayed repealer takes effect before the effective date of the original delayed repealer. Likewise, if an amendment to an RCW section is not yet in effect due to a delayed effective date, the session law section that makes the amendatory change may be repealed. This has limited application. For an example, see section 6, chapter 12, Laws of 1991.

(e) **Delayed repealer.** If delaying a repeal, provide for possible subsequent amendments in a form such as this:

NEW SECTION. Sec. 1. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2024:

(1) . . .

(f) **Table of disposition of former RCW sections.** The captions and legislative histories of RCW sections that have been repealed or decodified are found in the Table of Disposition of Former RCW Sections. This table appears in Volume 0 of the RCW, is updated in the current supplement, and is also available online on the digest page for each RCW chapter. If a subsequent enactment on the same subject is evident, it is usually noted in the table. If a statute is repealed simultaneously with the enactment of a substantially similar statute, the operation of the

statute is not interrupted; that is, the original statute is considered only to have been amended as of the effective date of the repeal and reenactment. *In re Welfare of Frederiksen*, 25 Wn. App. 726, 739-40 (1980). See also RCW 1.12.020. If you are repealing certain sections and replacing them with entirely new material that operates as a later enactment, please let the code reviser's office know so that we may make note of it.

(g) **Internal references.** If repealing or extensively amending a section, the drafter may also need to amend those sections of law that contain references to the repealed or amended section. To aid the drafter in locating these sections, the code reviser's office has an inverse cross-reference table of RCW sections available in hard copy and on the code reviser's office web site.

(h) **Decodification.** (i) The code reviser's office has the authority to remove or decodify a section from the code that has been repealed without reference to an amendment to the section. RCW 1.12.025 reads in part: "The code reviser, in consultation with the statute law committee, may decodify a section of the official code which was repealed without reference to an amendment to the section. The decodification of the section shall occur only if the statute law committee determines that the decodification does not conflict with the purpose of the amendment." The code reviser's office also decodifies sections that no longer need to be published, such as severability clauses, effective dates, cross-reference sections, and other similar provisions.

(ii) To legislatively decodify a statute that no longer needs to be published, use the following formats:

NEW SECTION. **Sec 1.** The following sections are decodified:

(1) RCW 43.320.012 (Department of general administration and department of licensing equipment, records, funds transferred);

(2) RCW 43.320.013 (Department of general administration and department of licensing civil service employees transferred);

(3) RCW 43.320.014 (Department of general administration or department of licensing rules, business, contracts, and obligations continued);

(4) RCW 43.320.015 (Department of general administration and department of licensing—Validity of acts);

(5) RCW 43.320.016 (Apportionment of budgeted funds); and

(6) RCW 43.320.901 (Implementation—1993 c 472).

NEW SECTION. **Sec 1.** RCW 5.45.920 (Repeal of inconsistent provisions) is decodified.

## **(11) SUGGESTIONS FOR COMMONLY USED CLAUSES**

The following examples of clauses are offered as a starting point for drafting various provisions. The drafter is cautioned to consider in each case how the suggested clause should be adjusted to fit the exact needs of the measure being drafted.

Many of these provisions are taken from existing statutory or constitutional language and have known judicial interpretations. Where possible, these sources and interpretations are cited.

(a) **Advisory committees.** Avoid placing advisory committees in statutes permanently. Use temporary sections or authorize the agency involved to have a committee or solicit input.

(b) **Age.** Be as concise and precise as possible. Examples:

Ten years old.

At least ten years old.

(c) **Alternative initiative clauses.** Under Article II, section 1(a) of the state Constitution, the legislature may reject a measure proposed by initiative petition and propose a different act dealing with the same subject. See also RCW 29A.72.050, 29A.72.270, and 29A.72.280. In this case, both measures are submitted to a vote of the people and the following language is suggested:

This act constitutes an alternative to Initiative \_\_. The secretary of state shall place this act on the ballot in conjunction with Initiative \_\_ at the next regular general election.

### Effective dates

This clause may be used in conjunction with an emergency or other effective date clause causing the act to go into effect before the election date, in which case the following language may be added to the alternative initiative clause:

This act continues in effect until the secretary of state certifies the election results on this act. If affirmatively approved at the next regular general election, the act continues in effect thereafter.

Both of these clauses are modeled after RCW 90.58.930 (decodified September 1996).

### Enacting clause

Initiatives to the legislature and initiatives to the people both begin with

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:"

See Article II, section 1(d) of the state Constitution.

(d) **Appropriations.** Article VIII, section 4 of the state Constitution declares:

No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law

making a new appropriation, or continuing or reviving an appropriation, shall *distinctly specify the sum appropriated, and the object to which it is to be applied*, and it shall not be sufficient for such law to refer to any other law to fix such sum. (Emphasis added.)

"While an appropriation need not be in any particular form or words, the legislative intent must be clear and certain; it cannot be inferred by a construction of doubtful acts or ambiguous language." *Mason-Walsh-Atkinson-Kier Co. v. Dept. of Labor & Industries*, 5 Wn.2d 508, 514-15 (1940).

The following is a suggested appropriation clause for an appropriation from a fund other than the general fund or a related fund:

The sum of \_\_\_ dollars, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 2021, from the \_\_\_ fund to the department of \_\_\_ for the purposes of \_\_\_.

(The state fiscal biennium ends on June 30th of the odd-numbered year.)

The following is a suggested appropriation clause for an appropriation from the general fund or a related fund:

The sum of \_\_\_ dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2020, from the general fund to the department of \_\_\_ for the purposes of this act.

(Expenditures from the general fund, the public safety and education account, the health services account, the violence reduction and drug enforcement account, the student achievement fund, the water quality account, and the equal justice subaccount are limited on a fiscal year basis under Initiative 601 (RCW 43.135.025). Annual appropriations enable better compliance and analysis.)

Lending of credit. Article VIII, section 5 of the state Constitution prohibits the lending of the state's credit. Article VIII, section 7 of the state Constitution prohibits counties, cities, towns, or other municipal corporations from giving money, property, or loaning money, or credit except for the necessary support of the poor and infirm. For exceptions, see Article VIII of the state Constitution.

(e) **Civil service.** To exempt an employee or an agency from the state civil service law, chapter 41.06 RCW:

(i) A new section may be added to chapter 41.06 RCW exempting the particular position or entity;

(ii) The extensive list in RCW 41.06.070 describing various exempt positions may be amended; or

(iii) A new section may be included in the material being drafted or the exemption may be added to the material being amended.

Example for a new section in chapter 41.06 RCW:

NEW SECTION. Sec. \_\_. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions provided under RCW 41.06.070, this chapter does not apply in the department of \_\_\_\_ (fill in appropriate agency) to the \_\_\_\_ (fill in appropriate positions).

Example for a new section outside of chapter 41.06 RCW:

NEW SECTION. Sec. \_\_. A new section is added to chapter \_\_ RCW to read as follows:

The \_\_\_\_ (fill in appropriate position) is exempt from the state civil service law, chapter 41.06 RCW.

To add new material to an existing RCW section, the language in the previous example may be added to an appropriate RCW section, with the underlining of new material as required.

To add additional positions beyond those already provided by statute, the following sentence may be added as a new section or may be inserted as amendatory material:

In addition to the exemptions in \_\_\_\_ (cite RCW number that gives initial exemption), the \_\_\_\_ (fill in appropriate position) is exempt from the application of the state civil service law, chapter 41.06 RCW.

**(f) Consumer protection clause.** To apply the consumer protection act, chapter 19.86 RCW, to conduct not specifically prohibited in chapter 19.86 RCW, a new section is added to the chapter regulating the conduct or activity, using the following language to make the conduct a *per se* violation of chapter 19.86 RCW:

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

The use of this language in statute enables the attorney general or private parties to bring an action under chapter 19.86 RCW without having to establish the five statutorily required elements under the consumer protection act. See *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778 (1986); *Travis v. Washington Horse Breeders Association*, 111 Wn.2d 396 (1988).

**(g) Creating a new crime or amending a criminal statute—A checklist.**



- (i)(A) Are you creating a new crime, a new consequence to an existing crime, or a procedural change? Discuss with the legislator.
- (B) In which title of the Revised Code of Washington should the material be codified? Options include Title 9, 9A, or 13 RCW.
- (C) If creating a new crime, what are the elements of the new crime?
- (D) What is the mental state for the new crime? See RCW 9A.08.010 and *State v. Roggenkamp* 153 Wn.2d 614. Do not use "willful."
- (E) Are the elements of the new crime subject to vagueness or overbreadth? *State v. Glas* 147 Wn.2d 410.
- (F) Is the crime more specific than an existing general crime? *State v. Shriner* 101 Wn.2d 576.
- (G) Is this an alternative means to committing a crime or a new crime? *State v. Fortune* 128 Wn.2d 464.
- (H) Do you want the crime to be "continuing" in terms of when it exists (e.g. escape, zoning, or natural resources crimes)?
- (I) Do you want a statutory defense or common law defenses (see RCW 9A.76.170)?
- (J) If creating a new crime, what is the classification (see RCW 9A.20.021)?
- (K) If the new crime is a felony, what seriousness level is assigned (see RCW 9.94A.515 or 9.94A.518)?
- (L) If a new felony is "unranked," does it have a low recidivism rate?
- (M) Given the seriousness level assigned the new crime, where will the sentence be served (e.g. twelve months and under in jail, over twelve months in prison)?
- (N) Should the new crime be: A crime against a person; a "most serious offense;" a "serious violent offense;" "violent offense;" or a "sex offense" (see defined terms in RCW 9.94A.030)?
- (O) Will the crime be eligible for community custody? If so, when (see RCW 9.94A.501, 9.94A.701, and 9.94A.702)?
- (P) How much earned release time may be earned on the crime (see RCW 9.94A.728)?
- (Q) Is the new crime eligible for crime victims' compensation (see chapter 7.68 RCW)?
- (R) Does the new crime have a unique code designation within the Revised Code of Washington?
- (S) Will the new crime be subject to sealing or vacation of the record (see RCW 9.94A.640 or 13.50.050)?

(T) Will the new crime have firearm possession consequences? This can raise federal law issues (see RCW 9.41.040).

(U) Do you want the crime to require registration after release (see RCW 9A.44.130)?

(V) Do you want the crime to require entry into the DNA database (see RCW 43.43.754)?

(W) Is a privacy interest affected? If yes, use a state Constitution analysis (see Article I, section 7 of the state Constitution).

(X) Is there a need for an intent section?

(Y) If creating a mandatory or discretionary sentencing enhancement that is more punitive, additional fact or facts will have to be pleaded and proved to the trier of fact/jury. You should consider codifying the additional facts as a special allegation. *Blakely v. Washington* 542 U.S. 296 (2004).

(ii) Further suggestions for the creation of a new crime:

(A) Most new crimes are carved out of the coverage of existing statutes.

(B) Do a word search for the existing crime and consider which consequences you wish to continue to the new crime.

(C) Do a second word search for any defined terms that the existing crime is part of and consider which consequences you wish to continue to the new crime.

(h) **Definitions—Introducing.** The following is suggested as a method of introducing a section containing only definitions:

The definitions in this section apply throughout (this chapter/sections \_\_ through \_\_ of this act) unless the context clearly requires otherwise.

Each definition is then given a subsection number and ended by a period. If creating a new definition section, alphabetize the terms if possible, as it is easier to find a particular term in a definition section if the terms are in alphabetical order. If you are adding a new definition to an existing RCW definition section that contains numerous definitions, add the new definition to the end of the section. The code reviser's office will put the term in alphabetical order during the codification process. See RCW 1.08.015(2)(k).

If the definition is restrictive, use "means." If the definition is inclusive, use "includes." Examples:

(1) "Department" means the department of transportation.

(2) "Vehicle" includes automobiles, trucks, buses, and motorcycles.

Terms that appear throughout an act should be defined, if at all, at the beginning of the act. If a term has been defined, there is no need to

recite the definition each time the term is used. The defined term should be used consistently. If a term is used in only one section or subsection in an act, it should be defined at the end of that section or subsection. For example:

For the purposes of this section, "noneconomic damages" means . . .

Definition sections should not contain substantive provisions of law such as fees, penalties, or prohibited conduct. Do not use definitions to specify requirements. These should be in separate sections of the act.

See *State v. Chester*, 82 Wn. App. 422, 427 (1996) for use of dictionary definitions.

Avoid citing to the subsection number if referring to a definition by RCW number. Unnecessary overciting requires amending the reference every time the definition section's subsection numbers change.

(i) **Double amendments—Correcting.** The following style is used to enact a corrected version of an RCW section that was amended two or more times during a legislative session, each amendment without reference to the other:

**Sec. 1.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are each reenacted to read as follows:

This style is also used for double amendments that have been merged for publication purposes under RCW 1.12.025(2). Merged sections are followed by a reviser's note in the code.

If the double amendment is being amended as well as being corrected, the last phrase of the amendatory jingle should read "are each reenacted and amended to read as follows:"

For statutory construction of double amendments, see RCW 1.12.025(1).

(j) **Effective date clauses.**

(i) **Ordinary.** If no effective date is specified in a bill, it will take effect ninety days after final adjournment of the legislative session in which it is enacted. See Article II, section 41 of the state Constitution. To specify a later effective date, the following effective date clause is appropriate:

This act takes effect (date).

(ii) **Date Specific—Emergency Clauses.** If the date chosen would put the act in effect earlier than ninety days after final adjournment of the legislative session, the effective date clause should be combined with an emergency clause. See Article II, sections 1(b) and 41 of the state Constitution. In odd-numbered years, the one hundred five-day length of the regular session puts the normal effective date in July, so an emergency clause is necessary for a July 1st effective date. In even-numbered years, bills passed during the sixty-day regular session take effect in early June, but bills passed in a thirty-day special session after

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the regular session will require an emergency clause for a July 1st effective date. See discussion of emergency clauses in (k) of this subsection.

(iii) Contingent. (A) If the effective date of an act is contingent on the enactment of another legislative act, the following language should be used:

This act takes effect only if chapter . . . ([House] [Senate] Bill No. \_\_), Laws of \_\_ is enacted by (date).

(B) If the effective date of an act is contingent on the adoption of a constitutional amendment, the following language should be used:

This act takes effect (date) if the proposed amendment to Article \_\_, section \_\_ of the state Constitution (briefly describe substance of amendment and indicate the joint resolution number, if known) is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety. (Based on chapter 141, Laws of 1973 1st ex. sess.)

The secretary of state has thirty days after the election to certify the results of the election. If a specific effective date is desired, the effective date should be on or after the completion of the thirty days. See RCW 29A.60.260.

