MANUAL FOR DRAFTING LEGISLATION

The Florida Senate

OFFICE OF BILL DRAFTING SERVICES
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To the late Professor Reed Dickerson
and all who care about words that govern

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Preface

Words are the only lasting product of the Legislature. Not all words uttered during the legislative process have the same dignity. The State Constitution does not convene the Legislature in regular session for 60 days every year to conduct studies, publish reports or analyses, or write correspondence, but rather to write, by a formal process, the words that govern people's lives. These words, embodied in law, are the commands of the sovereign. They control what we may do with our property and can constrain our liberty. All people are expected to abide by these words, and some must even take an oath to uphold them.

We are governed by this law and not by men. The king can expect us to obey his words, but not to read his mind. If we are to remain governed by law, we must find its meaning in its chosen words—not in the minds of its framers or in the creative minds of its readers. To this end, those words must be few and well chosen. Legal writing must not forsake good English. Obedience to proper grammar and usage helps secure our rule of law.

Drafting laws is exacting and tedious work for a lawyer. It demands much drudgery—reading and writing, rereading and rewriting. In the words of Daniel Webster:

> "Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind, or brilliance of talent. His business is to refine, define, split hairs, look into authorities, and compare cases. A man can never gallop over the fields of law on Pegasus, nor fly across them on the wing of oratory. If he would stand on *terra firma*, he must descend. If he would be a great lawyer, he must first consent to become a great drudge."

I hope that all who use this manual will find that it makes the drudgery of properly drafting bills less burdensome.

Robert L. Kennedy, III, Director, 1984-2002
Legal Research and Drafting Services

Chapter 1
Introduction to Drafting Legislation

APPROACH TO DRAFTING

Drafting legislation is a form of technical writing and therefore different from all other forms of writing in two significant ways. First, legal writing must be extremely precise. Its goals are to ensure that the legislation will have the effects intended and is clear to all persons concerned with those effects. In order to achieve these goals, the drafter, like all technical writers, must use greater precision and pay closer attention to detail than other writers. Second, legal writing lacks passion. Its purpose is not to incite, persuade, or entertain, but to declare and command.

There is, however, a role for passion in legal writing. The drafter should care passionately about the words he or she chooses. Some thoughts are more clearly expressed than others. Some word choices express a thought more clearly and concisely than other word choices. A drafter who cares passionately about clear writing understands fully the myth of legislative intent. The rule of law is possible only if words have lives of their own. The drafter must choose words that will speak clearly long after the words are written.

The first step in drafting any bill is to understand what the sponsor intends to accomplish through the proposed legislation. Occasionally the initial instructions provided to the drafter will be sufficient. Often, however, they are not, and the drafter must seek clarification from the bill sponsor. After reviewing the technical and substantive issues discussed in this manual, all drafters, regardless of experience, should recognize more clearly what questions to ask. Asking the right questions is critical. A failure to communicate at the outset can result in the failure of the bill to effectuate the sponsor's intent.

Robert J. Martineau, in his book *Drafting Legislation and Rules in Plain English*, asserts that the sponsor of legislation rarely has more than a rough idea of what his or her draft should include. Martineau explains that drafting does not merely express the ideas and intent of the sponsor which are already formed, but develops those ideas and intent as only the art of

writing can. Martineau tells us that most words chosen by a drafter represent policy choices. The number and nature of choices that the sponsor or drafter must make become apparent only when drafting the proposal. The drafter must first consult with the sponsor or make a choice and bring it to the sponsor's attention, explain the options and the reasons for the choice, and follow the sponsor's will. Martineau is right! Drafting is not merely the process by which the drafter chooses words to express choices already made, but it is the process by which the drafter identifies options and makes choices.

This process of drafting is the process of writing and of rewriting. Writing and rewriting are indispensable to clear thinking. George Orwell said: "The slovenly use of words makes it easier for us to have foolish thoughts." It is clear expression that promotes clear thinking. Thoughts become fully formed only by writing and rewriting. The following suggestions will help the drafter to recognize policy decisions in rewriting:

(1) Presume that the concept and existing law are flawed. The drafter cannot find flaws unless he or she looks for them and will not improve writing that is presumed to be clear.
(2) Read from the perspective of someone who knows nothing about the subject. The less the drafter presumes to know, the more questions will arise.
(3) Summarize or create an abstract of the proposal. A summary eliminates unnecessary complications and is more concise.
(4) Pay particular attention to voice, mood, tense, and number.
(5) Read the draft literally as many times as possible, gleaning as many potential meanings as possible.

Some research is mandatory. The drafter must know the existing law dealing with the subject. The drafter must research provisions that deal generally with the topic, such as laws and constitutional provisions concerning public officers, special laws, the executive branch, the judiciary, taxation, or local government. The indices to the *Florida Statutes* and the State Constitution help in this regard. If an agency is to enforce or administer a provision of the bill or currently enforces or administers a similar provision of existing law, the personnel of the agency involved could, within the constraints of confidentiality, be a useful resource.

The Legislative Intranet contains the official *Florida Statutes* and a search program known as "Search & Browse," which allows the user to search the current text of the *Florida Statutes* and the State Constitution. Other legal databases are available to help the drafter find relevant words and phrases to use in drafting statutory provisions. The Senate Office of Bill Drafting Services will conduct such a search when requested by a Senator or Senate committee.

Often the best source of drafting ideas is other bills. An annual compilation of bill information entitled *Final Legislative Bill Information*, commonly referred to as the "citator," indexes and traces the history of all bills filed for consideration in a particular session of the Legislature. This information is also available on the Legislative Intranet. The subject index of the citator is a good source of information regarding legislation from previous sessions. The drafter can save much time and effort if he or she finds an earlier bill that is adaptable to a sponsor's current needs. Model acts are less useful as a source of drafting ideas, even if there is one that is on point, because a model act chosen as the basis for a bill must be carefully redrafted to conform to the *Florida Statutes.* A model act may cover subject matter that is already addressed in the *Florida Statutes* or beyond the scope of the bill being drafted. Moreover, the designation "model act" does not necessarily mean that the act is well drafted. Laws enacted by other states are a better source of ideas than model acts, but laws from other states present the same problems of improper format, excessive scope, and unreliable quality.

General research is often helpful. The materials that are available for researching policy and technical issues are virtually limitless. Using the Internet or a university or college library, the drafter can find reports by federal and state agencies, congressional studies, studies by private "think tanks," textbooks, and scholarly journals. Researching areas of policy is helpful if the bill covers a broad area. Technical research helps if the sponsor's instructions need to be fleshed out or if the idea for the bill is too general and needs refining. Be forewarned, however, of information overload. More has been written on most subjects than the drafter needs to know. Time is better spent writing and rewriting a draft than researching interesting but extraneous materials. Too much time spent conducting research leaves too little time for drafting. Before conducting long hours of detailed research, heed the advice of the late Professor Reed Dickerson of

the College of Law at Indiana University: "Write first, research second." The words that are written will expose the questions requiring research.

Often a sponsor will request that a bill deal with a limited subject and later discover that the bill has broader effects than intended. The drafter should try to foresee all possible situations that the bill might affect in order to avoid unintended consequences and attempt to anticipate all likely interpretations of the draft so that it does no more than the sponsor intends. Foreseeing potential problems is the most difficult part of drafting. It requires great acuity and the drafter should not take it lightly.

Finally, be forewarned about the ease of writing at a computer. The novelist Russell Banks once warned: "Computers make writing so painless that the writer cannot bear to stop. On and on the writer goes, all judgment numbed." The best tools for drafting are a keen, discriminating, and disciplined mind; a pencil and paper; and an enormous eraser.

STRUCTURE AND FUNCTION OF THE FLORIDA STATUTES

Not all of the official statutory laws of the state are contained in the *Florida Statutes*, and not all provisions published in the *Florida Statutes* constitute official statutory law. The *Florida Statutes* is an edited compilation of the general laws of the state. While all acts of the Legislature which are enacted into law under Section 8, Article III of the State Constitution are published as the *Laws of Florida*, only those general laws of a permanent nature which are of general application throughout the state are incorporated into the *Florida Statutes*.

The annual publication entitled "*Laws of Florida*" contains the general and special laws enacted during each legislative year, printed verbatim, but it is difficult to determine the current status of the general law concerning a given subject using the *Laws of Florida*. Consequently, the Legislature established a continuous permanent statutory revision plan to keep the general law current and free of inconsistencies and redundancies and to carry out the arrangement and identification of the general statutes and laws. This plan is set out in ss. 11.241-11.243, *Florida Statutes*. The product of the plan is the *Florida Statutes*.

The *Florida Statutes*, like the *Laws of Florida*, is a research tool. It allows a person to ascertain the general law, with a few exceptions,

regarding any subject as of the last regular session of the Legislature. A given provision may not read exactly as enacted by the Legislature. Certain minor technical flaws or omissions may have been remedied, but that is one of the purposes of the continuous revision plan. Unless extraordinary circumstances arise, the Legislature formally approves each edition of the *Florida Statutes* after its publication.

Beginning in 1949, a full edition of the *Florida Statutes* was published each odd-numbered year. Beginning in 1970, with the adoption of the 1968 Constitution, which provides for annual sessions of the Legislature, a supplement was published each even-numbered year until 1999. Since 1999, a full edition of the *Florida Statutes* has been published annually. In order to find the most current text of a general law, the drafter need examine only the current edition of the *Florida Statutes* and any applicable session laws enacted since the publication of that edition.

The *Florida Statutes* is organized by major topics into "Titles," which are subdivided into specific subjects by "chapter." Each chapter is identified by a whole number. The "Numerical Title and Chapter Index," located in the front of each volume of the *Florida Statutes* (except the index volume), lists the titles by number and topic and the chapters in each title by subject and number. Each chapter is organized into one or more "sections." Each section is identified by a decimal number, the integer portion of which is the number of the chapter to which it is assigned. The index volume of the *Florida Statutes* and Search & Browse on the Legislative Intranet contain a "Table of Section Changes" whereby the drafter may track a given section of the *Florida Statutes* each year and identify the laws that changed it and the nature of those changes. Comparable information is provided in the history note at the end of each statute section.