(C) If the effective date of a section is contingent upon the occurrence of an event at an uncertain future date, the drafter should add a new section to the bill that reads substantially as follows:

**"NEW SECTION. Sec. 5.** The department of .... must provide written notice of the effective date of section 4 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department."

At the drafter's discretion, substantially similar language may be added as a subsection in the contingent section rather than as a separate new section.

(iv) Initiatives. "Such measure shall be in operation on and after the thirtieth day after the election at which it is approved." Article II, section 1(d) of the state Constitution.

(v) If the drafter wishes to ensure that the appropriate agency has the authority to prepare for the implementation of an act before its effective date, the following language, derived from RCW 90.58.920, may be used:

**NEW SECTION. Sec. 28.** Sections 1 through 27 of this act take effect (date).

**NEW SECTION. Sec. 29.** The director of \_\_\_\_\_ may take the necessary steps to ensure that this act is implemented on its effective date.

(vi) The phrase "the effective date of this section" is often used throughout a bill to refer to its effective date without having to repeat the date. Changes in the bill's effective date need only be made in the effective date clause and not throughout the bill. In the codification process, the phrase "the effective date of this section" is translated to the actual date. See subsection (12)(c) of this part for the use of "this act" in amendatory sections.

(vii) Use caution if a bill includes an effective date that could take effect before the governor signs the bill. If, in that case, a retroactive effect is desired, a clear intent for retroactivity should be expressed in the bill.

(viii) For more on computation of time, see subsection (12)(u) of this part.

(k) **Emergency clause.** The following standard emergency clause is based on the language of Article II, section 1(b) of the state Constitution:

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect (immediately or a specific date).

In odd-numbered years, the one hundred five-day length of the regular session puts the normal effective date in July, so an emergency clause is necessary for a July 1st effective date. In even-numbered years, bills passed during the sixty-day regular session take effect in early June, but bills passed in a thirty-day special session after the regular session will require an emergency clause for a July 1st effective date.

Emergency clauses are subject to veto by the governor. To avoid unintended consequences, do NOT list the effective date of other sections of a bill in the same section as the emergency clause. Add the effective date of other sections of a bill in a separate new section. An example of this unfavorable practice is as follows:

NEW SECTION. Sec. 7. Except for sections 5 and 6 of this act, which take effect September 1, 2019, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

A bill containing an emergency clause is not subject to a referendum under Article II, section 1(b) of the state Constitution. This exempts it from the rule of Article II, section 41 of the state Constitution that "No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted."

Article II, section 1(b) of the state Constitution states that an act may be subject to referendum "except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions . . ."

Therefore, the recitation of the emergency clause should be used if it is desired that the act take effect sooner than ninety days after adjournment *sine die*, though the declaration may not be strictly necessary if the nature of the bill clearly falls within the language of Article II, section 1(b) of the state Constitution. *State ex rel. Pennock v. Reeves*, 27 Wn.2d 739, 743 (1947).

The legislative declaration contained in the emergency clause is considered conclusive and is to be given effect unless the declaration is obviously false on its face. *CLEAN v. State*, 130 Wn.2d 782, 807-08 (1997), *State ex rel. Pennock v. Coe*, 42 Wn.2d 569, 576-77 (1953). But see *Andrews v. Munro*, 102 Wn.2d 761 (1984).

It has also been held that the language of Article II, section 1(b) of the state Constitution describes two separate and distinct categories of acts not subject to referendum, one that relates to the immediate preservation of the public peace, health, or safety, and the other for the support of the state government and its existing public institutions. The latter category need not have any immediate nature. *State ex rel. Helm v. Kramer*, 82 Wn.2d 307, 313 (1973). "The word 'or' was apparently inadvertently omitted before the word 'support,' and this court has always construed the section as though that word had not been omitted." *State ex rel. Hoppe v. Meyers*, 58 Wn.2d 320, 326 (1961); see also *Farris v. Munro*, 99 Wn.2d 326, 335 (1983).

An emergency clause is not necessarily required for immunity of a bill from referendum. See *Andrews v. Munro*, 102 Wn.2d 761 (1984).

For bills that might have effective dates that precede the governor's approval, see (j)(vii) of this subsection.

For more on computation of time, see subsection (12)(u) of this part.

**(l) Expiration date clauses.** (i) To expire a specific section in a bill, the following sentence should be inserted at the end of the section:

This section expires (date).

The RCW section will expire on the date specified, whether the section in the bill is new or is an amendatory section, and the RCW section will be removed from the code on the specified date regardless of subsequent amendments to the RCW section, unless the expiration language is amended. See RCW 19.122.150 or 79.105.620. However, a new tax preference automatically expires in ten years under RCW 82.32.805, unless there is language expressly providing otherwise. See (bb) of this subsection.

If the expiration of amendatory material in a bill is desired, it is possible to draft the expiration as part of the amendatory material. For example, if an additional subsection is being added to an RCW section and the subsection is to have a limited duration it should be drafted as follows:

(5) Until July 1, 2021, an applicant may not . . .

A separate expiration section should not be used unless the sections to expire are all new sections. In this case, the expiration section should be added to the code so that the section references will be translated to RCW numbers and the RCW sections can be removed from the code, regardless of subsequent amendments to the RCW section.

Alternatively, a separate expiration section may be applied to an amendatory section. If this is done, only the amendments expire and the section returns to its previous state. This method creates multiple versions of the RCW that contain "(Effective until...)" and "(Effective...)" in the captions.

For the sunset of agencies and programs, see (z) of this subsection. A "sunset" is not the same as an "expiration." Those terms should not be used synonymously.

(ii) **Contingent expiration dates.**

If the expiration date of a section is contingent upon the occurrence of an event at an uncertain future date, the drafter should add a new section to the bill that reads substantially as follows:

**NEW SECTION. Sec. 5.** The department of .... must provide written notice of the expiration date of section 4 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department."

At the drafter's discretion, substantially similar language may be added as a subsection in the contingent section rather than as a separate new section.

(m) **Funds.**

(i) **Public funds.** The moneys of the state are divided among various funds and accounts. If a fund or account is located in the state treasury, in accordance with Article VIII, section 4 of the state Constitution, it is subject to appropriation by the legislature. Being "subject to appropriation" means that money may not be used from the fund or account without legislative directive.

A fund or account that is not in the treasury may be referred to as a custodial or nontreasury fund or account. Within this classification, a fund or account may be in the custody of the state treasurer without actually being in the state treasury. See RCW 77.95.090.

Regardless of whether a fund or account is appropriated or nonappropriated, expenditures may be limited by statute to a specific purpose. These funds and accounts are called dedicated. Normally a fund or account that does not require an appropriation is restricted to a particular purpose. In addition, it is possible to restrict statutorily the use of certain moneys within a fund or account. See RCW 82.45.180.

In statute, many nonappropriated funds are loosely referred to as "revolving funds," which differs from the definition of revolving fund

found in the budget and accounting act. See RCW 43.88.020. In addition, some "revolving" funds are actually appropriated funds. See RCW 80.01.080. Technically speaking, a revolving fund is a particular type of dedicated fund in which other public funds, not citizens, are the revenue source.

(A) The following is suggested language for creating an account in the state treasury. All treasury accounts are subject to appropriation.

The \_\_\_\_\_ account is created in the state treasury. All receipts from \_\_\_\_\_ (fill in source) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for \_\_\_\_\_.

(B) The following is suggested language for creating a nonappropriated account in the state treasurer's custody:

The \_\_\_\_\_ account is created in the custody of the state treasurer. All receipts from \_\_\_\_\_ (fill in source) must be deposited into the account. Expenditures from the account may be used only for \_\_\_\_\_. Only the director of \_\_\_\_\_ or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(ii) **Effective dates.** If changing a treasury account to a nontreasury account or vice versa, or combining several accounts into one, a July 1st effective date on the section is preferred. An account change at the beginning of the fiscal year rather than during the fiscal year assists in the accounting process.

If creating a new program and corresponding fund or account, a July 1st effective date is not critical. The fund or account should be created with an effective date to serve the needs of the program.

If repealing a fund or account, a June 30th effective date of the repeal is preferred, for federal reporting purposes and statewide accounting by the office of financial management, so that the account closes at the end of the fiscal year. Additionally, language should be included to direct where any residual funds in or to the account should be deposited. This is to clearly reflect that all activity will take place within the same fiscal year. See chapter 251, Laws of 2013.

(iii) **Interest accrual.** See RCW 43.84.092 and 43.79A.040.

(A) RCW 43.84.092(4) (a) and (b) identify those appropriated treasury accounts that retain all or a portion of the account's interest earnings.

(B) RCW 43.79A.040(4) (b) and (c) identify those nonappropriated accounts in the state treasurer's custody that retain all or a portion of the account's interest earnings.

(n) **Gifts or grants to an agency.** Example:



The (commission, board, etc.) may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the (commission, board, etc.) and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

See RCW 74.29.020. Also consider RCW 42.52.150 and 42.52.010(9).

(o) **Joint select committees or legislative task forces.** Use joint select committee when only legislators are to be appointed; use legislative task force when both legislators and nonlegislative members are to be appointed. If the members are appointed exclusively by the president of the senate and the speaker of the house of representatives, the preferred format is a concurrent resolution rather than a bill. The preferred format is a bill when the study requires participation of the executive branch. The following is suggested language to use when creating a joint select committee or legislative task force:

NEW SECTION. Sec. \_\_\_\_. (1)(a) A joint select committee/legislative task force on \_\_\_\_ is established, with members as provided in this subsection.

(i) The president of the senate shall appoint \_\_ member[s] from each of the two largest caucuses of the senate.<sup>1</sup>

(ii) The speaker of the house of representatives shall appoint \_\_ member[s] from each of the two largest caucuses of the house of representatives.<sup>1</sup>

(iii) The president of the senate and the speaker of the house of representatives jointly shall appoint \_\_ members representing [local government or private sector interests].

(iv) The [governor or other named elected official] shall appoint \_\_ members representing [state agencies].<sup>2</sup>

(b) The committee/task force shall choose its chair/cochairs from among its [legislative] membership. [legislator/official] shall convene the initial meeting of the committee/task force.

(2) The committee/task force shall review the following issues:

(a) ...

(b) ...

(c) ...

(3) Staff support for the committee/task force must be provided by the senate committee services and the house of representatives office of program research.<sup>3</sup>

(4) Legislative members of the committee/task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(5) The expenses of the committee/task force must be paid jointly by the senate and the house of representatives.<sup>3</sup> Committee/task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The committee/task force shall report its findings and recommendations to the [governor, named elected official, and the] appropriate committees of the legislature by [date].

(7) This section expires [date].

### **Comment**

<sup>1</sup>Optional additional language might include: At least one member from each caucus must be a member of the senate/house of representatives committee, or successor committee.

<sup>2</sup>Executive branch members may be included as voting or nonvoting members. For nonvoting members, the following language is suggested:

"() The department of \_\_\_\_\_ shall cooperate with the committee/task force and maintain a liaison representative, who shall be a nonvoting member."

Alternatively, agencies may be required to assist the committee/task force. If so, the following language is suggested:

"() The department of \_\_\_\_\_ shall cooperate with the committee/task force and provide information as the chair/cochairs may reasonably request."

<sup>3</sup>If the task force includes executive branch members, the legislation may direct staffing by the executive branch instead, and subsection (3) will be replaced and the first sentence of subsection (5) deleted.

If the scope of the study may require outside expert resources, an identified funding source should be included. The following additional language is suggested:

"() The committee/task force may contract with additional persons who have specific technical expertise if the expertise is necessary to carry out the mandates of the study. The committee/task force may enter into such a contract only if an appropriation is specifically provided for this purpose."

It may be useful to specify that the committee/task force may form an advisory group or groups by adding a subsection using the suggested language below. If a mandatory advisory committee is desired, member representation, appointment authority, and travel reimbursement should be specified.

"() The committee/task force, where appropriate, may consult with individuals from the public and private sector or ask the individuals to establish an advisory committee. Members of such an advisory committee are not entitled to expense reimbursement."

(p) **Licensing scheme.** In order to comply with federal temporary assistance for needy families (TANF) requirements, the following language should be included, and modified as necessary, when creating a licensing scheme.

(i) If you are creating a new section:

The secretary shall immediately suspend the license of any person subject to this chapter who has been certified by the department of social and health services as a person who is not in compliance with a support order as provided in RCW 74.20A.320.

(ii) If there is an existing section that has grounds for license denial, suspension, or revocation, the following language may be added rather than creating a new section:

The director may deny, suspend, revoke, or refuse to issue a license to any person who has been certified by the department of social and health services as a person who is not in compliance with a child support order as provided in RCW 74.20A.320.

For a variety of examples, see RCW 18.04.430, 18.130.127, and 46.20.291(8).

(q) **Null and void clauses.** (i) Null and void clauses are used to prevent an act or a section of an act from becoming law if funds for the act or section of an act are not provided in the budget. The code reviser's office does not add this clause without specific direction.

(ii)(A) Example of a null and void clause for an entire act:

If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void.

(B) Example of a null and void clause for a specific section or sections of an act:

If specific funding for the purposes of section ... of this act, referencing section ... of this act by bill or chapter number and section number, is not provided by June 30, 2019, in the omnibus appropriations act, section ... of this act is null and void.

(iii) A null and void clause should not be used to terminate or expire the application of an act or section after it has already become law. If the act or section has already become law, an application section or contingent expiration section should be used to prevent the continued application of the act or section or to expire the act or section if a stated contingency occurs.

(r) **Penalty clauses—Sentencing.** For the punishment of misdemeanors, gross misdemeanors, and felonies if not fixed by statute, see RCW 9.92.010 through 9.92.030. For the classification and punishment of misdemeanors, gross misdemeanors, and felonies defined in Title 9A RCW, see RCW 9A.20.010 and 9A.20.021. Note that the performance of an act prohibited by statute for which there is no specified penalty is a

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misdemeanor. RCW 9A.20.010(2). For the classification of crimes based on punishment, see RCW 9A.04.040.

Examples:

A person violating this (section/chapter) is guilty of a misdemeanor and is subject to the penalties in RCW \_\_\_\_.

A violation of or a failure to comply with this (section/chapter) is a misdemeanor. Each day upon which a violation occurs constitutes a separate violation. A person violating this (section/chapter) may be enjoined from continuing the violation.

A person violating this (section/chapter) is guilty of a misdemeanor.

A person convicted of negligent homicide by means of a motor vehicle shall be punished by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. (Based on original from 57 Wn.2d 295, 300 (1960) (citing then - RCW 46.56.040).)

The following form should be used only within sections codified in Title 9A RCW:

(Name of crime) is a class (A/B/C) felony.

If the penalties of a classified felony are to be applied to a criminal act that is defined outside Title 9A RCW, the following form should be used because it incorporates the specific sentences authorized for the various classified felonies under Title 9A RCW:

A violation of this (section/chapter) is punishable as a class C felony according to chapter 9A.20 RCW.

Other alternative penalties apparently approved *Olsen v. Delmore*, 48 Wn.2d 545 (1956):

Alternative penitentiary or county jail imprisonment: RCW 9.02.010.

Alternative penitentiary imprisonment or fine: RCW 9.02.020 and 9.05.020.

The penalties in *Olsen* seem to have been sanctioned on the ground that the crimes described are felonies prescribing alternative punishments.

Held unconstitutional (5 to 4 decision) was the following:

A violation of any preceding provision of this chapter is punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than one year or both, or by imprisonment in the penitentiary for not less than one year nor more than ten years.

The court said that the section violates the equal protection clause of the Constitution in that it "purports to authorize prosecuting officials to charge violations of the uniform firearms act either as a gross misdemeanor or a felony." *Olsen*, 48 Wn.2d at 550.

See also *State v. Reid*, 66 Wn.2d 243 (1965); *State v. Saylor*, 70 Wn.2d 7 (1966); *State v. Blanchey*, 75 Wn.2d 926 (1969); and *State v. Ensminger*, 77 Wn.2d 535 (1970).

### Motor vehicle criminal penalties

To impose a misdemeanor or greater criminal penalty, rather than an infraction, on a motor vehicle offense within Title 46 RCW, it is necessary to amend RCW 46.63.020. That section specifies those offenses that are subject to processing as crimes instead of as noncriminal traffic offenses. See *State v. Taylor*, 97 Wn.2d 724 (1982).

### Sentencing

An act that alters a sentencing scheme should include a clause that indicates at what point in time a person is subject to the new scheme. Examples:

(i) This act applies to crimes committed on or after July 1, 2019.

(ii) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, take effect July 1, 2019, and apply to crimes or offenses committed on or after July 1, 2019.

(s) **Prospective or retroactive effect clauses.** A statute is given prospective effect only, unless the statute indicates that it is to be applied retroactively. If it is intended that a bill should be applied retroactively, a section of the bill should clearly express that intent. The court is reluctant to imply retroactive application. *Everett v. State*, 99 Wn.2d 264, 270 (1983).

Occasionally a court will apply a statute retroactively even though it contains no provision directing such an application. This is most often true with statutes relating to practice, procedure, and remedies. See *Godfrey v. State*, 84 Wn.2d 959 (1975). *Godfrey* held that a newly enacted comparative negligence statute applied retroactively to lawsuits commenced after the statute's effective date but whose operative facts occurred before the statute took effect.

Litigation to determine the retroactive effect of the statute might not have been necessary had clear direction as to its application been included in the bill. The drafter could have indicated a retroactive effect by including a section as follows:

NEW SECTION. Sec. 4. This act applies to all causes of action commenced on or after the effective date of this section, regardless of when the cause of action arose. To this extent, this act applies retroactively, but in all other respects it applies prospectively.

A prospective application may be indicated as follows:

NEW SECTION. **Sec. 4.** This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after the effective date of this section.

Clarification of intent can avoid a lawsuit. If there is doubt on the question of prospective or retroactive application, the drafter should spell out what is intended.

**(t) Referendum clauses.**

(i) Referral under initiative and referendum provisions (Article II of the state Constitution):

The secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation.

(ii) Referral required because of constitutional debt limitation (Article VIII of the state Constitution):

The secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article VIII, section 3 of the state Constitution and the laws adopted to facilitate its operation.

(iii) Referral under RCW 43.135.034 for exceeding the expenditure limit under chapter 43.135 RCW:

The secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with RCW 43.135.034.

(iv) Article II, section 1(b) of the state Constitution provides that a referendum "may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing institutions, either by petition signed by the required percentage of legal voters, or by the legislature as other bills are enacted." (Emphasis added.) For a discussion of a referendum on less than an entire act, see *State ex rel. Pennock v. Coe*, 42 Wn.2d 569 (1953). An example may be found in Referendum Measure No. 39, 1977 Official Voters Pamphlet. For a discussion of emergency clauses, see (j) and (k) of this subsection.

A bill referred to the people by petition is designated a "referendum measure." A bill referred to the people by the legislature is designated a "referendum bill." In the latter case, the legislature may prescribe the ballot title. See RCW 29A.72.040 and 29A.72.050.

**(u) Reports to the legislature/governor.**

(i) RCW 43.01.036 requires that all reports to the legislature, and all annual and biennial reports to the governor, be submitted in electronic format and provide for online access, among other requirements. When drafting language requiring submission of a report to the legislature or the governor, the drafter may consider including the following language: "By [list date report is due to be submitted], and in compliance with RCW 43.01.036, the department must submit a report to the [legislature/governor] that details. . . ."

(ii) RCW 40.07.030 requires a copy of any annual, biennial, or special report to the governor or the legislature to be filed with the state library as a public record.

(v) **Savings clauses.** The general rule is that repealing acts terminate all rights dependent upon the repealed statute and all proceedings based upon it. *Lau v. Nelson*, 89 Wn.2d 772 (1978), overruled on other grounds by *Roberts v. Johnson*, 91 Wn.2d 182, 188 (1978). An amendatory act constitutes a repeal of the amended act to the extent the two acts are inconsistent. To preserve existing rights and obligations, a savings clause should be used, especially if the statute could be applied retroactively. *Seattle-King County Council of Camp Fire v. Dept. of Revenue*, 105 Wn.2d 55, 63-64 (1985). Note that RCW 10.01.040 presumes a savings clause in the case of the express or implied repeal of a criminal offense, penalty, or forfeiture. Examples:

(i) This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

(ii) (Sections \_\_ through \_\_ of this act/this chapter) do/does not terminate or modify any civil or criminal liability that exists on the effective date of this section.

(iii) (Sections \_\_ through \_\_ of this act/this chapter/this section) are/is cumulative and nonexclusive and do/does not affect any other remedy.

(iv) This act does not repeal, amend, or modify any law providing for water supply for any city or town but is an additional and concurrent method providing for this purpose.

(v) **NEW SECTION. Sec. 99.** The following acts or parts of acts are each repealed:

(1) RCW 3.20.130 (Venue, criminal actions—Justice of the peace districts) and 1951 c 156 s 16; and

(2) RCW 3.20.131 (Venue in criminal actions) and 1953 c 206 s 4.

**NEW SECTION. Sec. 100.** The repeals in section 99 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or

order adopted under those statutes nor do they affect any proceeding instituted under them.

**(w) Severability clauses.**

**(i) State version.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

"An act of the legislature is not unconstitutional in its entirety because one or more of its provisions are unconstitutional unless the invalid provisions are unseverable and it cannot reasonably be believed that the legislature would have passed the one without the other, or unless the elimination of the invalid part would render the remainder of the act incapable of accomplishing the legislative purpose." *State v. Anderson*, 81 Wn.2d 234, 236 (1972). A severability clause is viewed by the court as a persuasive indication of legislative intent offering ". . . to the courts the necessary assurance that the remaining provisions would have been enacted without the portions which are contrary to the constitution." *Anderson*, 81 Wn.2d at 236.

**(ii) Federal version.**

(A) If the drafter anticipates the receipt of federal funds under the act, the drafter may want to use a federal severability clause:

If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Other examples include RCW 43.88.220, 74.29.055, and 74.42.630.

In *Yelle v. Bishop*, 55 Wn.2d 286 (1959), the state supreme court found substantially similar language valid against a challenge that the language unlawfully delegated legislative power to the federal government. The court held that the delegation was proper and that there was no attempt to adopt or incorporate future changes in federal statutes or regulations. *Yelle*, 55 Wn.2d at 303. See discussions of incorporation and delegation in subsection (12)(f) and (h) of this part.

(B) If federal unemployment tax credits are involved, the drafter may want to use the following clause:

If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part



of this act is inoperative solely to the extent of the conflict, and this finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

(iii) The invalidity of one portion of a legislative act has the effect of invalidating the remaining portions, despite the legislature's inclusion of a severability clause, if the purpose of the entire act would be overcome by severing the invalid portion. See *Dep't of Fisheries v. DeWatto Fish Co.*, 34 Wn. App. 135, 151 (1983), reversed on other grounds by *State v. De Watto Fish Co.*, 100 Wn.2d 568 (1983).

**(x) Short title.**

This (act/chapter) may be known and cited as the dental appliances act.

Avoid including a year in the name of the act.

(y) **Staggered terms.** In creating new boards, committees, or other entities, staggered terms are often used for the initial appointments to create a changing membership throughout the life of the entity. Example:

The members shall serve five-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for five-year terms. Thereafter, members must be appointed for five-year terms.

(z) **Sunset and termination clauses.** The sunset process involves a review by the joint legislative audit and review committee and is intended to terminate an agency or program in a given year and repeal the underlying statutes in the following year. RCW 43.131.010 through 43.131.150 are scheduled to expire June 30, 2025. See RCW 43.131.900.

If the drafter wishes the sunset review procedures under chapter 43.131 RCW to be used, the drafter should add two sections to chapter 43.131 RCW, one terminating the authority and one repealing all underlying statutes the following year.

The sunset process is not the same as a termination or an expiration. Do not use these terms synonymously.

The following is a suggested termination clause:

The (board, commission, etc.) terminates (date).

For a discussion of methods of expiring sections generally, see (l) of this subsection.

For more information on the sunset review process, go to the joint legislative audit and review committee's web site at <http://>

[www.leg.wa.gov/JLARC/Pages/StudyProcess.aspx](http://www.leg.wa.gov/JLARC/Pages/StudyProcess.aspx) and select the link entitled "What is a Sunset Review?"

(aa) **Tax-exempt entities.** When referring to charitable entities that are exempt from federal income tax, the drafter should use the following language: ". . . an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of [insert desired date] . . . ."

(bb) **Tax preference legislation—Performance statements and expiration dates.** RCW 82.32.808 requires the inclusion of performance statements in legislation that establishes, expands, or extends a tax preference, unless explicitly exempted. See also RCW 82.32.805 and the Joint Legislative Audit and Review Committee document "Legislative Auditor's Guidance for Drafting Tax Preference Performance Statements" (January 2014) available through the Joint Legislative Audit and Review Committee's web site at [www.leg.wa.gov/JLARC](http://www.leg.wa.gov/JLARC).

Tax preference performance statements only apply to the session law and not the underlying statute or future amendments. Therefore, cite only the session law (not the RCW) in a tax preference performance statement to refer to the new tax preference created in the act.

Under RCW 82.32.805(1)(a), a new tax preference is subject to an automatic ten-year expiration date, unless provided otherwise. For clarity, any new tax preference for which an expiration date is intended, should always expressly state the intended date, even if the intent is to expire the preference under the ten-year default. If the intent is for the tax preference to not expire, an express statement that the expiration date provisions of RCW 82.32.805(1)(a) do not apply to the tax preference must be included.

(cc) **Travel expenses—Reimbursement.** Elective and appointive state officials and state employees are entitled to a subsistence and lodging expense allowance under RCW 43.03.050 and a mileage allowance under RCW 43.03.060 while engaged in official business away from their designated posts of duty. But persons appointed to serve without compensation may receive the subsistence and lodging expense allowance under RCW 43.03.050 only if they are "entitled to payment of travel expenses." See RCW 41.04.300, 42.24.090, 43.03.050, 43.03.060, 43.03.220 through 43.03.265, and 44.04.120.

The following provision authorizing payment of these expenses is technically necessary only for uncompensated persons, but it is often used for both compensated and uncompensated persons:

Members of the (board, commission, etc.) must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

For travel allowances for officers and employees of political subdivisions, see RCW 42.24.090. The compensation for members of different types of part-time boards and commissions is set forth in RCW 43.03.220 through 43.03.265.

If an additional amount of money is intended as compensation per day, it should be stated separately as a rate per day or otherwise.

If the bill provides for legislators to be members of the entity being created, the bill should distinguish the legislators from the nonlegislators. Legislators on official business are entitled to reimbursement for travel expenses under RCW 44.04.120. Note that Article II, section 13 of the state Constitution provides:

No member of the legislature, during the term for which he is elected, shall be appointed or elected to any civil office in the state, which shall have been created during the term for which he was elected. Any member of the legislature who is appointed or elected to any civil office in the state, the emoluments of which have been increased during his legislative term of office, shall be compensated for the initial term of the civil office at the level designated prior to the increase in emoluments.

For a discussion of the term "civil office" and the extent of the ineligibility, see *Oceanographic Commission v. O'Brien*, 74 Wn.2d 904 (1968). Generally, a legislator is ineligible to serve as a voting member of a policy-making board, as opposed to an advisory board, during the legislator's term of office if the position on the board was created during that term. The ineligibility may be avoided by postponing the legislator's appointment, or the member's authority to vote, until after the expiration of the legislator's term of office.

(dd) **Waivers.** If you are creating a new waiver of higher education operating fees that is subject to the limitations in RCW 28B.15.910, you should amend RCW 28B.15.910 and add a reference to the new waiver section in subsection (2). If the waiver you are creating is for services and activities fees, the reference to the new waiver section should be in subsection (3). The language "Subject to the limitations in RCW 28B.15.910, . . ." in the new waiver provision is the key to whether you should amend RCW 28B.15.910.

## (12) GENERAL DRAFTING PRINCIPLES

(a) **Length of sections.** In creating new legislation, divide the material into short, concise sections. Short sections facilitate future amendment. As a rule of thumb, if the content of a section cannot be described in a one-line caption, the section should be divided into two or more sections. Short sentences are likewise preferable. Designation of sections has implications for vetoes. See *Washington State Legislature v. Lowry*, 131 Wn.2d 309 (1997).

(b) **Internal references in a bill.** In referring to other parts of a bill, the drafter should refer to specific sections. Avoid references such as "herein," "hereinbefore," "hereinafter," "preceding," "above," and "following," since these references are ambiguous and the relative position of the material referred to may be changed by legislative amendment or in codification.

Avoid through references such as "RCW 13.34.030 through 13.34.161." New sections might be placed within the beginning and ending references that may be contrary to the intent of the through reference citation.