The principal advantage of the decimal numbering system is its flexibility in allowing new sections to be inserted between two existing sections. For example, a new section could be inserted between section 112.45 and section 112.46 by assigning it a number from 112.451 through 112.459, inclusive, without using more than three digits to the right of the decimal. The section number has no significance other than to indicate the location of the section.

Each section of the *Florida Statutes* has a section heading, sometimes referred to as a "catch line." Its purpose is to help a person locate a particular

section quickly. The Division of Statutory Revision within the Office of Legislative Services, which implements the continuous revision plan, has authority to insert section headings.[1] A section heading may or may not be part of a law, depending on whether it is enacted by the Legislature or merely supplied by the reviser. Unless specified by statute or arising by necessary implication, a section heading has no legal significance.[2] In fact, a misleading section heading, while confusing and worthy of corrective legislation, does not modify the unambiguous text of the statute.[3]

A section may be further subdivided into "subsections," each identified by a whole Arabic numeral enclosed in parentheses. A subsection may be further subdivided into "paragraphs," each identified by a lower-case letter enclosed in parentheses. A paragraph may be subdivided into "subparagraphs," each identified by a whole Arabic numeral followed by a period. A subparagraph may be further subdivided into "sub-subparagraphs," each identified by a lower-case letter followed by a period. Further subdivisions into "sub-sub-subparagraphs" and "sub-sub-sub-subparagraphs" rarely occur. In drafting a bill, never use the term "subsection" or "paragraph" thoughtlessly or generically; these terms refer to discrete, precisely identifiable textual subdivisions of the *Florida Statutes*. Each subdivision includes all of its subordinate subdivisions. Thus, a subsection includes all of its paragraphs and a paragraph includes all of its subparagraphs. The following chart summarizes the system. The chart does not list "parts" as a primary subdivision of chapters. The grouping of sections into parts of chapters is not a basic component of the organizational plan of the *Florida Statutes*. Such grouping is a recent convention that is best avoided if possible. For those chapters that are organized into parts, however, the parts are designated by an upper-case Roman numeral.

Hierarchical Structure of the Florida Statutes	
chapter 200	Arabic numeral
section 200.34	Decimal numeral
subsection 200.34(1)	Arabic numeral within parentheses
paragraph 200.34(1)(a)	Lower-case letter within parentheses
subparagraph 200.34(1)(a)1.	Arabic numeral followed by a period
sub-subparagraph 200.34(1)(a)1.a.	Lower-case letter followed by a period
sub-sub-subparagraph 200.34(1)(a)1.a.(I)	Upper-case Roman numeral within parentheses
sub-sub-sub-subparagraph 200.34(1)(a)1.a.(I)(A)	Upper-case letter within parentheses

[1] Section 11.242, *Florida Statutes*.
[2] Agner v. Smith, 167 So.2d 86 (Fla. 1st DCA 1964).
[3] Merritt Square Corp. v. State of Florida, Department of Revenue, 354 So.2d 143 (Fla. 1st DCA 1978).

Volume 5 of the *Florida Statutes* contains the state and federal constitutions and an index to each. The index volume contains a tracing table for finding the statute numbers assigned to recent session laws. A paperbound supplement is available which contains a tracing table for chapter laws going back to 1919. The index volume also contains a table of repealed and transferred sections of *Florida Statutes* and a general subject index to the *Florida Statutes.*

The Division of Statutory Revision has the authority to place a new law in the proper chapter of the *Florida Statutes* and to change a section number assigned by the Legislature. The Division of Statutory Revision may also alter and add section headings where needed.

The numbering system used in the *Florida Statutes* was designed to be used indefinitely. The system's potential for long-term use can be realized, however, only if the assignment and retirement of section numbers are carefully monitored. Once a section number is retired, it is never used again. To do so would make the numbering system unreliable and consequently make the *Florida Statutes* useless as a research tool. The Division of Statutory Revision is responsible for ensuring the continuing integrity of section numbers of the *Florida Statutes.* Thus, when drafting new law a drafter should not assign to that law a *Florida Statutes* section number unless absolutely necessary. The task of the drafter in drafting new legislation is to draft clear, precise language that carries out the intent of the sponsor. If the bill becomes a law, the task of the Division of Statutory Revision, as editor and reviser, is to place it in the appropriate chapter and maintain the integrity of the *Florida Statutes.*

Chapter 2
Grammar, Usage, Punctuation, and Style

INTRODUCTION

This chapter sets out recommendations concerning grammar and conventions governing usage, punctuation, and style. It also identifies constructions that result in ambiguity or vagueness in the law.

The Division of Statutory Revision, which publishes the *Florida Statutes*, generally adheres to the *U.S. Government Printing Office Style Manual* as its guide for capitalization, compound words, style of numerals and symbols, and punctuation. In the interest of uniformity, the Office of Bill Drafting Services follows this style manual in drafting all forms of legislation, including general bills, special acts, resolutions, and memorials.

The Division of Statutory Revision may correct grammatical errors in a law compiled in the *Florida Statutes*, but in doing so it may not resolve an ambiguity in the law, supply details where the law is unclear, or change the meaning or construction of the law. Consequently, primary responsibility for correct grammar, usage, and style of legislation rests with the drafter. A further act of the Legislature is necessary to correct an error that misrepresents the meaning or alters the range of possible meanings of a law.

The primary goals of every drafter are clarity and brevity and the avoidance of vagueness and ambiguity.

Clarity.—Bills must be drafted in language that is as clear as possible because:

(1) Legislators must know the intent and effects of measures they vote on;
(2) Each official who administers the law must understand it;
(3) Everyone who is subject to the law must know his or her duties under the law; and
(4) A judge must be able to ascertain what the law means to all parties.

Therefore, the drafter should not introduce unnecessary complexities, but should use the simplest and most precise terms possible.

Brevity.—A bill should be concise because a succinct law is more easily understood than a verbose law. Although clarity and brevity are usually complementary, clarity should never be sacrificed for brevity. A clear, lengthy law is always preferable to an unclear, brief law. In general, brevity reduces the likelihood of ambiguity or contradiction. Two guidelines for drafting concisely are:

(1) Avoid redundancies, which impede comprehension; and
(2) Eliminate every word and phrase that does not serve a clear purpose.

Language in legislative writing should be simple and clear. There is no need for redundant and excessively formal language, which might sound more "legal" but is not. The statutes contain many passages similar to the following:

> "The commission is authorized, at its discretion, to promulgate, adopt, administer, and enforce such policies, procedures, rules, and regulations as it may find necessary and proper to fulfill the requirements of this act."

All that this provision means is:

> "The commission may adopt rules to administer this act."

Section 476.01, *Florida Statutes (1977)*, now repealed, required that a practitioner hold a "valid, unexpired, and unrevoked certificate," although it is hard to imagine how a valid certificate could be expired or revoked. Such redundancies are avoidable if proper terms are chosen and used consistently. Terms and phrases that should be avoided and suggested terms that may be used for redundant or unnecessarily formal words are listed on pages 30 and 31.

Vagueness and Ambiguity.—Constitutional due process requires that people be able to comprehend their rights and duties under the law. A law worded in such a manner as to preclude a person of average intelligence from being able to determine his or her rights and duties may be invalidated

under the void-for-vagueness doctrine that springs from this concept of due process. Moreover, separation of powers under the State Constitution does not permit the Legislature to rely on an executive agency or a court to supply essential missing details in a vague law. The Legislature may not delegate its constitutionally mandated authority to enact law to another branch of government. By supplying missing details, an executive agency or court would be enacting law.

Vagueness is the use of language in a manner such that a phrase has no clear meaning or application. Consider the following:

> Section 1. Each dog transported into this state for sale or acquired in this state for sale must be inoculated against:
> (1) Canine distemper;
> (2) Hepatitis;
> (3) Leptospirosis;
> (4) Tracheobronchitis; and
> (5) Canine parvo virus.
>
> If the dog is transported into this state for sale, it must be inoculated no more than 30 days and no less than 14 days before entry into the state. If the dog is acquired in this state for sale, it must be inoculated before sale.

Although the phrase "transported into this state for sale" may be construed only one way, the phrase "acquired in this state for sale" is vague. Does a person acquire puppies for sale when the person's pet has a litter, or when the person takes in strays, regardless of his or her intentions at the time of the acquisition? Using specific terms resolves the vagueness and makes the provision clearer and more concise:

> "Before sale, each dog sold in this state must be inoculated against . . . except that each dog brought into this state for the purpose of sale in this state must be inoculated no more than 30 days and no less than 14 days before it is brought into the state."

Ambiguity is a related, but distinct, problem that arises when a phrase has more than one possible interpretation encompassed by its terms. For example:

> "Funds may be used to support a child of a teacher under 25 years of age."

This sentence is ambiguous because the reader cannot tell whether the age criterion applies to teachers or to their children. Rearranging the clauses so that the age criterion applies only to the intended parties resolves the ambiguity:

> "Funds may be used to support a person younger than 25 years of age who is the child of a teacher."

Under the rules of statutory construction, a court would resolve this ambiguity differently. Because words are construed to modify their last possible antecedent, a court following the rules of statutory construction would find that the age criterion applied to the teacher. If a law is drafted clearly, a court has no cause to apply rules of construction and thereby arrive at an unintended meaning.

A drafter should avoid mistakes like those in the preceding examples. It is helpful to have a colleague review a draft to be certain it reads as intended.

GRAMMAR

The drafter should always follow rules of standard English grammar and usage when drafting bills. Nonstandard grammar or usage confuses the reader and often leads to a construction that is contrary to the intent of the Legislature. Whenever possible, legislation is drafted in the active voice, present tense, singular number, and indicative mood.