Keep the reference as concise as possible, as in "under section 21(2)(b) of this act," not "subparagraph (b) of subsection (2) of section 21 of this act." See Part IV (5)(b) of this guide for examples.

When referring to an amendatory section in the bill, use the RCW citation and not the section number.

If referring to a codified section, always refer to it by the RCW number and not to its session law or bill section number counterpart. A session law or bill number reference places an overly restrictive construction on the section. A reference to an amendatory section by its bill section number ("section 5 of this act"), and not its RCW number, may be construed as a reference to only the amendatory portions of the section and not the entire section.

**(c) Reference to "this act."** Avoid using a general reference to "this act." Reference to a specific section of the act is preferable to reduce ambiguity and so there are no translation problems in codification.

If the act or the part referred to will become a new chapter in the code, refer to "this chapter." If the act consists of amendments or the repeal of codified material, as well as new material either added to an existing chapter or material to be codified as a new chapter, consider carefully the use of "this act" or "this chapter." Use "this act" only if reference to every individual provision of the current act is intended. Use "this chapter" if reference to a particular chapter of the RCW is intended. Reference to certain sections of the act may also be appropriate, such as "under sections 10 through 15 of this act." If a portion of a bill constitutes a new chapter and reference is made to that chapter in other sections of the bill, the drafter should cite to the chapter in the form, "chapter 77.-- RCW (the new chapter created in section . . . of this act)," leaving only the chapter number blank, to be filled in during codification. Within the chapter itself, reference should be made to "this chapter."

**(d) References to other bills.** If reference is made to a bill currently before the legislature, use the form "chapter \_\_ ([House] [Senate] Bill No. \_\_), Laws of \_\_" filling in as many parts of the citation as are known at the time. A section may also be referred to in a similar manner.

If the drafter needs to identify a specific budget bill, the proper reference is to the "omnibus operating appropriations act" for the operating budget, "omnibus capital appropriations act" for the capital budget, and "omnibus transportation appropriations act" for the transportation budget.

**(e) Reference to Washington statutes.** Reference in a bill to an RCW section, chapter, or title incorporates future changes in that law, unless a contrary intent is clearly expressed. The phrase "as now or

hereafter amended" should not be used. However, if it is intended that the referring statute should invoke the statute to which reference is made only as it exists at the time the referring statute is enacted, the citation should include the limiting phrase "as existing on the effective date of this section." For example:

The tax imposed in this section does not apply to motor vehicle fuel, as defined in RCW 82.38.020, as existing on the effective date of this section.

Before June 10, 1982, the presumption was that reference to a specific statute only incorporated the statute as it existed on the date the bill was enacted, unless a contrary intent was evidenced. *City of Seattle v. Green*, 51 Wn.2d 871, 874 (1958). In referring to other Washington statutes by reference, if it were intended that the referring statute should invoke the statute to which reference is made as it then existed and as it was subsequently amended, the citation usually included the phrase "as now or hereafter amended." The legislature reversed this presumption with RCW 1.12.028.

(f) **Incorporation by reference.** Incorporation by reference of statutes from other jurisdictions or of other materials, such as building or fire codes, should be drafted to refer to a specific statute or edition as it existed at a particular point in time. The state supreme court has indicated that an attempt to incorporate future changes in federal laws or regulations would be an invalid delegation of legislative power. See *State v. Dougall*, 89 Wn.2d 118, 122-23 (1977). Also see: *State ex rel. Kirschner v. Urquhart*, 50 Wn.2d 131, 137 (1957); *State v. Reader's Digest Ass'n*, 81 Wn.2d 259, 275 (1972). The same rationale would apply to other source material.

To incorporate later versions without making an invalid delegation of legislative power, the following is suggested:

Applicants must meet the requirements of the federal internal revenue code as it existed on the effective date of this section, or such subsequent date as may be provided by the board by rule, consistent with the purposes of this section.

Also see the discussion of delegation of legislative authority in (h) of this subsection.

(g) **Gender.** In 1983, the legislature required drafting with gender-neutral terms. RCW 44.04.210 states:

(1) All statutes, memorials, and resolutions enacted, adopted, or amended by the legislature after July 1, 1983, shall be written in gender-neutral terms unless a specification of gender is intended.

(2) No statute, memorial, or resolution is invalid because it does not comply with this section.

However, in construing statutes, terms in the code referring to the masculine gender, such as "he," "his," or "workmen," also extend to the feminine gender. See RCW 1.12.050. Instead of the cumbersome dis-

junctive "he or she" or "his or her," it is best to avoid all personal pronouns reflecting gender, as shown in the following example: "The director or the director's designee shall deposit in the workers' compensation fund such moneys as the director deems necessary."

(h) **Delegation of legislative authority.** The delegation of legislative power, such as rule-making authority, to a person or agency must satisfy certain standards, as outlined in *Barry & Barry, Inc. v. Dept. of Motor Vehicles*, 81 Wn.2d 155, 159 (1972) (italics removed):

. . . the delegation of legislative power is justified and constitutional, and the requirements of the standards doctrine are satisfied, when it can be shown (1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and (2) that procedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power.

In adopting this test, the court overruled earlier decisions holding that legislative authority may not be delegated unless accompanied by specific or precise standards. In *Barry*, the court shifted its focus from statutory standards to the need for procedural safeguards, which the court held was satisfied by the procedural requirements of the administrative procedure act. See also *In re Powell*, 92 Wn.2d 882 (1979).

In *United Chiropractors of Washington, Inc. v. State*, 90 Wn.2d 1 (1978), the court held invalid statutes authorizing private professional associations to appoint members of the professional examining and disciplinary boards, even though in the case of one of the boards the governor was permitted to make the actual appointments from among nominations submitted by the private associations. The court used the second component of the *Barry* test to conclude, on due process grounds, that the "procedural safeguards which exist in this scheme are inadequate to control arbitrary administrative action and abuse of discretion in licensing and disciplining of chiropractors not belonging to the favored groups." *United Chiropractors*, 90 Wn.2d at 6. Also see *State v. Dougall*, 89 Wn.2d 118 (1977), and the discussion of incorporation by reference in (f) of this subsection.

(i) **Provisos.** A proviso is "a restraint or limitation upon, and not an addition to, that which precedes it." *State v. Collins*, 94 Wash. 310, 313 (1917). It generally begins with the word "provided." Provisos should not be used. It is often difficult to determine precisely what a proviso is attempting to modify, particularly where several provisos are used in a string. See limitations, exceptions, and conditions in (s) of this subsection and the last antecedent rule in (v) of this subsection.

A proviso should be avoided entirely by setting out the exception in an independent sentence following the general provisions. The meaning is the same and structure is simplified. See *Sutherland* §§ 20:22, 21:11; *Dickerson* § 7.11.

If a proviso must be used, its function should be to except something from the general clause immediately preceding it, or otherwise qualify or restrain it. See Part IV (1)(h) of this guide for examples. Usually, the use of "but . . ." "except . . ." or "however . . ." will accomplish the same purpose. A proviso is always strictly construed and any doubts will be resolved in favor of the general provisions rather than the proviso. See *State v. Wright*, 84 Wn.2d 645, 652 (1974). A proviso should only be used to introduce an exception and not merely as a conjunction between two unrelated clauses.

(j) **The "one subject" rule.** Article II, section 19 of the state Constitution requires that, "No bill shall embrace more than one subject, and that shall be expressed in the title." See also Senate Rule 25. A bill may violate the "one subject" rule even though the title of the bill is broad enough to cover all aspects of the bill. The state supreme court applies the "rational unity" test to determine whether a bill contains more than one subject:

. . . where the title embraces a general subject it is not violative of the constitution even though the general subject contains incidental subjects. All that is required is that there be some "rational unity" between the general subject and the incidental subdivisions.

*Fritz v. Gorton*, 83 Wn.2d 275, 290 (1974), quoting *Water Dist. 105 v. State*, 79 Wn.2d 337, 341 (1971). See also *State v. Grisby*, 97 Wn.2d 493, 498 (1982), *Amalgamated Transit v. State*, 142 Wn.2d 183, 209 (2000) (declaring Initiative Measure No. 695 unconstitutional in its entirety), and *Pierce County v. State*, 150 Wn.2d 422, 429-31 (2003).

For a discussion of the sufficiency of the title under Article II, section 19 of the state Constitution, see subsection (8) of this part. A similar, but separate, issue arises under the "scope and object" clause in Article II, section 38 of the state Constitution.

For initiatives, the "title" in question has been interpreted by the courts to mean the ballot title, not the title on the initiative itself. See *Fed'n of Employees v. State*, 127 Wn.2d 544 (1995), *State v. Thorne*, 129 Wn.2d 736 (1996), and *State v. Manussier*, 129 Wn.2d 652 (1996).

(k) **Enrolled bill doctrine.** "[T]he enrolled bill on file in the office of the Secretary of State, which is duly signed by the presiding officers of both houses (as required by Article II, section 32 and Article III, section 17 of the state Constitution) and otherwise appears fair upon its face, is conclusive evidence of the regularity of all proceedings necessary for its proper enactment in accordance with the constitutional provisions. . . . The constitutional principle upon which this doctrine is based is that the three branches of state government are co-equal in dignity and that none of them is entitled to look behind the properly certified record of another to determine whether that branch has followed the procedures prescribed by the constitution, but rather each is responsible and answerable only to the people for its proper performance of the function for which it is constituted." *Citizens Council v. Bjork*, 84 Wn.2d 891,

897 n.1 (1975). See also *Roehl v. P.U.D. No. 1*, 43 Wn.2d 214 (1953); *Sutherland* § 15:3. In *Roehl*, the court held that the enrolled bill doctrine prevents the court from looking beyond the face of the enrolled bill to determine if an amendment to the bill was beyond the scope and object of the bill in violation of Article II, section 38 of the state Constitution. The court considered and rejected the "journal entry rule," which allows the constitutional validity of an enrolled bill to be rebutted by the legislative history of the bill as recorded in the official legislative journals. See *Sutherland*, § 15:5.

**(I) Amending without setting forth in full—Amendments to sections by reference.** (i) Article II, section 37 of the state Constitution provides, "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." See also Senate Rule 26 and House Rule 11(F) (permanent rules of the Senate and House of Representatives have not been adopted as of the time of the publication of this guide). The purpose of this constitutional provision is to inform the legislature and the public as to the nature and effect of proposed and enacted statutes. It is not intended to restrict or hamper the legislature, but to regulate the method of enactment.

(ii) This is an example of amending a section by mere reference:

NEW SECTION. Sec. 1. A new section is added to chapter 43.21A RCW to read as follows:

Notwithstanding the provisions of RCW 15.54.480, fertilizer inspection fees must be deposited into the water quality account.

Generally, this requirement does not apply to supplemental acts that do not modify or alter the original act in any way, to acts that merely add new sections to an existing act, or to acts complete in themselves, not purporting to be amendatory, but that by implication amend other legislation on the same subject. On the other hand, the courts are equally emphatic that if an act is not complete in itself and is clearly amendatory of a former statute, it falls within the constitutional inhibition whether it purports on its face to be amendatory or an independent act. *State ex rel. Living Servs., Inc. v. Thompson*, 95 Wn.2d 753, 757 (1981).

In the past, Article II, section 37 of the state Constitution was not strictly observed and the supreme court expressly allowed general statutes to be temporarily "suspended" by conflicting language in the appropriations act. *State ex rel. Jones v. Clausen*, 78 Wash. 103, 112 (1914). But the state supreme court overruled *Jones* and revitalized Article II, section 37. In *Flanders v. Morris*, 88 Wn.2d 183 (1977) and *Washington Education Assoc. v. State*, 93 Wn.2d 37 (1980), the court held invalid provisions of temporary budget acts that conflicted with codified statutes. *Flanders*, 88 Wn.2d at 191:

We realize that in certain instances the legislature must place conditions and limitations on the expenditures of monies, but to the extent that such conditions or limitations have the ef-



fect of modifying or amending the general law they are unconstitutional enactments. An appropriations bill may not constitutionally be used for the enactment of substantive law which is in conflict with the general law as codified.

In *Weyerhaeuser v. King County*, 91 Wn.2d 721 (1979), the court considered an amendment to the forest practices act, chapter 76.09 RCW, that limited the application of the shoreline management act (SMA), chapter 90.58 RCW. The court found the amendment invalid because it altered the scope and effect of the SMA, "but did not set out those provisions of the SMA which were affected. . . . The test to be applied, as stated above, is whether it changes a prior act in scope and effect." *Weyerhaeuser*, 91 Wn.2d at 730-31. In *Washington Education Assoc. v. State* 93 Wn.2d 37, 40-41 (1980), the court expressed the issue with two questions:

(A) Is the new enactment such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment?

(B) Would a straight-forward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment?

If an amendment is a "complete act" under the first question and will be codified within the same RCW chapter that is being modified by the new enactment, the supreme court may find the violation of Article II, section 37 of the state Constitution to be a mere technicality that does not invalidate the enactment. In *Washington Education Assoc. v. State*, 97 Wn.2d 899 (1982), the court dealt with a house bill that modified, without amending, chapter 28B.50 RCW. The court declared:

Undoubtedly, modification of existing laws by a complete statute renders the existing law by itself "erroneous" in a certain sense. Here SHB 782 "restricts the operation" of the existing provisions of RCW 28B.50. . . . Nonetheless, SHB 782 will be codified within RCW 28B.50 and its modification of the existing statute should be apparent. Article II, section 37 was designed to "protect the members of the legislature and the public against fraud and deception; not to trammel or hamper the legislature in the enactment of laws." . . . The purpose of SHB 782 is not hidden and, to the extent it fails to articulate how it relates to the rest of RCW 28B.50, its infirmities are not of constitutional magnitude.

*Washington Education Assoc.*, 97 Wn.2d at 906, quoting *Spokane Grain & Fuel Co. v. Lyttaker*, 59 Wash. 76, 82 (1910) and *Yelle v. Bishop*, 55 Wn.2d 286 (1959).

For a discussion of this issue and its application to criminal laws and initiatives, see *State v. Manussier*, 129 Wn.2d 652 (1996).

(iii) In *Washington Citizens Action of Washington v. State*, 162 Wn.2d 142 (2007), the court held that an initiative violated Article II,

section 37 because the text of the statutory law that was set forth to be amended had been altered by a Washington supreme court ruling issued after the initiative qualified for the ballot but before the voters approved the initiative. *Washington Citizens Action of Washington*, 162 Wn.2d at 162. It is the code reviser's practice to use the most current version of law when amending existing law.

(m) **Articles.** Do not use "each," "any," "every," "all," and the like, if an article such as "a," "an," or "the" can be used with the same result.