Voice.—The drafter should use the active voice whenever possible. It is more concise than the passive voice and is often clearer. It ensures that the reader knows who is supposed to do what. Consider the following two sentences:

> "Each physician shall file the required statement with the department. Copies of each statement shall be made available to any interested person."

The first sentence, drafted in the active voice, leaves no question as to who must take what action. The second sentence, however, drafted in the passive voice, provides no clue as to whether the physician or the department must

furnish the copies. The person or entity being directed to act should be made the subject of the sentence.

Tense.—The drafter should always draft in the present tense. Some drafters think the word "shall" imparts formality to a statute or makes it sound more legal. It does not. Avoid using a false imperative, as in: "A person who shall violate this section shall be guilty of . . . ." It is more effective to write: "A person who violates this section is guilty of . . . ." Many drafters assume that they must draft a bill in the future tense because it will become law in the future, as in: "The term 'licensee' shall mean a person who . . . ." This is incorrect. The law is regarded as speaking in the present, so the provision should be written: "The term 'licensee' means a person who . . . ."

Number and Gender.—Unless there is an overriding reason to the contrary, the drafter should draft provisions in a bill in the singular number. Section 1.01, *Florida Statutes,* provides that, in construing the *Florida Statutes,* the singular includes the plural and *vice versa.* The drafter should avoid gender-specific pronouns when possible. Although s. 1.01, *Florida Statutes,* also specifies that gender-specific language includes the other gender and neuter, in deference to contemporary style, the drafter should use the phrase "he or she" or "her or him" if use of the pronoun cannot be avoided.

Mood.—The indicative mood expresses an act or condition as an objective fact. The drafter should draft in the indicative mood whenever possible and avoid the subjunctive mood, which expresses a hypothetical situation or contingency. The law should not, except in rare circumstances, be expressed in hypothetical terms. The drafter should also avoid the imperative mood, which most often relies on an implied subject in commanding an act.

USAGE

Ordinary Meaning.—It is important to keep in mind the ordinary meanings of words and, wherever possible, a word should be used in its ordinary sense. A drafter should know or check the commonly accepted dictionary definition and any statutory definition for each word that the drafter uses. A court will generally apply the common dictionary definitions of words that are not specifically defined by statute. Courts consistently hold

that the Legislature is conclusively presumed to have a working knowledge of English.

A drafter must also know the precise meanings of terms used in the lawmaking process. The glossary in this manual, Appendix A, defines many such terms.

Consistent Word Use.—Using terms consistently is the best way to avoid ambiguity. The drafter cannot be certain that different terms used synonymously will be construed to be interchangeable. More likely, the reader will ascribe different meanings to different terms. A law that uses the terms "license" and "certificate" interchangeably might lead the reader to conclude that a "license" is one thing and that a "certificate" is another. The reader would be even more confused if, in another law, the two terms had different meanings.

Positive Expression.—A law should be written in positive terms if it is possible to do so without sacrificing accuracy and conciseness. The sentence "This section does not apply to a person who is not 18 years of age or older" is less concise and harder to understand than the sentence "This section applies only to persons who are 18 years of age or older."

If exceptions to a provision must be stated, place them at the end of the provision: "An unlicensed person may not fish in the waters of this state unless he or she is a member of the armed services on active duty or is younger than 18 years of age." If there are several exceptions, the simplest approach is to list the exceptions in tabular form following the provision:

> Section 5. <u>An unlicensed person may not fish in the waters of this state unless he or she is:</u>
>
> <u>(1) A member of the armed services on active duty;</u>
> <u>(2) Younger than 18 years of age; or</u>
> <u>(3) A disabled veteran.</u>

Precision.—Imprecision and a disregard for proper usage can result in this common mistake:

> "If the licensee fails to renew his or her license within 30 days *of* its expiration, a fine will be imposed."

The question here is *when* must the licensee renew the license. Using the word "of" is imprecise. Must the licensee renew the license within 30 days before or within 30 days after it expires? The word "of" gives the hapless licensee no clue.

It is important to be precise in a law imposing a duty or requiring enforcement.

> "Reasonable notice must be served in a reasonable manner and within a reasonable time."

Possibly no word has caused lawyers to waste as much time and energy as the pleasant but imprecise word "reasonable." Because reasonable people will disagree as to what is reasonable, do not substitute the word "reasonable" for specific criteria.

The drafter should be precise when stating a person's age. A person is a certain number of years old only on the anniversary of his or her birth. At other times, a person is either older than they were on their most recent birthday or younger than they will be on their next birthday. When describing persons in different age groups, be sufficiently precise so as not to include some ages in more than one group. Using "*x* years of age or older" or "younger than *x* years of age" achieves the necessary precision. In dealing with ages, remember that the word "child" in a legal context connotes only a familial relationship. It carries no connotation of age. We are all our parents' children. The word "child" should not be used to connote age since childhood is a state that does not end.

Placement of Modifiers.—The improper placement of modifiers can drastically change the meaning of a sentence. Consider the following:

> "That is just the opinion of one attorney and not a very good one at that."

> "A person employed by a contractor who is licensed under chapter 438 . . . ."

Is it a sorry opinion or a sorry attorney? Does the licensure requirement apply to contractors or to their employees? Provisions such as these reinforce the wisdom of having a critical reader review the draft.

Conjunctions and Disjunctions.—A conjunction is used to join elements of a sentence. The word "and" joins words, phrases, or clauses while integrating the concepts being expressed. If the drafter intends for all elements to be satisfied, the word "and" should be used.

> "The seller must furnish each potential buyer with a profit statement from the previous year, a current year's audit, and a prospectus."

The word "or" joins words, phrases, or clauses while segregating the concepts being expressed. "Or" is used to provide choices between several options. For example:

> "A person may not take by hook and line, by spear, or by net any grouper less than 12 inches long."

If the statute is to apply when any single element is satisfied, the word "or" should be used. As used in statutory drafting, the disjunction "or" is inclusive. If all elements are satisfied, the law still applies.

The expression "and/or" is meaningless and should NEVER be used.

The drafter should avoid ambiguity when there is a series within another series and the elements of one are connected by a conjunction and the elements of the other are connected by a disjunction or *vice versa*. Consider the ambiguity in the following example:

> "The department shall issue a license by endorsement to a person who holds an active license to practice in another state or meets the licensure requirements of section 2 and passes the national examination."

In this example, the reader cannot distinguish the primary series from the secondary series. Under one possible reading, a person who holds an active license in another state could be licensed by endorsement without passing the national examination. Under the other possible reading, everyone would be required to pass the national examination in order to be licensed by endorsement. The ambiguity in this example can be resolved in one of two ways—by repeating the word "who" before each element of the primary

series or by using a hierarchical arrangement of the elements of each series. If the latter meaning is intended, the example could be rewritten:

> "The department shall issue a license by endorsement to a person *who either* holds an active license to practice in another state or meets the licensure requirements of section 2 *and who* passes the national examination."

The drafter could also express the latter intent by using the following structure:

> Section 3. <u>The department shall issue a license by endorsement to a person who:</u>
>
> <u>(1) Holds an active license to practice in another state or meets the licensure requirements of section 2; and</u>
>
> <u>(2) Passes the national examination.</u>

Shall, Must, and May.—There is a specific use for the word "shall." "Shall" is used if the drafter wishes to mandate in the present tense and active voice some act to be performed by a person or entity and if the act being mandated is not an expressed or implied condition precedent to any right, authority, or entitlement being granted to that person or entity. For example:

> "The department shall revoke the license of a person who violates this section."

> "The secretary shall appoint five persons to the board."

In these examples, a person or entity is mandated in the present tense and active voice to perform an act, and that act is not an expressed or implied condition precedent to the granting of any right, authority, or entitlement to that person or entity. The word "shall" imposes the rule of law and leaves the subject no discretion as to whether to perform the act. "Shall" should not be used to declare a legal result, such as, "The circuit court *shall have* jurisdiction . . . , but rather, "The court *has* jurisdiction . . . ."

If the act being mandated is an expressed or implied condition precedent to the granting of any right, authority, or entitlement to the person

or entity required to perform the act, the verb "must" is used, as in the following examples:

> "Each person appointed to the commission *must* reside in this state."
>
> "Each person who sells widgets in this state *must* register with the bureau."

In the two preceding examples, the required act is a condition precedent to the granting of a right, authority, or entitlement. If a person is not a resident of this state, he or she may not be appointed to the commission. If a person does not register with the bureau, he or she may not sell widgets in this state.

Conversely, if a person or entity is being prohibited from performing some act and complying with the prohibition is not an expressed or implied condition precedent to the granting of some right, authority, or entitlement, the phrase "may not" is used. If the prohibition is an expressed or implied condition precedent to the granting of some right, authority, or entitlement, the phrase "must not" is used. Consider the following examples:

> "A candidate *may not* withdraw his or her candidacy."
>
> "A candidate *must not* be a convicted felon."

Under the first example, the candidate has no authority to withdraw his or her candidacy, and the prohibition is not an expressed or implied condition precedent to the granting of some right, authority, or entitlement. Some drafters think that a prohibition is made stronger by using the word "shall." Legally, this is not true; and in negative constructions, which the drafter should avoid, using the word "shall" is weaker. Under the second example, the prohibition is a condition precedent to becoming a candidate. If a person is a convicted felon, he or she may not become a candidate.

If a person or entity is being authorized rather than being required to perform an act, the verb "may" is used, as in: "The board *may* employ an assistant executive director." However, entitlement to or eligibility for a benefit should be stated expressly rather than by using the word "may." For instance: "Members of the council *are entitled to* receive reimbursement as provided in s. 112.061 for travel and per diem expenses."

Which and That.—"Which" is used to introduce a nonrestrictive clause. For example: "The *application, which* need not be notarized, must be signed and dated."

"That" is used to introduce a restrictive clause modifying the nearest antecedent. For example: "An application to renew a *license that* has been revoked . . . ."