(n) **Grammatical changes.** Correct grammar and clear expression should be used in all new sections and in new language added to existing sections. In bills amending existing code sections, the drafter should focus on the policy change desired by the requester. Other changes that are intended solely to achieve improved grammar, sentence structure, punctuation, or clear expression and that are not intended to achieve a change in meaning should be made only at the express direction of the bill requester. Avoid voluntary changes in existing code language even to correct grammatical deficiencies. These changes can divert attention from substantive policy changes and can create confusion and added burdens for the proponents of the bill.

Changing existing code language can have unintended substantive ramifications. Changes to achieve fine grammatical improvements to existing language may not be recognized as such and may even be debated by experts. Even to resolve an existing ambiguity, the drafter must choose between two plausible interpretations and, in the process of doing so, a meaning contrary to the requester's intent may be imparted. It is preferable to tolerate a degree of grammatical imperfection in existing code.

(o) **Style.** The Instructions on Style (Part IV of this guide) should be consulted as to voice, punctuation, word combinations, and subsection numbering.

(p) **Captions.** Section captions appearing in the code as published do not constitute any part of the law and are not included in a bill drafted for the legislature. Section captions, part headings, subheadings, tables of content, and indexes appearing in legislative bills are not considered any part of the law. See RCW 1.08.017.

(q) **Bond bills.** Chapter 39.42 RCW authorizes the state finance committee to set such things as terms and issue anticipation notes for all bonds, notes, and other evidences of indebtedness of the state. It is unnecessary to repeat this authorization in each bond bill. Similarly, as chapter 43.99M RCW creates general obligation bond retirement accounts for the various purpose general obligation bonds, it is unnecessary to create a new retirement fund in each bond bill. In addition, it is unnecessary to create new construction accounts in each bond bill; RCW 43.83.020 and 43.99Q.020 create the state building construction account and the state taxable building construction account, respectively.

For an example of a streamlined state various purpose general obligation bond bill, see chapter 43.99Z RCW.

(r) **Reference materials.** Generally, on the subject of bill drafting, statutory construction, and word usage, see:

(i) Chapter 1.12 RCW;

(ii) Dickerson, Reed. *Legislative Drafting*. Little, Brown and Co., 1954;

(iii) Garner, Bryan A. *Garner's Dictionary of Legal Usage*. 3rd ed. Oxford University Press, 2011;

(iv) Garner, Bryan A. *Garner's Modern American Usage*. 3rd ed. Oxford University Press, 2009; and

(v) *Sutherland Statutes and Statutory Construction*. 7th ed. West Group, 2008-2016, 8 vols.

(s) **Limitations, exceptions, and conditions.** (i) If limitations or exceptions to the coverage of a statute are numerous, notice of their existence should be given in the first part of the statute and they should be stated separately later in the statute.

(ii) If a provision is limited in its application or is subject to an exception or condition, it promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence. Example: "(a) Except as provided in (b) of this subsection, . . ." Avoid using "notwithstanding" to express a limitation of a general provision of the same act.

(iii) **"If," "when," "where."** If the application of a provision is limited by the occurrence of a condition that may never occur, use "if" to introduce the condition, not "when" or "where." Use "when" to indicate a particular time for an event that is assumed will occur. Example: "When the parties have completed their closing arguments, the judge shall instruct the jury." Use "where" to indicate a particular place.

(iv) Do not use "provided that" or "provided however that," or similar proviso language. Use "except" to create an exception, not to describe an entire category. Instead of stating "a person except one who is sixty years old or older," state "a person who is less than sixty years old." See (s)(ii) of this subsection.

(t) **Special legislation.** (i) Special legislation is that which relates to particular persons or things, as opposed to "general legislation," which applies to all persons or things within a class. *Young Men's Christian Ass'n of Seattle v. Parish*, 89 Wash. 495, 497-98 (1916). A law may be general even if the class to which it applies consists of only a single person or thing; but the law must be so framed that all persons or things constituting the class come within its provisions. *Young Men's Christian Ass'n of Seattle*, 89 Wash. at 498. However, the exclusion of persons or things from a class must be rationally related to the purpose of the law. *Island Cty. v. State*, 135 Wn.2d 141, 150 (1998).

(ii) The legislature has the power to enact special legislation, except when the state Constitution provides otherwise. *Martin v. Tollefson*, 24 Wn.2d 211, 214 (1945). The state Constitution contains four provisions related to special legislation:

(A) Article II, section 28 of the state Constitution lists specifically the circumstances in which the legislature is prohibited from enacting private or special laws. See *CLEAN v. State*, 130 Wn.2d 782 (1997), *King County v. Taxpayers of King County*, 133 Wn.2d 584 (1997).

(B) "Corporations for municipal purposes shall not be created by special laws." See Article XI, section 10 of the state Constitution. See *Seattle v. State*, 103 Wn.2d 663 (1985).

(C) Corporations may be formed under general laws, but shall not be created by special acts. See Article XII, section 1 of the state Constitution.

(D) Special privileges and immunities are prohibited. "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporation." Article I, section 12 of the state Constitution.

(u) **Time.** If a date is mentioned, time is generally counted from the first moment of that day. For example, "this act takes effect July 1, 2019," means that the act has effect at the first moment of July 1, 2019 (midnight June 30, 2019). It is possible that a contrary intent might be implied in a phrase such as "expires December 31, 2019." For clarity and consistency, the first moment should be used, as in "expires January 1, 2020." See subsection (11)(j) and (l) of this part for more information on effective dates and expiration dates. The time of day should be written in figures, not words, as: 8:00 a.m.; 12:00 p.m.

RCW 1.12.040 has been interpreted as being generally applicable in some cases for computing time, such as in time limits for filings.

(v) **Last antecedent rule.** The last antecedent rule provides that, unless contrary intention appears in statute, qualifying words and phrases refer to the last antecedent. However, the presence of a comma before a qualifying phrase is evidence that the qualifier is intended to apply to all antecedents instead of only the immediately preceding one. See *Judson v. Associated Meats and Seafoods*, 32 Wn. App. 794, 801 (1982) and *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 781-82 (1995). Also see Part IV (1)(f)(v) of this guide.

This rule illustrates that long lists of modifiers, especially a string of provisos, can result in interpretation problems. Simple declarative sentences help to avoid these problems.

(w) **Respectful language.** RCW 44.04.280 requires drafting using respectful language in reference to individuals with disabilities. RCW 44.04.280 states:

(1) The legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal commun-

ity members. The legislature finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(2)(a) The code reviser is directed to avoid all references to: Disabled, developmentally disabled, mentally disabled, mentally ill, mentally retarded, handicapped, cripple, and crippled, in any new statute, memorial, or resolution, and to change such references in any existing statute, memorial, or resolution as sections including these references are otherwise amended by law.

(b) The code reviser is directed to replace terms referenced in (a) of this subsection as appropriate with the following revised terminology: "Individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness," and "individuals with intellectual disabilities."

(3) No statute, memorial, or resolution is invalid because it does not comply with this section.

(4) The replacement of outmoded terminology with more appropriate references may not be construed as changing the application of any provision of this code to any person.

### **(13) RESOLUTIONS AND MEMORIALS**

#### **(a) Types enumerated.**

While the bill is the most common form of legislative measure, formal expressions of the legislature are also stated by:

- (i) Concurrent resolution;
- (ii) Floor resolution (also known as a resolution or a simple resolution);
- (iii) Joint memorial; and
- (iv) Joint resolution.

Resolutions and memorials do not require the signature of the governor; they have special functions and should not be used for the general enactment of laws. Article II, section 18 of the state Constitution declares, "And no laws shall be enacted except by bill."

#### **(b) Uses summarized.**

- (i) \*Joint Rule 11 provides, in part:

All memorials and resolutions from the legislature addressed to the President of the United States, to the Congress or either house thereof, to any other branch of the federal government, to any other branch of state government, or to any unit of local government shall be in the form of **joint memorials**. Proposed amendments to the state Constitution shall be in the form of **joint resolutions**. Business between the two houses such as joint sessions, adopting or amending joint rules, creating or empowering joint committees, opening and closing business of the legislature and all such related matters shall be in the form of **concurrent resolutions**. Joint memorials, joint resolutions, and concurrent resolutions, up to and including the signing thereof

by the presiding officer of each house, shall be subject to the rules governing the course of bills.

**\*Note:** Joint rules have not been adopted as of the time of publication.

(ii) A **floor resolution** is a formalized motion of one house of the legislature and deals with its internal affairs or expressions of sentiment or opinion. Some common uses are:

- (A) To regulate practice, procedure, and conduct;
- (B) To create special committees, except joint committees;
- (C) To express an opinion or desire to the other house;
- (D) To express sorrow over the death of one of its members;
- (E) To express recognition for meritorious service; and
- (F) To commemorate an event.

(iii) Appropriations may not be made by resolution (see Article VIII, section 4 of the state Constitution), but a resolution may grant authority to spend money otherwise appropriated. See *State ex rel. Todd v. Yelle*, 7 Wn.2d 443 (1941). Joint interim committees are always created by bill or by concurrent resolution. Directions to an existing interim committee to make a particular study should be by concurrent resolution, but many interim committees and councils will follow a directive proclaimed by simple resolution.

(iv) Both **joint resolutions** and **joint memorials** have been used to ratify recent amendments to the United States Constitution (see 1971 HJM 15 and 1973 HJR 10), although both were drafted in the form and style of joint resolutions. Joint memorials have been used to petition congress to call a constitutional convention to consider amendments to the United States Constitution. See 1963 ex.s. HJM 1 and 1981 HJM 1.

**(c) Sample forms.**

**(i) Concurrent Resolution.**

WHEREAS, The State Building Code Advisory Council is statutorily assigned to the duties of monitoring the operation and administration of the State Building Code; and

WHEREAS, The State Building Code was established to provide uniform standards for the safe and efficient construction of buildings throughout the state; and

WHEREAS, There is apparently a lack of uniformity in the implementation of the Building Code resulting in duplication, overlap, and conflict in the building regulations and the various jurisdictions responsible for implementation of the Code;

NOW, THEREFORE, BE IT RESOLVED, By the Senate of the state of Washington, the House of Representatives concurring, That a joint select committee on the State Building Code be established to review the duties, responsibilities, funding, and the need for the continued existence of the State Building Code Advisory Council; and

BE IT FURTHER RESOLVED, That the committee consist of eight members, four members each selected by the President

of the Senate and the Speaker of the House of Representatives;  
and

BE IT FURTHER RESOLVED, That the committee report its findings and recommendations to the legislature at the regular session held in 2019.

**Note:** In the resolve clause, the senate should be mentioned first if the concurrent resolution started in the senate and the house of representatives should be mentioned first if the measure was initiated by the house of representatives.

If a resolution directs that nonlegislative staff be hired for a joint select committee, the following language may be used to place a limitation on hiring:

All expenses and hiring of additional staff shall be subject to the approval of the House of Representatives Executive Rules Committee and the Senate Facilities and Operations Committee.

**(ii) Floor Resolution.**

WHEREAS, Women of character, intelligence, courage, initiative, and compassion have made significant contributions to the growth and development of the State of Washington; and

WHEREAS, Emma Smith De Voe, Nettie Asbury, Catherine May Bedell, Julia Butler Hansen, and Pearl A. Wanamaker are representative of these qualities and contributions; and

WHEREAS, Emma Smith De Voe, of Seattle, was a State President of the National American Women Suffrage Association and led the successful 1910 suffrage campaign; and

WHEREAS, Nettie Asbury helped establish the National Association for the Advancement of Colored People and was a distinguished President of the State Federation of Colored Women of Washington; and

WHEREAS, Catherine May Bedell and Julia Butler Hansen served the State of Washington in an exemplary manner as members of the State House of Representatives and the United States Congress; and

WHEREAS, Pearl A. Wanamaker superbly served the citizens of the State of Washington as State Superintendent of Public Instruction and as a member of the State House of Representatives and the Senate; and

WHEREAS, Women's History Week in Washington is an appropriate time to recognize the contributions of all women in Washington;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize and honor women's contributions in government, in industry, and in the home; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the Governor's Interagency Committee on the Status of Women.

**Note:** These are not ordered printed but are read into and recorded in the House and Senate Journals. They are indexed under the heading "Floor resolutions."

**(iii) Joint Memorial.**

TO THE HONORABLE DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN CONGRESS ASSEMBLED[, AND TO ANY OTHER APPROPRIATE OFFICIAL OR AGENCY]:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, The eruption of Mount St. Helens on May 18, 1980, was a spectacular and cataclysmic demonstration of the forces of nature; and

WHEREAS, This event should be publicly commemorated;

NOW, THEREFORE, Your Memorialists respectfully pray that the United States Postal Service issue a postage stamp in commemoration of the May 18, 1980, eruption, depicting Mount St. Helens before, during, and after the eruption.

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable Donald J. Trump, President of the United States, [add official or agency named in first paragraph], the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

**Note:** The senate is always mentioned first in the petition clause whether it is a Senate Joint Memorial or a House Joint Memorial.

**(iv) Joint Resolution (Constitutional Amendment).**

(A) The proper form for amending a section of the Constitution is as follows:

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article XV, section 2 of the Constitution of the state of Washington to read as follows:

Article XV, section 2. The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks, and other structures, upon the areas mentioned in section one of this article, but no lease shall be made for any term longer than ((thirty)) fifty years, or the legislature may provide by



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general laws for the building and maintaining upon such area wharves, docks, and other structures.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

(B) The proper form for adding a new section to the Constitution is as follows:

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article IV of the Constitution of the state of Washington by adding a new section to read as follows:

Article IV, section . . . The supreme court may . . .

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

The section number is usually left blank to allow greater flexibility in integrating the newly enacted section with the existing sections.

It is not necessary to use the "NEW SECTION." introduction required for new RCW sections.

(C) The proper form for repealing a section of the Constitution is as follows:

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article IV of the Constitution of the state of Washington by repealing section 29 thereof in its entirety.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

### Notes:

(i) In the resolve clause, whether of a Senate Joint Resolution or a House Joint Resolution, the senate is always mentioned first:

"BE IT RESOLVED, BY THE SENATE AND THE HOUSE OF REPRESENTATIVES . . ."

(ii) Article XXIII, section 1 of the state Constitution provides that "if more than one amendment be submitted [to the people], they shall be submitted in such a manner that the people may vote for or against such amendments separately." See *Gottstein v. Lister*, 88 Wash. 462 (1915). Thus, in joint resolutions that amend or enact more than one section of the Constitution, the following language is sometimes inserted following the text of the amendment and before the publication clause:

BE IT FURTHER RESOLVED, That this amendment is a single amendment within the meaning of Article XXIII, section 1 of the state Constitution.