"Which" is used to modify a remote antecedent in a restrictive clause: "An *application* to renew a license *which* is rejected . . . ." If the referent is unclear, the sentence should be reworded in order to avoid the use of "which" to modify the remote antecedent in a restrictive clause. For example: "If an application to renew a license is rejected, the application shall be returned to the applicant."

Under and Pursuant To.—The word "under" is used if a provision of law is cited to indicate the source of a right or duty, such as "A lessor's right to restitution *under* subsection (1) is subject to review." The phrase "pursuant to" is used if a provision of law is cited to indicate the source of a procedural directive, such as "The proceedings shall be conducted *pursuant to* the Rules of Civil Procedure."

Misuse of "with."—The word "with" is a preposition and should not be used to denote an attribute or a characteristic, such as "A county *with* a population of fewer than 65,000 residents." That phrase could be written as "A county *that has* a population of fewer than 65,000 residents."

Herein.—The word "herein" is never used. It is inherently vague. Does it refer to the specific subdivision of the section in which it is used? To the entire section? To the entire chapter or act? To the entire *Florida Statutes?*

Such and Said.—The words "such" or "said" should not be used as a substitute for the words "the," "that," "it," "those," or "them" or similar words. For example: "*The* [not *such*] application must be in the form that the department prescribes." Use "such" to express "for example" or "of that kind." Avoid disasters that can result from a careless and overzealous use of "such":

> "A person who files a false report or fails to file such report commits a misdemeanor of the first degree, punishable as provided in s. 775.082."

Surely, the Legislature does not intend to make failure to file a *false* report a crime. Use of the word "said" should be avoided altogether—except as a verb.

Proviso.—The word "provided" could be stricken from the statutes with little or no effect upon meaning. For example:

> "Provided, this act does not apply to . . . ."

The word "provided" is often misused to introduce a new enactment, an exception, or a special situation that could more properly be introduced using words such as "if," "but," "and," "except," or "unless." Most often, the provision introduced by the word is a hastily appended afterthought. In this case, the phrase should be redrafted in order to more fully integrate the concept embodied by the proviso into the substance of the bill.

Loopholes.—A competent drafter always reviews his or her draft, and has another person review it also, to be sure that it says what is intended. A competent drafter examines the draft for loopholes. Consider:

> Section 12. <u>The Department of Health shall process all applications received before June 1, 2009. The Department of State shall process all applications received after that date.</u>

Who processes the applications received *on* June 1, 2009?

Hyphenated Words.—Many people wrongly think that the primary reason for using hyphens to join words is merely for purposes of style. Style is but the most insignificant of reasons for a hyphen's use, and no attempt will be made here to describe its use for purposes of style. Dictionaries and style manuals give inconsistent advice in this regard. For matters of style in drafting bills, refer to the *U.S. Government Printing Office Style Manual*. The paramount reason for using a hyphen to join words is to resolve ambiguities, and for this purpose its use is indispensable. Noted grammarian H. W. Fowler, in *Fowler's Modern English Usage*, tells us that the hyphen is

not a mere ornament but an essential aid to understanding and should be used when it is needed for this purpose.

Consider the ambiguity imparted to the reader by omitting the hyphen in each of the following four examples:

"Bach composed 200-odd cantatas."

"You should avoid cross-references."

"The agency may sue to collect delinquent child-support payments."

"I encountered a man-eating tiger."

Omit the hyphen in these examples and the reader will wonder how odd were the cantatas and who angered the references? The reader will also be unsure whether the agency may sue if the child is not delinquent, and will puzzle over who eats whom.

Often, the drafter must join more than two words by hyphens. Sometimes it is a case of hyphenating either several words or none. Both hyphens are needed to avoid ambiguity in the phrases "two-year-old horses" and "three-quarter-hour intervals." Without the benefit of hyphens, the reader cannot quickly grasp the subject of a sentence that begins with the phrase "The area-of-critical-state-concern review . . . ." The drafter can avoid the complications of hyphenating such a phrase by using prepositions: "The area shall be reviewed as an area of critical state concern." As Fowler notes:

> "Some . . . problems in hyphening are set by the unpleasant modern habit of forgetting the existence of prepositions and using a long string of words as a sort of adjectival sea serpent (e.g. *a large vehicle fleet operator mileage restriction has not been made imperative*). Those who like writing in this way can be left to solve their problems for themselves. Indeed many of our difficulties with hyphens are of our own making; we can avoid them by remembering prepositions and writing, say, *intervals of three quarters of an hour* instead of three-quarter-hour intervals."[1]

[1] *Fowler's Modern English Usage*, Second Edition, at 257.

The drafter should heed Fowler's advice concerning prepositions. The phrase "a hearing under chapter 120" is more comprehensible than the phrase "a chapter-120 hearing"; and the phrase "a person impaired by substance abuse" is more elegant than the phrase "a substance-abuse-impaired person."

One final word of caution was given by William Strunk Jr. and E.B. White:

> "The hyphen can play tricks on the unwary, as it did in Chattanooga when two newspapers merged—the *News* and the *Free Press*. Someone introduced a hyphen into the merger, and the paper became *The Chattanooga News-Free Press,* which sounds as though the paper were . . . devoid of news. Obviously, we ask too much of a hyphen when we ask it to cast its spell over words it does not adjoin."[2]

PUNCTUATION

Proper punctuation is often critical in establishing the meaning of a phrase or sentence. The drafter should construct each sentence so that its meaning does not depend upon punctuation. If this is not possible, the punctuation used should not cast doubt on the meaning of the provision. Generally, a well-constructed sentence is not difficult to punctuate properly. If the drafter has trouble punctuating a sentence correctly, he or she should rewrite the sentence.

Commas in Series.—A comma should follow each element of a series containing three or more elements connected by a final conjunction, as in: "The colors of the flag are red, white, and blue." Although newspapers and other publications omit the last comma, the statutes adhere to the closed-punctuation rule in order to avoid confusion and ambiguity. Consequently, in the interest of maintaining uniformity with the style of the *Florida Statutes,* the drafter should use the closed-punctuation rule in drafting all legislation. The importance of the last comma can best be seen in a complex series:

---

[2] *The Elements of Style*, Third Edition, at 35.

> "The information may be obtained from the Departments of Education, Legal Affairs, Citrus and Agriculture and Consumer Services."

The foregoing example follows the open-punctuation rule of omitting the comma preceding the conjunction that connects all members of the series. In doing so, it creates confusion. Someone unfamiliar with the structure of state government might conclude that there is one department for citrus and agriculture and another department for consumer services. As can be seen, consistently following the closed-punctuation rule and placing a comma after the word "Citrus" avoids ambiguity.

> "The information may be obtained from the Departments of Education, Legal Affairs, Citrus, and Agriculture and Consumer Services."

The example fairly illustrates the problems caused by the open-punctuation rule, but it misleads in one respect: the convention used in the *Florida Statutes* is to repeat the words "Department of" for each item in this series.

Commas.—The omission or misplacement of a comma can result in a meaning that is different from what is intended. The following sentence states four distinct requirements:

> "An applicant must reside in this state, attend a college in this state, or have graduated from high school in this state, and be younger than 25 years of age."

As this sentence is punctuated, an applicant need meet only one of the first three requirements, but must meet the fourth requirement. As a result, an applicant need meet only two requirements to be eligible. If the second comma is omitted, the requirements change:

> "An applicant must reside in this state, attend a college in this state or have graduated from high school in this state, and be younger than 25 years of age."

When punctuated this way, an applicant need only meet the first requirement, either the second or the third requirement, and the fourth requirement, for a total of three requirements. The requirements are again

altered if the comma is placed after the first and second occurrences of the word "state":

> "An applicant must reside in this state, attend a college in this state, or have graduated from high school in this state and be younger than 25 years of age."

In this example, an applicant need only meet either of the first two requirements, or both the third and fourth requirements, providing three ways for an applicant to qualify. It is important to place commas with care.

Semicolons.—Semicolons are used primarily to separate independent clauses that are closely related in meaning and to clarify the structure of a series containing another series that is set off by commas or conjunctions. The following examples illustrate:

> "The board may enter into contracts; however, a contract is invalid unless it is ratified by the department."

> "The board may investigate complaints and take depositions; conduct hearings and other administrative proceedings; revoke, suspend, or refuse to renew the license of a person who violates this act; and seek the assistance of the department in defending any action of the board."

Colons.—Colons are used to introduce a series of items any of which might complete a sentence begun by an introductory clause preceding the colon.

> Section 1. <u>It is unlawful for a person to:</u>
> <u>(1) Be in the wrong place at the wrong time;</u>
> <u>(2) Appear suspicious; or</u>
> <u>(3) Fail to give a satisfactory account of his or her presence.</u>

Items in the series must be parallel and each must relate back to the clause preceding the colon. It would be improper in the preceding example to add a subsection (4) stating: "A person who violates this section commits a misdemeanor." Taken together with the introductory clause, subsection (4) would read: "It is unlawful for a person to a person who violates this section commits a misdemeanor."

STYLE

Florida Statutes Section Numbers.—When used in the *Florida Statutes,* in the title of a bill, or in a section of a bill, a section number of the *Florida Statutes* or State Constitution is written as a numeral preceded by the abbreviation "s." for a single section or the abbreviation "ss." for multiple sections:

s. 112.061, *not* s 112.061, section 112.061, *or* § 112.061
s. 112.061(5) and (6)
s. 775.082 or s. 775.083
ss. 944.582 and 944.583
s. 14, Art. III of the State Constitution

When used in a clause that amends, creates, or repeals a section of the *Florida Statutes* or when used at the beginning of a sentence, the words "section" and "sections" are not abbreviated, but are spelled out:

> Section 24. Subsection (1) of section 112.061, Florida Statutes, is amended to read:

> Section 3. <u>Section 207.001, Florida Statutes, is repealed.</u>

The words "*Florida Statutes*" are omitted from any reference contained in the *Florida Statutes* and from any reference contained in a section of a bill to which a *Florida Statutes* section number has been assigned. In these instances, the inclusion of the words "*Florida Statutes*" can be properly inferred from the context. In references contained in the title of a bill, for the sake of brevity, the words "*Florida Statutes*" are abbreviated as "F.S.," as in: "amending s. 112.061, F.S.; prescribing rates of . . . providing an effective date." In all other references in the bill, the words "*Florida Statutes*" are spelled out.