The legislature finds that the changes contained in this amendment constitute a single integrated plan for [purpose of amendment]. If this amendment is held to be separate amendments, this joint resolution is void in its entirety and is of no further force and effect.

Conversely, the joint resolution could direct the secretary of state to place each section of the joint resolution on the ballot as a separate amendment. See, for example, SJR 22, 1965 ex.s.

(iii) On the issue of whether the Constitution may be amended by initiative, see *Ford v. Logan*, 79 Wn.2d 147 (1971) and *Gerberding v. Munro*, 134 Wn.2d 188 (1998).

#### **(14) COMMITTEE AND FLOOR AMENDMENTS TO BILLS**

It is important when writing an amendment to have an accurate version of the document being amended. Be especially conscious of which printer was used to print the document, since there are official printers that accurately reproduce the documents line-for-line and other printers that do not. Legislative staff members should contact their computer system facilitator to ensure that the correct printer is being used.

**Note:** Amendment to an amendment to the amendment.

Reed's parliamentary rules:

In case the amendment offered, while satisfactory in its design does not in the opinion of a member exactly meet the case, he is at liberty to propose an amendment to the amendment. Here, however, the process must end, for there must somewhere be a limit or confusion would ensue. The general judgment of assemblies has settled upon the limitation of amendments to the second degree. If the amendment to the amendment is not satisfactory to the assembly it can be voted down, and then a new amendment to the amendment will be in order, which in its turn can be rejected, and so on until the assembly is satisfied.

##### **(a) Heading.**

All amendments to a bill before the legislature should have a heading that discloses the following information:

- (i) The bill being amended;
- (ii) Whether the amendment is a floor amendment or a committee amendment;
- (iii) The legislator, if desired, or committee, including a conference committee, proposing the amendment; and
- (iv) If an amendment is being amended, identification of that amendment.

Examples:

HB 2541 - H COMM AMD  
By Committee on Ecology & Parks

EHB 2541 - S COMM AMD  
By Committee on Ways & Means

SHB 2121 - S AMD  
By Senator \_\_\_\_\_

2SHB 2284 - CONF REPT  
By Conference Committee

In addition, if the amendment proposes to amend a previous amendment to the bill, the proposed amendment must accurately and adequately identify and be addressed to the previous amendment. If the previous amendment is from a committee, use the committee's abbreviated name as found on the first page of the daily bill status pamphlet. The specific identification of the previous amendment, placed in parentheses at the end of the first line of the heading, is either the code reviser draft number, found in the bottom right corner of the previous amendment, or, if there is no code reviser draft number, the staff identification number found at the top left corner of the previous amendment.

Examples:

Amending a code reviser draft:

ESSB 6334 - H AMD TO TR COMM AMD (S-0000.2/17)  
By Representative \_\_\_\_\_

Amending drafts from online reports (that are not code reviser drafts):

2SHB 2935 - H AMD TO H AMD (H5231.1)  
By Representative \_\_\_\_\_

HB 2821 - H AMD TO H AMD (AMH SPRI DURB 231)  
By Representative \_\_\_\_\_

SSB 5451 - H AMD TO LG COMM AMD (5451-S AMH LG MOET 543)  
By Representative \_\_\_\_\_

Usually, only a single heading is sufficient for an amendment. A new heading is not necessary every time the amendment refers to a new page on the document being amended. As a general rule, if the amendments under a heading could all be voted on at the same time and effect a cohesive purpose, a single heading is adequate.

### (b) Form and style of amendments.

(i) There are no absolute rules to follow in drafting amendments. A correctly drafted amendment allows a person to integrate it into the bill or amendment being amended with the least amount of difficulty. After composing an amendment that adds to or deletes parts of a sentence or paragraph, check to make certain that the sentence or paragraph reads correctly with the additions or deletions.

The drafter should be aware that Article II, section 38 of the state Constitution declares, "No amendment to any bill shall be allowed which shall change the scope and object of the bill." See also Senate Rule 66 and House Rule 11(E) (permanent rules of the Senate and House of Representatives have not been adopted as of the time of publication of this guide).

Remember that all bill drafting rules must be followed in composing amendments. Here are some general rules:

(ii) If amending an RCW section in a bill, all material that the drafter intends to delete from the code section must be replaced with the material shown inside double parentheses and lined out. All new material to be added to the code section must be underlined.

Examples:

On page 1, line 20, after "surgery" strike ", or nursing," and insert "~~(, or nursing,)~~"

or

On page 3, line 19, after "surgery" insert "or nursing"

or

On page 4, beginning on line 30, after "(3)" strike all material through "(4)" on line 31, and insert "~~(("Department" means the department of licensing.~~  
(4))"

In this last example, subsection (3) is deleted from the law, and the former subsection (4) will become subsection (3). If there were additional subsections remaining in the section, add the following phrase:

Renumber the remaining subsections consecutively and correct any internal references accordingly.

(iii) If amending a new section in a bill, the drafter should delete and add desired material without showing the material deleted as stricken and without underlining the new material being inserted. Additional subsections may be renumbered by directive.

Examples:

On page 5, line 15, after "telephone," insert "radio,"

or

On page 3, line 19, after "telephone" strike "or radio"

or

On page 3, beginning on line 30, strike all of subsection (3)

Renumber the remaining subsections consecutively and correct any internal references accordingly.

(iv) If adding or deleting entire sections in a bill, remember that the remaining sections might need to be renumbered and internal references might need to be changed. These changes may be made individually or they may be made by directive. Individual changes leave less room for error in the engrossing process, but might not be feasible if the bill is long or contains numerous internal references or because additional sections might be added or deleted by other amendments. Also, each amendment, whether new or amendatory, must be enclosed in quotation marks.

Examples:

On page 3, after line 10, insert the following:

"NEW SECTION. Sec. 5. A person may not anchor or moor a vessel within three hundred feet of a public bathing beach."

Renumber the remaining sections consecutively and correct any internal references accordingly.

or

On page 3, line 15, strike "5" and insert "6"

(v) Bring amendments to the code reviser's office. This will increase accuracy and ease of later revision and engrossing, especially for amendments that are lengthy or add a section that amends an existing RCW section. If an amendment is adopted at the committee level and was not submitted to the code reviser's office before adoption, forward an electronic copy of the amendment in Microsoft Word to the code reviser front desk or assistant code reviser, if known, to expedite the engrossing process.

(vi) Only those punctuation marks that are intended to become part of the bill, or to be deleted from the bill, should be included within the quotation marks used to designate the language to be inserted or deleted. Each separate section does not need to be enclosed in quotation marks.

(c) **Title amendments.** This subsection refers to the part of a bill title after the first semicolon. Changing the legal title of a bill (the material before the first semicolon) is rarely done in the senate and is forbidden in the house of representatives. If a change in the legal title is de-

sired, the requester should consult with senate or house of representatives leadership for approval.

(i) **In the senate.** A title amendment is usually necessary if an amendment to a bill adds or deletes a section. It is always necessary if the amendment adds or deletes a section that amends or repeals an RCW section. A title amendment is preferred on a striking amendment regardless of whether it is technically required. If there is no title amendment, an amendment to the striking amendment might require an amendment to the bill title. Appropriate punctuation should be inserted in all title amendments. See subsection (8) of this part on bill titles for sections, such as emergency clauses, that need to be reflected in the title.

Examples:

On page 1, line 5 of the title, after "84.36.020;" insert "repealing RCW 84.36.030;"

On page 1, line 2 of the title, after "82.08.020," insert "82.08.050,"

If adding a clause that provides an effective date that is likely to be earlier than ninety days after final adjournment, the effective date should be combined with an emergency clause. The title will need a corresponding amendment.

Example:

On page 1, line 7 of the title, after "84.36.020;" strike "and" and on line 8, after "appropriation" insert "; providing an effective date; and declaring an emergency"

It is ordinarily not advisable to combine amendments to different lines, but it is acceptable in the title merely to make a grammatical correction of this kind.

(ii) **In the house of representatives.** Generally, title amendments are not used. A directive to correct the title is usually included if necessary.

**(d) Amendments to engrossed bills.**

If amending engrossed senate or house bills, resolutions, or memorials, it is important that the amendment be written to the engrossed version. An engrossed bill is one in which the amendments of the house of origin have been physically incorporated into the bill. Bills are engrossed by the house of origin before they are transmitted to the other house. But on occasion they may be transmitted before engrossing. See \*Joint Rule 22.

Example:

ESB 5082 - H AMD

By \_\_\_\_\_

If the bill were reprinted in the engrossed form, the amendment should refer to the page and line numbers of the engrossed bill only. If a

reprinted version is not available, print an engrossed version from the computer system.

**\*Note:** Joint rules have not been adopted as of the time of publication.

**(e) Striking amendments.**

(i) If drafting numerous or extensive amendments to a bill, consider "striking" the bill by using the following form:

Strike everything after the enacting clause and insert the following:

(ii) Striking the technical portion of a title:

On page 1, line 1 of the title, after "government;" strike the remainder of the title and insert ". . ."

(iii) In the senate, a title amendment must always accompany a striking amendment, whether or not the amendment actually changes elements reflected in the title.

(iv) Amending the legal title in an amendment to a striking amendment applies to Senate amendments since the House of Representatives does not (A) include title amendments on striking amendments, or (B) permit amendments to legal titles. Strike the entire title amendment and insert a new striking amendment:

Beginning on page 16, line 1, strike all of the title amendment and insert the following:

"On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "....."

(v) Since a striking amendment obscures the changes being made in a bill, it should be done only after explaining to the requester how the desired changes could be made in a series of small amendments. Sometimes this is not possible, for example if the entire bill is being substituted with different text. If the requester wants the changes to be apparent, it is better not to use a striking amendment. Frequently, the requester wants a clean copy of the text or does not want the changes to be apparent, in which case the requester will want a striking amendment.

**(f) Conference reports.** (i) An amendment by a conference committee is referred to as a conference report. It has a heading in the following form:

ESHB 2154 - CONF REPT  
By Conference Committee

(ii) All conference reports must contain a title amendment. See (c) of this subsection for a discussion of title amendments.

**(g) Effect statements.** Effect statements on amendments are the requestor's responsibility. The code reviser's office will add an effect statement, written by the requester, but will not edit the statement except to

correct spelling. The code reviser's office does not confirm the statement's accuracy. The format for an effect statement is:

EFFECT: This is the effect of the amendment.



**PART III****AVOIDING UNINTENDED LIABILITY****(1) OVERVIEW**

Some legislation unintentionally creates new liability for the state. This happens especially when the law establishes new programs or imposes new duties on state agencies but is unclear about who is to do what or which members of the public will benefit. In drafting, it is helpful to consider whether or not you intend to allow the state to be sued for damages for failing to perform some obligation. By following a few guidelines you can make it less likely that liability issues will be left to the courts to sort out.

The best way to avoid creating new liability is to expressly deny it.

Example: "This act does not create a private right of action."

Example: "The department and its employees and agents are not liable for X."

The best way to create new liability is to state so expressly. If you do this, you should be clear about its limits. State exactly: Who bears which new duty; what standard of care applies (negligence, gross negligence, recklessness, or intent); and what kind of relief is available to the aggrieved person (compensatory or other damages, injunctive relief, declaratory relief, some administrative remedy, or a combination of these) and in what forum.

Circumstances may compel you to be less direct. Even then, following the guidelines below will help you avoid creating unintended liability.

**(2) GUIDELINES****(a) DO**

(i) Be clear.

(ii) State precisely who is covered by a program, whether the program is an entitlement, who is excluded, and how the program is to operate.

(iii) Identify which state agency or official is responsible for carrying out which duties.

(iv) Explain what process, if any, is available to an aggrieved applicant or beneficiary. Do not make residents turn to the courts to find out what their rights are. If legislation provides instruction to an agency, state clearly (A) whether it mandates a particular action or merely authorizes it and (B) who is to exercise any new authority.

(v) When mandates are imposed on public agencies, identify the consequences if the agency does not fulfill those mandates.

Bad: "The department shall record the deed within three days" (with no reference to what happens if it does not).

Good: "The department shall record the deed within three days. However, its failure to do so within this period does not invalidate the transfer."

**(b) DO NOT**

(i) Do not refer to "rights" unless you intend the courts to provide a remedy. By discussing "rights" while creating a social welfare or licensing program, you might unintentionally make the state legally obligated to an individual who believes he or she should benefit, rather than simply creating the program to improve the lot of state residents generally. If you do list some rights, but do not intend to create a cause of action, state that no cause of action is created.

(ii) Do not state "ensure" unless you mean "guarantee." If you intend to guarantee something, state what will happen if the guarantee fails. If you do not, the courts may fill that vacuum by ruling that a cause of action for damages was implied.

(iii) Do not state "subject to available funds..." or "within available funds...". These phrases leave it unclear whether the legislature intends to: (A) Limit a function to amounts that are explicitly appropriated for that purpose, (B) require that a function be performed within the agency's overall appropriation whether or not funds are explicitly appropriated for that purpose, or (C) provide the agency with discretion to determine whether it has sufficient funding to perform the function.

To limit a program to funds appropriated for it, state "Subject to the availability of amounts appropriated for this specific purpose." See RCW 28A.235.180. Another approach is to direct that "The department shall operate the program within the appropriations provided for the program." See RCW 13.36.090(2).

To require an agency to perform a function whether or not appropriations are explicitly provided for that purpose, use mandatory language to direct the agency to perform the function without placing further conditions on the duty. Adding a reference to "available" appropriations may appear to make the duty conditional or otherwise subject to discretion. If a reference to funding is necessary, state "The department shall operate the program within the department's appropriations."

(iv) Do not use ambiguous or "springing" null and void clauses. A null and void clause allows a bill to continue through the legislative process even when it is unclear whether that year's budget bill will provide funding. The clause makes the bill "null and void" unless it is specifically funded or otherwise referenced in the budget bill by a certain date. "Springing" null and void clauses purport to render the bill null and void at some future date if funding is not provided in later biennia, thus creating a troublesome scenario in which some laws would "spring" in and out of effect. If you want the bill to take effect, but you want to limit the required or authorized actions to fiscal periods in which the program is funded, then use the "subject to the availability of amounts appropriated" language in subsection (2)(b)(iii) of this part.

Bad: "Section 7 of this act is null and void into the future if no funds are appropriated."