Numerals and Symbols for General Bills.—A number at the beginning of a sentence is always spelled out, and a number at the beginning of each indentation is usually spelled out. Within a sentence, a numeral is used for a number of 10 or more. An integer less than 10 is spelled out unless it is a unit of measurement or time. In a group of two or more integers, however, and for related integers, any one of which is 10 or more, numerals are used for each integer. The same general rules apply to ordinal numbers. The following examples may serve as a general guide:

five members, *not* 5 members *or* five (5) members
10 members; *but* "Ten members appointed by the Governor . . . ."
5,000 documents
20 times as large
10 members, of whom 5 must be attorneys and 5 must be physicians
12 members who are judges and 3 members who are legislators
First Congress; 82nd Congress
seventh district; 12th district; *but* the 7th and 12th districts
the 30th day, *not* the thirtieth day
April 1, *not* April 1st
third quarter, *not* 3rd quarter
the 2010-2011 fiscal year, *not* 2010-11 fiscal year *or*
the fiscal year 2010-2011

There are exceptions to the general rules, however. Numbers that under the rules would be written as numerals may be written out for formality in a resolution, memorial, local bill, or "WHEREAS" clause. Integers less than 100 preceding a compound modifier containing a numeral are spelled out. The drafter should refer to "twelve 12-member advisory boards," but "120 12-member advisory boards." Indefinite expressions such as "the seventies" or "in his eighties" are spelled out. The phrase "$12 million" or "2.7 billion" may be used for an easy grasp of large numbers. Fractions standing alone or followed by the words "of," "of a," or "of an" are generally spelled out:

three-fourths of an inch, *not* 3/4 inch *or* 3/4 of an inch
one-half inch, *but* 1/2-inch pipe
one-half of a district
one-fourth of 1 percent (or 0.25 percent)
one-hundredth, *but* 2 1/2 times as large

The following two charts provide examples of the conventions set out in the *U.S. Government Printing Office Style Manual* and adopted for use in the *Florida Statutes*. The charts are by no means complete, but the underlying rules should be evident from the examples.

Units of Measurement and Time

Units of measurement and time are always written as numerals, except at the beginning of a sentence or indentation.

AGE

age 65, *not* age sixty-five
at the age of 6
16 years of age or older
at least 18 years of age

CLOCK TIME

4:30 p.m., *but* 4 p.m., *not* 4:00 p.m.

DATES

July 1, *not* July 1st *or* the first day of July

DECIMALS

0.25 inch 1.25 inches

DEGREES

45°, *not* 45 degrees *or* forty-five degrees
68° to 72° F.
latitude 49° 26' 14" N.

MATHEMATICAL EXPRESSIONS

multiplied by 3, *not* times 3, *or* x 3

MEASUREMENTS

10 feet
2,500 horsepower
8 by 12 inches
1 1/2 miles
but two dozen, five votes, fourfold
1 mill, *not* one mill

MONEY

11 cents, *not* $0.11
$5, *not* $5.00 dollars *or* five dollars *or* five dollars (5)
$1 million, *not* $1,000,000

PERCENTAGE

3 percent, *not* 3% *or* three percent
5.5 percent
0.5 percent, *not* 1/2 percent

PROPORTION

1 to 4, *not* 1:4

TIME

5 minutes, *not* five minutes
72 hours, *not* seventy-two hours
30 days' notice
12 weeks
6 months
2 fiscal years
1 year from, *but* any one year
three quarters *and* four afternoons

UNIT MODIFIERS

8-mill cap 30-year bonds
5-day week 15-day period
8-hour day 10-minute delay
1/2-inch pipe 1-year term
4-to-1 ratio, *but* 10 percent raise
2-cent-per-gallon tax
.22-caliber rifle
12-member board, *but* five-member board *and* two-story house

Capitalization

ACTS (Cross-references)

chapter 627 part VII
subsection (3) paragraph (b)
section 3 Pub. L. No. 94-177
49 C.F.R. parts 390-397
43 U.S.C. s. 751

ACTS (Short title)

the "State Bond Act," *but* the act
the "Florida Election Code," *but* the code
the "Beverage Law," *but* the law

AGENCIES

Tampa Port Authority, *but* the authority
Board of Medicine, *but* the board
Parole Commission, *but* the commission
Joint Legislative Sunset Committee, *but* the committee
Peanut Advisory Council, *but* the council
Department of Citrus, *but* the department
Division of Elections, *but* the division

BILLS AND RESOLUTIONS

Senate Bill 218, *but* the bill or a senate bill
Senate Concurrent Resolution 44, *but* the concurrent resolution
Senate Joint Resolution 4, *but* the joint resolution
Senate Resolution 126, *but* the resolution

BUILDINGS

Supreme Court Building, *but* the building
the Capitol, the Historic Capitol

CALENDAR DIVISIONS

the first Tuesday in January
spring, summer, autumn, winter

COLLEGES AND UNIVERSITIES

Chipola College, *but* the college
State University System
University of Florida, *but* the university

CONSTITUTIONS

State Constitution, *but* the constitution
United States Constitution, *but* the federal constitution

COURTS

United States Supreme Court *or* the Court
Florida Supreme Court, State Supreme Court, *or* the Court
First District Court of Appeal, *but* the district court of appeal
Circuit Court for the Second Judicial Circuit, *but* the circuit court
County Court for Lee County, *but* the county court

FUNDS

General Revenue Fund
Operating Trust Fund, *but* the trust fund
State Treasury
Working Capital Fund

GOVERNMENTS

Federal Government, *but* a federal form of government
Florida, State of Florida, *but* the state
Florida Government, *but* state government
United States, United States Government

HIGHWAYS

Interstate 4 State Road 12

HISTORIC EVENTS

the Holocaust World War II

HOLIDAYS AND SPECIAL DAYS

Fourth of July Gasparilla Day
Mother's Day Thanksgiving

JUDICIAL CIRCUITS

Second Judicial Circuit, *but* the judicial circuit

LEGISLATIVE BODIES

United States Congress or Congress
Florida Legislature, State Legislature, or the Legislature
Florida Senate, the Senate
House of Representatives, the House, *but* either house of the Legislature

OFFICERS

Attorney General (and all cabinet officers)
Chief Justice, chief judge, circuit judge, or county court judge
Governor and Cabinet
Lieutenant Governor
mayor (and all other municipal officers) *but* Mayor of Jacksonville
President of the Senate
Secretary of Transportation, *but* secretary of the department
Senators, Representatives, *but* legislators
sheriff (and all other county officers), *but* Sheriff of Leon County
Speaker of the House of Representatives
state attorney or public defender
State Fire Marshal
Supreme Court Justice
United States Congressman

PLACES

Apalachicola Bay, *but* the bay
Atlantic Ocean, *but* the ocean
Big Cypress Swamp, *but* the swamp
Cape Canaveral, *but* the cape
central Florida
Gulf of Mexico, *but* the gulf
Indian River Lagoon, *but* the lagoon
Lake Okeechobee, *but* the lake
Longboat Key, *but* the key
Pine Island Sound, *but* the sound
St. Lucie Canal, *but* the canal
Steinhatchee Wildlife Management Area, *but* the wildlife management area
Suwannee River, *but* the river
west Florida, *but* West Florida (1763-1819)

POLITICAL SUBDIVISIONS

Alachua County, *but* the county
City of Gainesville, *but* the city
Northwest Florida Water Management District, *but* the district
Town of Melbourne Beach, *but* the town

PRIVATE ORGANIZATIONS

American Medical Association
Florida Wildlife Federation

SCIENTIFIC TERMS

Kingdom:	Animalia
Phylum:	Cordata
Class:	Mammalia
Order:	Primates
Family:	Hominidae
Genus:	Homo
Species:	sapiens
Subspecies:	neanderthalensis

TITLES TO PUBLICATIONS

Florida Statutes, *but* the statutes
Florida Administrative Code, *but* the code
Laws of Florida
Senate Journal, *but* the journal

TRADE AND VARIETY NAMES

Trade name: Plexiglas
Variety name: American Beauty rose
Market grade: West Texas Light crude oil

MISCELLANEOUS

Board of County Commissioners of Leon County, *but* the board of county commissioners
Florida Capital (the city, not the building)
Florida Retirement System, *but* the system
Medicaid
Medicare
MediPass program
Seminole Tribe, *but* the tribe
social security, *but* the Social Security Act
The Florida Bar
United States Armed Forces, *but* the armed forces

Expressions to Avoid

Do not use the following words:

above (as an adjective)	hereinafter	s/he
aforesaid	hereinbefore	their (as a singular pronoun)
aforementioned	he/she	to wit
and/or	provided that	whatsoever
before-mentioned	said (for “the” or “that”)	whensoever
herein	same (as a pronoun)	wheresoever

Do not use the following pairs of words having the same effect:

authorize and empower	full force and effect	order and direct
by and with	made and entered into	over and above
final and conclusive	null and void	rules and regulations
from and after	each and all	sole and exclusive
full and complete	each and every	type and kind

Do not use the following pairs of words, one of which includes the other. Use the broader or narrower term as the context requires:

any and all	by and under	means and includes
authorize and direct	desire and require	unless and until

Avoid the following expressions on the left and use the expressions on the right:

AVOID	USE
accorded	given
afforded	given
and/or	or
approximately	about
at the time	when
be and the same is hereby	is
constitute and appoint	appoint
daily basis	daily
deemed to be	is
during such time as	while
during the course of	during