Good: "If specific funding for the purposes of this act [or section ... of this act], referencing this act [or section ... of this act] by bill or chapter number [or section number], is not provided by June 30, 2019, in the omnibus appropriations act, this act [or section ... of this act] is null and void."

(v) Do not use definitions that include the term you are defining. These circular definitions create uncertainty about who is covered or exempted, or what obligations are owed by the state.

Bad: "'Manager' means any manager regardless of status."

Good: "'Manager' means a state employee who directly supervises at least one other state employee."

(vi) Do not codify unnecessarily. In describing agency actions:

(A) Ask whether the activity needs to be codified at all. Codifying agency activities carries a risk: Someone aggrieved by a failure to follow procedures may claim a cause of action against the agency.

Bad: "The deputy director's duties include answering mail from constituents."

Better: "The deputy director should answer mail from constituents but no remedy is available if he or she fails to do so."

Best: Do not put this into statute at all.

(B) If the activity does need to be codified, avoid describing existing practice in a way that sounds prescriptive: "The department will respond to petitions within five days." It is better to simply authorize actions that are likely to be needed: "The department may respond to petitions." If a time limit must be imposed, state what consequences, if any, will occur if the agency does not meet the statutory deadline.

(vii) Do not use passive voice. Do not omit the actor. Say directly who does what. See Part IV (1)(a) of this guide for more on voice.

Bad: "Penalties shall be imposed by the director."

Worse: "Penalties shall be imposed."

Good: "The director shall impose penalties."

(viii) Do not tie an agency's exercise of discretion to long lists of criteria the agency must apply. These can be read as providing opportunities for challenging the exercise of discretion. Instead, list factors to consider, or, better yet, grant the agency discretion.

### **(3) INTENT SECTIONS**

Intent sections are important. They influence how an act will be interpreted. If you are considering an intent section, follow these guidelines.

(a) Ask whether you really need an intent section. An intent section may be used, for example, to direct the courts to "construe this act liberally so as to effectuate its broad remedial purposes" or, just the opposite, to tell them that "this act should be construed narrowly to protect the civil liberties of those affected by it." It may guide courts or administrative agencies by explaining the bill's core purposes. But when an intent section is used to clarify an ambiguity that could be solved by editing, or worse, just to explain why the bill is good, you run the risk of creating ambiguities that in turn may be interpreted as granting causes of action that the drafter never intended.

(b) Do not describe the law's goal in terms that make it sound like a guarantee. Stating that "the legislature intends that members of the public have a right to prompt police response in an emergency" is appropriate only if you intend that people can sue the police if they do not respond on time.

(c) Do not use terms of art that carry legal baggage ("unfunded mandate," "basic education") unless the baggage is intended.

(d)(i) In a regulatory or social welfare bill, use "public duty" language:

"The legislature declares that this act to [insert statement describing legislation, *e.g.*, improve training for home health care workers] constitutes an exercise of the state's police power to protect and promote the health, safety, and welfare of the residents of the state in general. Accordingly, while this act is intended to protect the public generally, it does not create a duty owed to any individual or entity on the part of the state [or its instrumentalities]."

(ii) This indicates the intent is to authorize the state to exercise its police power, not to create a private right of action.

(iii) If circumstances permit, you may strengthen this by adding an express disclaimer. Examples include:

(A) "This act does not create an entitlement to services."

(B) "This act does not create a private right of action."

(C) "Nothing in this act may be construed to create:

(1) An entitlement to services; or

(2) A private right of action or claim on the part of any individual, entity, or agency against the [department of social and health services] or any contractor of the [department]." (Based on section 2, chapter 266, Laws of 2006.)

(e) If the act is intended to override a judicial interpretation of a statute, say so clearly. Identify the case, the ruling, and exactly what result the act is intended to achieve in relation to that ruling.

Bad: "This act is intended to reaffirm and protect the rights of sea urchin farmers and their families."

Good: "This act is intended to reverse the result of *Snerd v. Department* by mandating that the department has sixty days to respond to a request to transfer a sea urchin harvesting license to a family member."

**(4) CREATING IMMUNITY OR IMPOSING A HIGHER STANDARD OF CULPABILITY**

(a) The following is suggested language for creating immunity and eliminating liability for the state and its officers and employees:

"This [act or section] does not create any civil liability on the part of the state or any state agency, officer, employee, or agent."

(b) Liability is typically established by proving negligence. To require a higher standard of culpability before liability may be imposed upon the state, the following is suggested language:

"No civil liability may be imposed by any court on the state or its officers and employees [or instrumentalities] under this [section or act or chapter] except upon proof of [bad faith or willful misconduct or wanton misconduct or willful or wanton misconduct or gross negligence]."

**(5) PRESERVING THE LEGISLATURE'S ABILITY TO RESERVE THE RIGHT TO CANCEL OR CHANGE CERTAIN BENEFIT ENHANCEMENTS.**

In some instances, a drafter may seek to preserve the legislature's ability to reserve the right to cancel or change certain benefit enhancements at the time of enactment. In *Washington Education Association v. Washington Department of Retirement Systems*, 181 Wn.2d 212, 227-28 (2014), the Washington state supreme court upheld the legislature's repeal of a pension benefit known as "gain sharing." In this case, the legislature expressly reserved its right to amend or repeal gain sharing with the following language:

"The legislature reserves the right to amend or repeal this chapter in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that amendment or repeal." Former RCW 41.31.030 (2006).

Similarly, in *Washington Education Association v. Washington Department of Retirement Systems*, 181 Wn.2d 233, 251 (2014), the court followed the same reasoning when the legislature repealed legislation granting future uniform cost of living adjustments (UCOLA) for certain members of a pension plan based on the legislature's reservation of its right to modify or repeal the UCOLA scheme in the future and specified that it was not creating any contract rights:

"The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time." RCW 41.32.489(6).

Presumably, other nonpension benefits are subject to modification or repeal as long as the legislature expressly reserves the right to do so at the time of enactment.

PART IV

INSTRUCTIONS ON STYLE

"When style suffers, so does the content. Upgrading the style inevitably upgrades the content." Bryan Garner, *How Attention to Style Improves Substance* ABA Journal (2013).

"When clarity and readabilities of statutes and rules increase, the need for litigation over meaning decreases and voluntary compliance increases." George C. Pratt, Retired Judge of the U.S. Court of Appeals for the Second Circuit and Former Chair of the Style Subcommittee for the Federal Rules of Practice and Procedure.

**(1) GRAMMAR AND PUNCTUATION**

**(a) Voice.**

(i) Use active voice whenever possible. In passive voice, the subject of the clause does not perform the action of the verb. Instead, you back into the sentence.

Passive: The report shall be filed by the commission.

Active: The commission shall file the report.

And often in passive voice, the drafter omits the actor altogether – a major source of unclear writing.

Passive: The report shall be filed.

(ii) Passive voice has three problems: (A) It adds unnecessary words; (B) it fails to squarely say who does what; and (C) it subverts the normal word order, making it harder for the reader to process the information.

"In jargon nobody ever does anything, feels anything or causes anything; nobody has an opinion. Opinions are had; causes result in; factors affect. Everything is reduced to vague abstraction." Robert Waddell, "Formal Prose and Jargon" in *Modern Essays on Writing and Style* 84, 89 (1964).

(iii) Active voice saves words, says directly who does what, and meets the reader's expectation of actor-verb-object sentence order.

(iv) For more discussion on active voice v. passive voice, see Garner, Bryan A., *Garner's Modern American Usage* 612-13 (3rd ed. 2009).

**(b) Buried verbs.**

(i) Buried verbs, or derivative nouns, are verbs that have been changed into nouns – usually a noun ending in -tion, -sion, -ment, -ence, -ance, -ity.

(ii) "It is hardly an exaggeration (make that *one hardly exaggerates*) to say that when the verb will work in the context, the better choice is almost always to use it instead of a buried verb." Garner, Brian A., *Gar-*

*ner's Modern American Usage* 120 (3rd ed. 2009). "[B]uried verbs ought to be the sworn enemy of every serious writer." *Id.* at 121.

(iii) There are four reasons to uncover buried verbs: (A) You eliminate prepositions and unnecessary words (*perform an analysis of* becomes *analyze*); (B) you eliminate be-verbs (*be in possession of* becomes *possess*); (C) you say directly who does what (*upon the enforcement of* becomes *when the court enforces*); and (D) readers can more easily understand what you're talking about.

(c) **"Shall," "may," and "must."**

(i) A statute should be drafted in the present tense because it speaks at the time it is read. Thus, the word "shall" should not be used to state a proposition in the future tense. "Evidence is admissible . . ." is preferable to "Evidence shall be admissible . . ." See *Sutherland* § 21:10.

(ii) "Shall" should only be used to mean "has a duty to." That is, to require the performance of an act. For example, "the governor shall appoint a director . . ."

Avoid using a negative subject with an affirmative shall, "A person may not . . ." is preferable to "No person shall . . ." The latter means that no one is required to act. So read, it negates the obligation, but not the permission, to act. On the other hand, "A person may not . . ." negates also the permission and is, therefore, the stronger prohibition. To avoid confusion, the drafter should use the affirmative form, "A person may not . . .," rather than negative forms such as "No person may . . ." or "No person shall . . ." "Shall not" should only be used to mean "has a duty not to."

"May" indicates discretion and is used to confer a right, privilege, or power. *Faunce v. Carter*, 26 Wn.2d 211, 215 (1946); but cf. *Buell v. City of Toppenish*, 174 Wash. 79, 81-82 (1933).

Do not confuse "may" and "might." "May" confers authority, as in "A person may file a petition." "Might" describes a possibility, as in "They might want coffee."

Do not confuse "may" and "can." "May" confers authority. "Can" expresses physical or mental ability.

For a discussion of "may," "shall," and "must," see *Garner's Dictionary of Legal Usage*.

(iii) To determine whether the use of "shall" or "may" is correct, a helpful test is to mentally substitute for the word "may" the words "has the authority to" and substitute for the word "shall" the words "has the duty to." This reading will make it readily apparent whether the usage is correct.

(iv) "Must" creates a condition precedent. Use "must" if the verb it qualifies is an inactive verb or an active verb in the passive voice. Examples: The applicant "must be" (inactive verb) an adult. Prior convictions "must be set forth" (active verb in passive voice) in the application.



Use "must not" if the verb it qualifies is an inactive verb or an active verb in the passive voice. Example: The applicant "must not be" (inactive verb) a convicted felon. The application "must not be filed" before the end of the reporting period.

If the word "must" seems appropriate because of passive voice, the drafter should improve the phrase to avoid ambiguity. See (a) of this subsection.

**(d) Tense and mood.**

(i) Use the present tense instead of the future tense. "A person who violates this section . . ." is preferable to "A person who shall violate this section . . ." Similarly, use the present perfect tense instead of the future perfect tense. "After apprehending a person who has violated this section . . ." is preferable to "After apprehending a person who shall have violated this section . . ."

(ii) Proper drafting uses both the indicative mood and the imperative mood, but the uses of the two moods are distinct. The proper role of the imperative mood is to create a legal duty or prescribe a rule of conduct, as in, "The department shall adopt rules." The imperative mood should not be used merely to state a legal result. "This chapter shall not apply to . . ." and "'Vehicle' shall mean . . ." are both "false imperatives" because the purpose of the provision is achieved by the very act of declaring the legal result. As self-executing provisions, the indicative mood is proper. Thus, "This chapter applies to . . ." and "'Vehicle' means . . ." In neither situation is the subjunctive mood appropriate, as in "If the director shall decide that . . ." See *Dickerson* § 6.6.

**(e) Tabulation.**

(i) Break a sentence into its parts and present them in tabular form only if this makes the meaning substantially clearer.

(ii) Use a single "or" to indicate the disjunctive and a single "and" to indicate the conjunctive at the end of the next to last item in a series. Use a semicolon at the end of each item in the series.

(iii) As an alternative to using "or" or "and" to indicate the disjunctive or conjunctive in a series, use a phrase in the introductory clause of the series that clearly expresses how many of the following items are to be included, such as, "any of the following," "one of the following," "all of the following," or "any one or more of the following."

(iv) Language that qualifies all of the items should not be included in the last item of the tabulation.

(v) Do not place a sentence or paragraph after a tabulation. If the sentence or paragraph is not part of the tabulated series, draft it as a separate subsection or paragraph.

(f) **Commas.** The use or misuse of a comma can have significant implications. "It is urged that the comma is the lowest and least significant of all punctuation marks. . . We must confess, however, to a very

high regard for the lowly comma." *Peters v. Watson Co.*, 40 Wn.2d 121, 122-23 (1952). The comma is to be used only if required. The most important uses of the comma are described in the following:

(i) In a series of three or more words or phrases, a comma is used after each item except the last, as in "officers, deputies, and employees." This rule applies to both conjunctive, "and," and disjunctive, "or," series.

(ii) A nonrestrictive clause is set off by commas, but a restrictive clause, which is essential to the meaning of the word being modified, should not be set off by commas. Compare the following two sentences, which illustrate a restrictive clause and a nonrestrictive clause, respectively:

Students who hate football should stay home.  
Students, who hate football, should stay home.

(iii) A comma is used to separate the independent clauses of a compound sentence, but it should not be used to separate the noun from the verb in a simple sentence. The following examples illustrate the proper use and omission of commas in a simple sentence and a compound sentence, respectively:

The board may adopt rules to implement this chapter and shall report annually to the governor.

The board may adopt rules to implement this chapter, and the board shall report annually to the governor.

(iv) Always place commas around the year when used in a date, thus: For the period from December 1, 2019, through December 1, 2021, the rate must . . .

(v) If a qualifying phrase applies to all antecedents instead of only to the immediately preceding one, separate the qualifying phrase from the antecedents with a comma. See *Judson v. Associated Meats and Seafoods*, 32 Wn. App. 794, 801 (1982) and *In re Sehome Park Center, Inc.*, 127 Wn.2d 774, 781-82 (1995). See Part II (12)(v) of this guide about the last antecedent rule.

(g) **Semicolons.** A semicolon is not used where a comma will suffice, but is to be used to separate phrases already containing commas. A semicolon, not a period, is used following each item in a tabulated series listing that is introduced by a colon, thus:

The board has the following powers and duties:

- (1) Inspection of all dental appliances for safety, durability, and ease of operation;
- (2) Licensing of all dental appliance manufacturers; and
- (3) Regulation of dental appliance retailers.

(h) **Provisos.** Provisos should not be used. See discussion in Part II (12)(i) of this guide. If used, the proviso should be preceded by a colon. The words "PROVIDED," or "PROVIDED FURTHER," are writ-

ten in capitals followed by the word "That," thus: "PROVIDED, That . . ."