AVOID	USE

effectuate ..... carry out
enter into a contract with ..... contract with
every person, all persons, any person ..... a person
expend ..... spend
fail, refuse, or neglect ..... fail
feasible ..... possible
for the duration of ..... during
forthwith ..... immediately
has the duty ..... shall or must
hereafter ..... after this act takes effect
heretofore ..... before this act takes effect
in cases in which ..... when
in the event that ..... if
in case ..... if
is able to ..... can
is applicable ..... applies
is authorized ..... may
is directed to ..... shall
is empowered ..... may
is unable to ..... cannot
it shall be unlawful ..... may not
means and includes ..... "means" or "includes" as required
monthly basis ..... monthly
null and void ..... void
per annum, per day, per foot ..... a year, a day, a foot
per centum ..... percent
period of time ..... period; time
prior to ..... before
promulgate ..... adopt
provided (conjunction) ..... if; but
provided further; provided, however; provided that ..... except; but; however
provisions of law ..... law
provisions of this section ..... this section
pursuant to (if cited to indicate the source of a right or duty) ..... under
quarterly basis ..... quarterly
reflect ..... show
said ..... the
subsection (3) above ..... subsection (3)
subsequent to ..... after
until such time as ..... until
utilize ..... use
within 30 days *of* ..... within 30 days *after* or *before* (as appropriate)
yearly basis ..... yearly

Chapter 3
Drafting a Bill

Article III of the State Constitution provides for the Legislature and its basic structure and operation and prescribes basic requirements for laws enacted by the Legislature. Every drafter should become familiar with Article III.

ONE-SUBJECT LIMITATION

Generally.—Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[1] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.[2] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[3] The one-subject limitation does not apply to joint resolutions, concurrent resolutions, Senate or House resolutions, or memorials.

The Florida Supreme Court has allowed the Legislature much wider latitude under the one-subject limitation than it perhaps should. Some people have wrongly concluded that the Court has given the Legislature latitude to enact a law encompassing as many subjects as it wishes, so long as those subjects are loosely connected and "packaged" to give the appearance of being associated elements of a comprehensive legislative scheme. Their conclusion is dangerous for three reasons. First, the latitude given by the Supreme Court is not absolute. Courts still seriously consider challenges to acts based upon a multiplicity of subjects and will overturn those acts that do not meet the Court's test for unity of subject. Even when the Supreme Court upholds an act, great delays and costs are incurred in the litigation. Second, the latitude the Supreme Court appears to give the Legislature is not based on a construction of the State Constitution, but on the deference that courts

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[1] Santos v. State, 380 So.2d 1284 (Fla. 1980).
[2] Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969).
[3] State *ex rel*. Landis v. Thompson, 163 So. 270 (Fla. 1935).

must give the Legislature under the doctrine of separation of powers. Third, the courts are not the only branch of government that may interpret and enforce the State Constitution. The Legislature itself is the victim of the logrolling evil sought to be cured by the one-subject limitation, and the Legislature itself may more strictly interpret and enforce this limitation by its rules governing germanity and otherwise. The job of the drafter is to draft a bill that clearly meets constitutional muster, and the drafter must strictly adhere to the one-subject limitation. The consequence of not doing so is dire.

A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[4] Because a violation of the limitation goes to the efficacy by which the act is passed, courts are unlikely to sever the subjects, and the entire act is likely to be void. Would either subject have passed but for the other? How is anyone to know?

The Florida Supreme Court has held that the adoption of the *Florida Statutes* as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[5] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,[6] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[7]

Specific Restrictions.—In addition to the one-subject limitation prescribed in Section 6, Article III of the State Constitution, the State Constitution contains specific limitations for bills on certain subjects. The most significant of these provisions are:

(1) Section 24 of Article I, which requires that a law containing a provision that exempts records or meetings from the right of public access contain only public-records exemptions and provisions for enforcing those exemptions.

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[4] *Ex parte* Knight, 41 So. 786 (Fla. 1906).
[5] State v. Combs, 388 So.2d 1029 (Fla. 1980) and State v. Johnson, 616 So.2d 1 (Fla. 1993).
[6] State v. Lee, 356 So.2d 276 (Fla. 1978).
[7] Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991).

(2) Section 12 of Article III, which prohibits laws making appropriations for salaries of public officers and other current expenses of the state from containing provisions on any other subject.
(3) Section 19 of Article III, which requires a separate bill to create or recreate a trust fund of the state or other public body.
(4) Section 5 of Article XI, which requires a separate bill to place a proposed constitutional amendment on the ballot at a special election.

TITLE

Constitutional Requirement.—Section 6, Article III of the State Constitution also requires that the subject of every law "be briefly expressed in the title." It is not a coincidence that the title requirement is contained in the same section as the one-subject limitation. The two are closely related. The subject as expressed in the title circumscribes the one subject to which the act must relate. The purpose of the title requirement is to give accurate notice of the act's contents so as not to mislead the public or the Legislature as to the scope of the act.[8] If the language of the title is broad enough to allow a person of average intelligence to reasonably foresee that his or her interests might be affected by the subject of the proposed act, the notice given in the title is constitutionally sufficient. The title requirement applies only to laws; it does not apply to joint resolutions, concurrent resolutions, Senate or House resolutions, or memorials.

A title need not be an index to the bill or delineate in detail the subject matter of the bill. The issue in all title-defect cases is "fair notice." Consequently, if the title fails to give adequate notice or misleads or deceives the reader, the act is unconstitutional. The test of whether a title misleads or deceives is whether it would deceive the mind of an ordinary person who understands the common meaning of language, not the mind of a precisionist who knows the technical refinements of terms.[9] Generally, a strange, unnatural, or uncommon definition in an act will render it unconstitutional if the title does not apprise the reader of the consequences of the act.[10] Failure to express in the title the matters repealed by an act can invalidate the act, unless the repeal merely cleanses the statutes of surplus

[8] Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979) and Peeples v. Pilcher, 423 So.2d 907 (Fla. 1982).
[9] *Id*. at 435. *See also* FL JUR 2d, "Statutes" § 61.
[10] Kass v. Lewin, 104 So.2d 572 (Fla. 1958).

language.[11] Also, if the title of an act gives notice of the repeal of a law but not of a restriction on the effect of the repeal, that restriction is void.[12]

If the title of an act gives accurate notice of the consequences of the act to the persons affected and does not mislead, the notice is sufficient even though it expresses changes to the law which are not actually made by the act. The title may be broader than the act itself. For example, an act, the title of which stated that the act related to the "distribution of obscene materials," was upheld even though the text of the act was limited to "obscene motion pictures, exhibitions, shows, [and] representation" and did not apply to other obscene materials such a magazines and books.[13]

Consequences of Defective Titles.—If a court finds that a title fails to give adequate notice, the court will invalidate the entire act or, if the parts of the act for which proper notice is not given are severable, the court will invalidate those parts while upholding the remaining parts.[14] To this end, a court will construe an unusually defined word to have the meaning that a person of common intelligence generally attributes to it and will uphold the statute as to that limited application for which the title gives adequate notice.[15]

If the title of an act is insufficient, the defect will be cured when the act is incorporated in a general revision of the laws, whether the insufficiency has been adjudicated or not; however, incorporation in a general revision of the statutes does not cure a particular act of any unconstitutional substance.[16] Thus, the annual adoption by the Legislature of the *Florida Statutes* as the official law of the state cures title defects in those general acts of a permanent and continuing nature which have been compiled into the adopted edition of the *Florida Statutes.* Such an act may be successfully challenged for failure of its title to give adequate notice only with respect to events occurring before its subsequent adoption as the official law of the state. An act having a title defect is considered valid only from adoption and not from the date of its original enactment.[17]

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[11] Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).
[12] Soule v. Lewis, 66 So.2d 665 (Fla. 1953).
[13] Leigh v. State *ex rel*. Kirkpatrick, 298 So.2d 215 (Fla. 1st DCA 1974).
[14] State v. Hamilton, 388 So.2d 561 (Fla. 1980).
[15] Pruitt v. State, 363 So.2d 552 (Fla. 1978).
[16] State *ex rel*. Badgett v. Lee, 22 So.2d 804 (Fla. 1945).
[17] Thompson v. Intercounty Tel. & Tel. Co., 62 So.2d 16 (Fla. 1952).

Drafting Titles.—In drafting a title, the drafter provides notice to the Legislature and the public of the changes being made to the law. If the drafter determines who is affected by the bill and how they are affected and then writes a title that puts those persons on notice of those effects, the title should be adequate. Consider a bill that merely redefines the term "motorboat," in a law requiring the registration of motorboats, to include sailboats within that definition. There are very sound drafting reasons, explained in the discussion on definitions beginning on page 42, why the drafter should never redefine a term in this way to expand the scope of regulation; however, assume for the sake of this discussion, that the approach taken is proper. The phrase "providing a definition" in the title puts no one on notice of anything; nor does the phrase "defining the term 'motorboat'" advise the persons affected of the consequences of the bill. The phrase "requiring the registration of sailboats" would give better notice. Such a notice would still be inadequate to apprise persons that they must pay a fee or are subject to criminal penalties, but at least persons who have sailboats would know that the bill requires them to register their boats.

Based on the case law with respect to title defects, the title should contain notice of the following items:

(1) The section of the *Florida Statutes* or *Laws of Florida* which is being amended. Charts illustrating appropriate title references appear on pages 53-54.
(2) The section, subsection, and paragraph of any repealed provision of the *Florida Statutes* or *Laws of Florida*, the general subject of that provision, and any restriction on that repeal.
(3) An appropriation or bond issue.
(4) A fee, tax, or assessment.
(5) A penalty or forfeiture.
(6) An award of court costs or attorney's fees.
(7) A referendum.
(8) An effective date.
(9) Retroactive application.

If a bill does not specifically provide for a tax, a penalty or forfeiture, or an award of court costs or attorney's fees, but as a result of the bill one of these items will apply under existing law, the title must also give notice of that item.

The title should be as brief as possible. Although the State Constitution expressly authorizes brevity, it does not require it. In writing a brief title that gives adequate notice, the drafter is forced to abstract the contents of the bill and express them in broad terms that are less likely to mislead and that resist the need to be amended when the body of the bill is amended. Consequently, the title of an amended bill as finally passed is less likely to be defective if the Legislature fails to adopt corresponding title amendments. Occasionally a lengthy title is necessary. A lengthy title may be appropriate if it will prevent confusion or aid in determining the constitutionality of an act by properly defining its scope or if it will help courts determine legislative intent. Concise titles, however, are generally better.

It is a good practice to provide notice in the title of changes to the law in the same order as those changes appear in the bill. This order is not required, but it is helpful when preparing title amendments to a lengthy title of a lengthy bill.

Although the title begins a bill, the title should NEVER be drafted until the body of the bill is complete. It is impossible to write an adequate title until the drafter understands each element of the bill which requires notice. The drafter should not draft the title from a recollection of what the bill does, but should refer to the bill while drafting the title in order to ensure that all elements of the bill requiring notice are included.

PREAMBLE

Explanatory language, in the form of "WHEREAS" clauses, provides reasons for enacting a bill. A preamble is not required, and because it is not considered part of an act it will not be compiled in the *Florida Statutes*. Nevertheless, the court may consider the preamble in determining legislative intent.[18] If included, the preamble is placed after the title and before the enacting clause. As in the following example, the clauses are separated by commas, not by semicolons:

. . . providing an effective date.

WHEREAS, 8 million vehicles travel our roads each day, and

[18] Finn v. Finn, 312 So.2d 726 (Fla. 1975).

WHEREAS, at least 10 percent of these vehicles operate while a system critical to their safety in the state of disrepair, and

WHEREAS, mandatory vehicle inspection would prevent these unsafe vehicles from being operated on our state roads, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

ENACTING CLAUSE

Section 6, Article III of the State Constitution requires that the phrase "Be It Enacted by the Legislature of the State of Florida:" precede the body of every law. It is mandatory that this phrase appear verbatim before the body of each proposed law. An act is not valid without this enacting clause. Various styles of resolving clauses are used in resolutions and memorials in lieu of an enacting clause. See Chapter 6 on Resolutions and Memorials for examples.

SEQUENCE OF SECTIONS

The substantive provisions of a bill are not arranged according to any mandatory rules, but convention and logic govern the arrangement of bill sections. Whenever possible, a bill that amends or creates sections of the *Florida Statutes* or *Laws of Florida* should be arranged so that the statute sections appear in numerical order. For a bill that creates new law, the most important provisions should be placed at the beginning of the bill, and provisions that are subordinate or ancillary to the main substantive provisions should be placed near the end of the bill. Although a repealer is usually ancillary to the main substantive provisions of a bill, if it is the most important provision of the bill and the other provisions are ancillary or conforming provisions, the repealer should come first. Examples of ancillary provisions that are generally placed near the end of a bill are: procedural provisions, temporary provisions, and provisions conforming the text of existing statutes to the main provisions of the bill. The following conventional arrangement is most often used for the body of a bill:

(1) Short title (best to avoid using if possible).
(2) Legislative intent (also, best avoided).
(3) Definitions (when definitions are needed).
(4) Main provisions.
(5) Subordinate provisions.
(6) Procedural provisions
(7) Temporary provisions.

(8) Penalty provisions.
(9) Appropriations.
(10) Saving clause (when needed).
(11) Severability clause (best to avoid if possible).
(12) Effective date.

If the bill creates an agency or commission, the drafter may use the following organization for the main provisions of the bill:

(1) Creation of the agency or commission.
(2) Membership and tenure of officers.
(3) Powers and duties.
(4) Administration.
(5) Personnel matters.
(6) Salaries and expenses.

However a bill is organized, it should not be divided into labeled "parts." Doing so creates ambiguity and confusion as to the meaning of the word "part" when used in the bill. Does it refer to a "part" of the *Florida Statutes* or to a "part" of the bill?

SHORT TITLE SECTION

The only purpose for a short title is to give an official name to an act for ease in referring to or citing the act. A short title is unnecessary, and there are circumstances in which the drafter should not use one. A short title should not be used to name an act that amends existing law. Technically, the short title refers only to the amendments to the law. It does not refer to the law being amended and cannot be compiled within that law. If it is not compiled, it will never be used. If it will never be used, it cannot serve its only purpose. Likewise, an act that amends sections scattered throughout various chapters of the *Florida Statutes* should not be given a short title, and if the drafter does so, the short title will not be compiled in the *Florida Statutes*.

A short title is appropriate only for a lengthy bill that deals comprehensively with a new subject and does not amend existing law. If a short title is used, it should be placed at the beginning of the bill. A short title should never include a date because the date becomes obsolete when the Legislature later amends the act. The phrase "shall be known as" should not

be used. The Legislature may allow an act to be *cited* by a particular name, but it cannot command people to *know* the act by any name. An example of a well-written short title is:

Section 1. This act may be cited as the "Poultry Law."

LEGISLATIVE INTENT SECTION

A legislative intent section is one of the most overused and abused sections in a bill. A properly drafted bill does not need a legislative intent section. The intent of a bill should be clear from the bill's substantive text. If the drafter believes that his or her bill will benefit from an intent section to clarify some matter, the bill is poorly drafted and should be rewritten. An intent section should not be used to clarify anything that can be clarified in the substantive text of the bill. Even a well-drafted, accurate intent section is likely to add confusion and may even add conflict rather than clarity when the bill or law is subsequently amended and the legislative intent is left unchanged. For this reason, if the bill sponsor insists on a statement of legislative intent, the intent may be placed in a preamble.

An intent section should not set out facts that are subject to change, such as the number of homeless people in the state or the fact that Florida is one of the fastest-growing states in the nation. Will the act cease to apply when those facts are no longer true? Will the intent section be accurate 25 years in the future? If the act accomplishes its intended purpose of eliminating homelessness or curtailing the growth rate, those statements of fact become false. If the facts remain true, the intent section becomes permanent testimony to the failure of the act to accomplish its intended purpose.

Also, substantive provisions should not be included in an intent section, such as: "It is the intent of the Legislature that this act not apply to teachers certified in this state." Does the substance of the bill exempt teachers certified in this state? "Intent" is all too often what the drafter meant to do but didn't; and a treacherous road is paved with good intentions. Substantive provisions should be placed in the substantive portions of the bill.

Finally, although an intent section usually appears at the beginning of the bill, it should be drafted only after the substance is complete. This

reduces the likelihood that the intent section will conflict with the substance or be used to conceal substantive provisions or as a substitute for substance.

DEFINITION SECTION

Generally.—One of the best tools for drafting bills is the proper use of well-written statutory definitions, but the definition section of a bill is often the most misused section. Statutory definitions that are poorly drafted or improperly used can quickly destroy a bill by adding unnecessary complexities and confusion, by prescribing too broadly or too narrowly the scope of the act, or by creating unintended loopholes and exemptions. The quality and use of definitions are the best evidence of the drafter's skill.

When to Draft a Statutory Definition.—

> "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."[19]

Humpty's arrogant assertion that he can be the master of meaning is wrong, but he poses a telling question. In order for law to govern, communication must exist. If words mean only what the speaker wants them to mean, they do not convey meaning. Noah Webster and other lexicographers have done an admirable job of compiling dictionaries that set out the ordinary, conventional meanings of words—meanings derived from common usage that we have all come to accept and understand. A law that uses a word in a sense that departs from its common usage departs from common understanding. For this reason, the drafter should not draft a statutory definition if the concept can be clearly expressed using a word or phrase that has a commonly understood meaning.

[19] *Through the Looking Glass*, by Lewis Carroll.

Most often a statutory definition is not necessary and should be provided only:

(1) To attain specificity and conciseness and for no other purpose;
(2) For a word that is used in a sense encompassed by, but more limited than, its common dictionary meaning; and
(3) When failure to define the word would result in a consequential uncertainty as to its meaning.

If a statutory definition does not satisfy all of these criteria, it is unnecessary; it will create confusion, uncertainty, or verbosity; and its use is dangerous. A statutory definition should not be used if:

(1) The common dictionary definition of the word is adequate. Courts will impart this meaning to a word that is not statutorily defined;
(2) The word is defined in the *Florida Statutes* for use throughout the *Florida Statutes* or in the code, chapter, or part being amended for use throughout that code, chapter, or part; or
(3) The word is used only once or very few times or in only one section or paragraph. In these cases, it is better to use modifiers to limit the meaning of the word rather than to define it. This helps prevent an unwary drafter from deleting the word from the portion of the bill in which it is used or changing the context in which it is used, and then failing to delete or change the definition.[20]

Drafting a Statutory Definition.—The reader and the courts must be able to keep a statutory definition in mind and rely on it confidently whenever the defined word appears in the text of the law. Therefore, the drafter should keep in mind the following points:

(1) Select a single word or phrase to receive a given meaning. Giving two words the same meaning sacrifices conciseness and confuses the reader. If the drafter defines the term "records and reports" and use both words jointly, the reader will stumble over two unnecessary words wherever the term is used. What is worse, if in one instance the drafter uses the word "records" and in another the word "reports," the reader is confused and will likely assume

[20] *See* s. 812.015(1)(c), *Florida Statutes (2009),* for the definition of a term that is never used in the law.

that each word has a different meaning and that perhaps neither has the meaning ascribed to the term "records and reports."

(2) Do not redefine a word that is already defined for use throughout the *Florida Statutes* or within the law being amended; and do not define a word by using the same definition given to a different word within the *Florida Statutes*. Doing either will confuse the reader and sacrifice conciseness. In the first case, select a different word, and in the second case, use the already-defined word. The Division of Statutory Revision annually publishes an index of statutorily defined terms entitled the *Florida Statutes Definitions Index*.