(i) **Colons.** A colon is used to introduce a list or a proviso, as shown in (1)(g) and (h) of this subsection.

(j) **Quotation marks.** Quotation marks are used to set off a particular word or phrase under discussion, as in a definition of a term.

If the end of a quotation coincides with another punctuation mark, several rules should be observed. Periods and commas are always placed inside the quotation marks. All other punctuation marks, such as colons, semicolons, question marks, and exclamation points are placed inside the quotation marks only if they are part of the material being quoted.

(k) **"Which" v. "that."**

(i) Use "that" (without a comma) when the clause is restrictive (if you cannot omit the clause without changing the basic meaning). Use "which" (with a comma) when the clause is nonrestrictive (if you can omit the clause without changing the basic meaning). If you ever find yourself using a "which" that does not follow a comma (or a preposition), it probably needs to be a "that."

(ii) Consider the following sentences:

All the cars *that* were purchased before 2008 need to have their airbags replaced.

All the cars, *which* were purchased before 2008, need to have their airbags replaced.

(iii) For more discussion on "which" v. "that" see Garner, Bryan A., *Garner's Modern American Usage* 806 (3rd ed. 2009).

(l) **Fewer, less.** "Fewer" refers to number, individual countable items. "Less" refers to degree or quantity, general amounts. Examples: "Nonfat milk has fewer calories than whole milk." "We have less milk than I thought."

(m) **Words and phrases to avoid.** Ambiguity, wordiness, and legalese can be eliminated by using the suggested substitutes for the following words or phrases.

<u>Avoid</u>	<u>Use</u>
and/or	"either A or B, or both"
any and all	(either word)
at such time as	when
at the time of	when
commence	begin
deal with	"address" or "conduct"
deemed to be	is

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<u>Avoid</u>	<u>Use</u>
dispersal (when referring to the distribution of moneys)	disbursement
during such time as	while
during the course of	during
each and all	(either word)
either directly or indirectly	(delete)
employ (meaning "to use")	use
etc.	(delete)
every person, all persons	a person
except when otherwise provided	(delete)
expend	spend
following section	section ( <u>fill in number</u> ) of this act
for the duration of	during
forthwith	immediately
from and after	after
from July 1st	after June 30th
full and complete	full
give consideration to	consider
greater than	more than
has the duty to	shall
hereafter	after the effective date of this section
hereby	(delete)
herein, hereinafter, hereinbefore, hereinabove, above, below, following, preceding	(These are objectionable if referring to the position of a section or other position; if reference is necessary, specify the title, chapter, section, or subsection by number.)
heretofore	before the effective date of this section
in case	if
in order to	to
institute (verb)	"begin" or "start"
in the event that	if
in the interests of	for
is able to	can
is applicable	applies

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<u>Avoid</u>	<u>Use</u>
is authorized to	may
is binding upon	binds
is directed to	shall or must
is empowered to	may
is entitled to	may
is required to	"shall" (if action) or "must" (if condition)
is unable to	cannot
it is lawful to	may
make application	apply
make payment	pay
make provision for	provide for
means and includes	"means" or "includes" as required
necessitate	require
not later than	by
null and void	void
occasion (verb)	cause
on and after July 1st	after June 30th
on or before July 1st	by July 1st
operable	operative
or, in the alternative	or
per (meaning "according to")	under
per annum	per year
per centum	percent
period of time	"period" or "time" as required
prior to	before
promulgate	adopt
provided (conjunction)	"if" or "but"
provided, however that	"except," "but," or "however," or start a new sentence
regulations	use the term "rules" when referring to state administrative rules; use "regulations" for federal regulations
render (meaning "to give")	give

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<u>Avoid</u>	<u>Use</u>
rules and regulations	rules, unless you are referring to both state rules and federal regulations
said	"the," "that," or "those"
same	(appropriate pronoun)
shall be	is
shall be construed to mean	means
shall constitute	is
shall have the power to	may
shall mean	means
subject to the provisions of	under
subsequent to	after
the provisions of section 5	section 5 of this act
under the provisions of	under
unless and until	"unless" or "until" as required
until such time as	until
utilize	use

Avoid adjectives such as "real," "true," and "actual" and adverbs such as "duly" and "properly." Since these ideas are normally implied, expressing them in some instances creates doubt that they are implied elsewhere.

Avoid the use of "such." Instead, describe what you are referencing or substitute "the," "that," or another pronoun. Ordinarily, "such" requires the addition of "a" before a true singular noun; for example, "such a person."

(n) **Italics.** Italics are used in these instances:

(i) Case names. The case name is italicized, but the location information is not. For example: *Citizens Council v. Bjork*, 84 Wn.2d 891 (1975); and

(ii) Scientific names. For example, the state fossil is the Columbian mammoth of North America (*Mammuthus columbi*). The scientific name is always italicized, with the first word capitalized and the second and subsequent words, no matter what their derivation, not capitalized. If only the genus name is used (in this case, *Mammuthus*), it is still capitalized and italicized. The scientific name is placed in parentheses after the popular name, if used, but may also be referred to alone. Groups of higher ranks, such as phyla, classes, or orders, such as in "the phylum Brachiopoda," are not italicized.

## (2) NUMBERS

(a) **Quantities and amounts** should be written in words, not figures, as:

one and one-half  
two and one-tenth percent  
twenty-seven one-thousandths  
four hundred sixty-seven feet  
population of twenty thousand  
one hundred sixteen dollars  
nine hundred dollars and sixty-three cents  
six percent

Any omnibus appropriations act, other appropriations, tax rates, and tables are exceptions to this rule.

Do not repeat numbers in bracketed numerals.

Compound numbers from twenty-one to ninety-nine are hyphenated. Fractions are also hyphenated unless the numerator or denominator is a compound number that also requires a hyphen.

Examples:

two-thirds  
two thirty-thirds  
twenty-three one-hundredths

(b) **Dates.**

April 1, 2019,  
April 1st  
first day of April  
first of April  
April 2nd  
March 31st  
September 30th  
the 2019-20 academic year  
the 2019-20 school year  
the 2019-2021 fiscal biennium  
January 2019 (no commas)  
January 2019 through June 2019 (no commas)  
January 1, 2019, through June 1, 2019,  
(commas on each side of year)  
2010s

### **(3) CAPITALIZATION**

Observe the following capitalization in drafting bills. The list is not exhaustive.

Note that resolutions, memorials, and amendment headings require more liberal capitalization. See examples in Part II (13) of this guide.

If using the scientific name of a plant or animal, capitalize the genus but not the species. See RCW 77.08.030.

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Typically, acronyms are not used when drafting unless the acronym is commonly used and universally understood. When used, acronyms are always capitalized.

<b>Do not capitalize</b>	<b>Capitalize</b>
chapter	Cascade mountains
chapter 19.86 RCW	Columbia river
city	First word after a colon
civil rule 60	Geographical names
congress	MB (megabyte)
county	Names of colleges and universities
federal	Names of nations, states, cities, towns, and counties
house of representatives	Northwest power planning council
internet	Pacific Northwest
legislature	Puget Sound
line	Revised Code of Washington
medicaid	Thurston county
names of boards, bureaus, departments, or officers thereof	Title 67 RCW
names of state funds	Washington Administrative Code
page	Washington State Register
section	X-ray
senate	
state	
superior court	
supreme court	
title	



**(4) SPELLING**

(a) Write:

a.m.	master's degree
attorneys' fees	moneys
attorneys general	p.m.
benefited	publicly
benefiting	rescission
canceled	therefor (for)
canceling	therefore (only if meaning consequently)
cancellation	totaling
capital (meaning city or money)	traveled
capitol (meaning buildings)	traveling
commitment	veterans' administration
fulfill	willful
kidnapped	
kidnapping	

(b) The following are written as **one word** (the list is not exhaustive):

aircraft, airspace, air...	handbill	secondhand (adjective)
antifreeze	inpatient	semiannual
birthdate	insofar	setoff (noun)
biweekly	landowner	shellfish
boldface	layoff (noun)	shorelands
bylaw	letterhead	statewide
cleanup (noun)	marketplace	streamflow
cochair	motorboat	subcommittee

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coextensive	nationwide	supersede
collocate (place in proximity, esp. referring to words)	nighttime	streetcar
colocate (share common facilities)	nonjudicial (most words containing "non")	systemwide
councilmember	ongoing	textbooks
counterclaim	online	tidelands
countywide	parimutuel	timeline
coursework	payoff (noun)	timetable
courthouse	percent	trademark
crosswalk	policyholder	wastewater
cutoff (noun or adjective)	policymaker	watercourse
database	posttrial (most words containing "post")	watercraft
dropout	preession (most words containing "pre")	waterworks
email	punchboard	workforce
firefighter	quitclaim	workload
floodplain	ratepayer	workplace
forestland	rearview	worksite
groundwater	recordkeeping	worldwide
	runoff	
	safekeeping	

**Note:** All "multi" words, except those beginning with an "i," are written as one word.

(c) The following are written as **two words** (the list is not exhaustive):

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at large	pay off (verb)
bona fide	per annum
child care	per capita
cut off (verb)	post office
day care	pro rata (but prorated)
decision making (noun)	punch card
ex officio	ride sharing
fact finder	rule making (noun)
first aid	set off (verb)
first class (noun)	time frame
food fish	to wit
full time (adverb)	traffic control
hang gliding	vice chair
health care	vice presidency
horse racing	vice president
instream flow	web site
lay off (verb)	work group
park owner	
part time (adverb)	

**Note:** Some of these two-word phrases should be hyphenated if used as compound adjectives. For examples, see (e) of this subsection.

(d) The following are written as **three words** (the list is not exhaustive):

miles per hour (except mph if in a table)  
reduction in force

(e) The following are written as **hyphenated words** (the list is not exhaustive):

attorney-at-law	in-state
attorney-in-fact	limited-access (highway)
before-and-after-school	long-range
by-product	non-Indian

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clean-up (adjective)	odd-numbered
co-owner	one-half
cost-effective	on-site
court-martial	out-of-state
cross-examined	pull-tabs
cross-pollination	quasi-judicial
cross-reference	quasi-municipal
decision-making (adjective)	ride-sharing (adjective)
(Except for "email," words when the "e-" prefix is an abbreviation for "electronic")	right-of-way
even-numbered	rule-making (adjective)
fact-finding	self-esteem
first-class (adjective)	self-incrimination
full-time (adjective)	so-called
fund-raiser	trade-off
fund-raising	Tri-Cities
in-service	up-to-date
	well-being
	X-ray

Adjectives composed of two or more words are usually hyphenated when they precede a noun, even though the phrase would not be hyphenated if standing alone, such as "low income," "one year," "full time," and "part time." Example:

Low-income persons may serve three-year terms.

This is necessary to avoid ambiguity. Compare the following sentences:

A patron may purchase two dollar tickets.  
A patron may purchase two-dollar tickets.

The ill educated man sold a little used car.  
The ill-educated man sold a little-used car.

He came across a man eating tiger.

He came across a man-eating tiger.

Do not hyphenate between an adverb ending in "ly" and the adjective it modifies. For example, "substantially new construction" does not need a hyphen.

## **(5) SUBSECTIONS**

(a) Subsections and subparagraphs are enumerated as follows:

- (1)
- (2)
- (a)
- (b)
- (i)
- (ii)
- (iii)
- (A)
- (B)
- (I)
- (II)

(b) Internal references to these subdivisions may be made as follows:

- section 29(1)(a)(iii) of this act
- subsection (1) of this section
- subsection (2)(a)(i) of this section
- subsections (1) and (2) of this section
- subsection (1) or (2) of this section
- subsection (1)(a) and (b) of this section
- subsection (1)(a) or (b) of this section
- (a) of this subsection
- (a)(iii) of this subsection

## **(6) CITATIONS**

(a) **To the Revised Code of Washington.**

(i) **RCW sections.**

- RCW (no periods between letters)
- RCW 1.08.010
- RCW 1.08.010(3) (not "subsection (3) of RCW 1.08.010")
- RCW 1.08.010(3)(a)(ii)
- RCW 1.08.010 (3) and (5)
- RCW 1.08.010 and 1.08.015
- RCW 1.08.010, 1.08.016, and 1.08.037
- RCW 1.08.010 through 1.08.140 (for an inclusive string)

(ii) **RCW chapters.**

- chapter 34.05 RCW
- chapter 24.03 or 24.06 RCW
- chapters 24.03 and 24.06 RCW

chapters 24.03, 24.06, and 34.05 RCW

**(iii) RCW titles.**

Title 43 RCW

Titles 43 and 44 RCW

Titles 34, 43, and 90 RCW

**(iv) Session laws.**

section 3, chapter 113, Laws of 1935

section 5, chapter 93, Laws of 1967 ex. sess.

section 9, chapter 176, Laws of 1975 1st ex. sess.

section 2, chapter 5, Laws of 1994 sp. sess.

section 45, chapter 2, Laws of 1995 1st sp. sess.

Sessions that are not regular sessions are referred to as "special" sessions. Before 1991, these sessions were referred to as "extraordinary" sessions.

See discussion in Part II (2)(c)(iv) of this guide as to which years require the special session to be designated 1st or 2nd.

**(b) To the state Constitution.**

Article VII, section 2 of the state Constitution

Article II, section 1(b) of the state Constitution

section 2 of this article

**(c) To the Washington Administrative Code.**

WAC 296-34-020

chapter 296-34 WAC

Title 296 WAC

**(d) To federal law.**

(i) Federal statutes. If possible, cite both the Statutes at Large and the United States Code:

Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended

the G.I. Bill of Rights (58 Stat. 284; 38 U.S.C. Sec. 693)

the federal comprehensive employment and training act (87 Stat. 839; 29 U.S.C. Sec. 801 et seq.)

Do not cite the unofficial U.S.C.A.

**(ii) Public laws.**

P.L. 94-115

**(iii) The Code of Federal Regulations.**

47 C.F.R. Sec. \_\_ (year)

**(iv) Federal Register.**

60 Fed. Reg. 50,379, 50,381 (Sept. 29, 1995)

(e) **Other citations** should conform to *The Bluebook: A Uniform System of Citation* (The Columbia Law Review Association, The Harvard Law Review Association, The University of Pennsylvania Law Review, The Yale Law Journal Company, Inc., 20th ed. 2015).

In case of doubt as to word or punctuation styles other than those listed in this guide, the *U.S. Government Printing Office Style Manual* (United States Government Printing Office, 30th ed. 2008) may be consulted.