(3) Define a term clearly and concisely. The elements of a definition should be selected as carefully as if they were the elements of a crime. For example: "The word 'record' means written information that pertains to a student and is maintained by a public school." In this case, the elements of a "record" are that the record must:

   (a) Be information;
   (b) Be written;
   (c) Pertain to a student; and
   (d) Be maintained by a public school.

The drafter should avoid repetition and redundancy and avoid illustrations. A reader cannot remember a long, unwieldy definition. The foregoing example would mean the same but be less concise and more confusing had it been written: "The word 'record' means any official or unofficial written information, data, or file, directly or indirectly relating to a pupil or student, which is created, maintained, and used by a public elementary, middle, or secondary educational institution in this state, and includes, but is not necessarily limited to, identifying data, achievement records, test scores, attendance data, health data, family background information, and discipline reports."

(4) Never define a word more broadly than its ordinary meaning or to be something that it is not. For example, the definition of the word "motorboat" should not include sailboats because doing so would conceal the fact that the bill regulates sailboats. If the title provides notice that the bill regulates only "motorboats," the regulation of sailboats by the bill would be unconstitutional because the title is misleading. It would be better to define the word "boat" so as to limit it to motorboats and sailboats.

(5) Do not put substantive law in a definition. Doing so hides the substance and can lead to unintended constructions. Suppose the following sentence is appended to the definition of the word "record": "All records must be open for public inspection." As a part of the definition, it expresses another element of the definition. Thus, rather than requiring records to be open for inspection, it excludes from the definition of "records" those that are not open and consequently exempts them from the act.
(6) Do not use the word being defined in its definition.
(7) Draft definitions only after the substantive provisions are complete.

Terms defined for use throughout the main provisions of an act should be placed in a definition section immediately before the main provisions, arranged alphabetically, and introduced by a statement that concisely and precisely limits the portion of the act to which the definitions apply. For example:

Section 1. <u>As used in this section, the term:</u>

Section 1. <u>As used in sections 1-8 of this act, the term:</u>

Section 1. Section 100.001, Florida Statutes, is created to read:
<u>100.001 Definitions.—As used in ss. 100.001-100.005, the term:</u>

Section 1. <u>As used in this act, the term:</u>

A definition section that references specific sections must be checked after the bill is amended in order to ensure that the references are accurate after the bill is amended. The last introductory statement may be used only if the definitions apply throughout the bill and the bill does not amend existing law. The purpose of definitions is to provide a specificity in construction on which the reader can rely; therefore, the drafter should not use such phrases as "where the context permits" or "unless the context requires." Such phrases immediately alert the reader that the drafter did not rely on the definition and neither can the reader.

Using Statutorily Defined Terms in the Text.—A defined word in the text of a bill must be used only in its statutorily defined sense. If the term "records" is defined to be written information that pertains to students and that is maintained by a public school, the drafter may not use that term to

refer to employee personnel records. Doing so even once poisons the well. The reader can never then be sure that the statutory meaning applies any other time the term is used.

A defined word must be used consistently. Having defined the word "records," the drafter must not later provide in the act that: "This act applies only to data relating to pupils no longer attending school," because such a statement directly contradicts the definition. A defined word may be used with confidence. Do not use the definition of a defined word or a part of its definition. When the defined word is used, the drafter must not modify it with an element of its definition. Given the preceding definition of the word "records," the drafter must not provide: "All records *maintained by a school* are confidential." Do any of the elements of the definition no longer apply? Must the information still pertain to students? Must it still be written? Does it not cover information maintained by *private* schools?

Finally, the drafter should never follow the defined word with a cross-reference to its definition, such as "as defined in this act" or "as defined in s. 228.01." These references are unnecessary; they defeat the goal of statutory definitions to achieve conciseness; and, because of the rule of construction governing specific cross-references, they can keep future changes to the definition from applying to the term as used in that instance. See pages 123-125 for a discussion of incorporation by reference.

If a properly defined word is used only in its statutorily defined sense and it is used consistently and confidently, the reader can rely on it. Appendix B contains a summary of these rules for drafting and using definitions.

SECTION AMENDING EXISTING LAW

Republication Requirement.—Section 6, Article III of the State Constitution states:

> "No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection."

A bill amending existing law must republish the entire section, subsection, or paragraph being amended. Courts have held that the

requirement to "set out in full" is satisfied if the section, subsection, or paragraph being amended is complete and intelligible standing alone without referring to other parts of the statute to determine the meaning of the amendment.[21]

Example of a Florida Statute section (2008)

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

[21] Auto Owners Insurance Co. v. Hillsborough County Aviation Authority, 153 So.2d 722 (Fla. 1963).

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.—s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95.

A "paragraph" is the smallest division of a law which may be republished under the State Constitution. This word as used in the State Constitution is not synonymous with the word in its statutory sense. In order to satisfy the constitutional republication requirement, the drafter must understand the hierarchical arrangement of the laws and recognize what is being amended and what must be republished.

The terms "section," "subsection," and "paragraph," when used to refer to the *Florida Statutes* or *Laws of Florida*, specify a precise hierarchical arrangement used in the *Florida Statutes*. The organization and nomenclature for hierarchical subdivisions of laws published in the *Laws of Florida* are not uniform, but generally follow those uniformly used in the *Florida Statutes*.

The following material must always be republished in addition to the entire text of the subdivision of the statute being amended:

(1) The section number and catch line of the section and, if applicable, the number of the subsection or letter of the paragraph being amended and any catch line for that subsection or paragraph.

(2) Any introductory language to the section and any introductory language to the subsection or paragraph being amended. If introductory language is itself being amended, all subdivisions of the statute which are subordinate to the subdivision of which the introductory language is a part must also be republished, even if those subordinate subdivisions are not being amended. If for example the drafter amends the introductory language of subsection (1) of s. 83.51, *Florida Statutes*, shown on page 47, all of paragraphs (a) and (b) of subsection (1) must be republished.

(3) Flush-left material that is part of a subdivision being amended or that applies to a subordinate subdivision being amended. The flush-left material shown on page 47 is expressly a part of subsection (1) and applies to all subordinate subdivisions of that subsection. If the introductory language of subsection (1) or paragraph (1)(a) or paragraph (1)(b) is amended, the flush-left material must be republished. It is not always easy to determine the subdivision to which flush-left material belongs or the subordinate subdivisions to which it applies. Consider a hypothetical section that is divided into subsections (1) and (2); subsection (2) is further divided into paragraphs (a) and (b); paragraph (b) is further divided into subparagraphs 1. and 2.; and flush-left material follows subparagraph 2. The flush-left material might be contained within paragraph (2)(b) and apply only to subparagraphs 1. and 2. and the text contained within paragraph (b). It might be contained within subsection (2) and apply to paragraphs (a) and (b) and the text contained within subsection (2). It might be a part of the entire section and apply to subsections (1) and (2). Often, the text of flush-left material contains language that indicates the subdivision to which it belongs or the subordinate subdivisions to which applies, as does the flush-left material shown on page 47. If it is not obvious from the text of the flush-left material as to which subdivisions should be republished, the drafter should republish all material rather than risk an unconstitutional bill.

Because the State Constitution expressly requires republication of a section, subsection, or paragraph of a subsection, it implicitly prohibits republication of less than a full paragraph of a subsection. If even one subdivision that is subordinate to a paragraph is amended, the entire paragraph and all of its subordinate subdivisions must be republished. For example, if subparagraph (2)(a)3. of s. 83.51, *Florida Statutes,* shown on page 47, is amended, all of paragraph (a), including subparagraphs 1.-5., must be republished.

A subsection or paragraph of the *Florida Statutes* or *Laws of Florida* may encompass LESS text than that which the State Constitution requires to be republished. Consider paragraph (1)(a) of s. 83.51, *Florida Statutes,* on page 47. Standing alone, the text is not a complete sentence. It contains a verb, but no subject. In holding that the constitutional republication

requirement is satisfied if the provision amended is complete and intelligible standing alone, courts are applying the common dictionary meaning of the word "paragraph." *The American Heritage Dictionary of the English Language* defines a "paragraph" as:

> "A distinct division of a written work or composition that expresses one thought or point relevant to the whole but is complete in itself, and may consist of a single sentence or several sentences."

A paragraph in the dictionary sense is never less than a sentence; and the drafter should NEVER republish only a statutory subsection or a paragraph if it is less than a complete sentence. A sentence must have a subject (expressed or implied) and a verb, usually has a direct object, and ends in a period.

The drafter should also republish additional subdivisions of a section if republication is necessary to convey the full effect of an amendment. For instance, suppose a bill amends subsection (3) of s. 83.51, *Florida Statutes*, by striking the words "the same or" and republishes only subsection (3):

> Section 1. Subsection (3) of section 83.51, Florida Statutes, is amended to read:
>
> Landlord's obligation to maintain premises.—
>
> (3) If the duty imposed by subsection (1) is ~~the same or~~ greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

Subsection (3) is a paragraph in the dictionary sense of the word—and more than a paragraph in the statutory sense of the word. The change made to the subsection is unintelligible, however, without reading subsections (1) and (2), which should also be republished. Compare the example above with the following amendment to paragraph (2)(e):

> Section 1. Paragraph (e) of subsection (2) of section 83.51, Florida Statutes, is amended to read:
>
> 83.51 Landlord's obligation to maintain premises.—
>
> (2)
>
> (e) ~~Nothing contained in~~ This subsection <u>does not prohibit</u> ~~prohibits~~ the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for <u>locks and keys,</u> garbage removal, water, fuel, or utilities.

In this example, a paragraph in both the dictionary sense and the statutory sense is republished. Although the text that is republished refers to the entire subsection, a reader need not have before him or her the entire subsection in order to understand the change being made to the law. In fact, the text that is republished states that the reader may disregard the remaining portions of the subsection with respect to the paragraph and the changes it embraces. All that is necessary to be republished is republished in this example.

The history note is not a part of the section and is never amended or republished.

A directive to the Division of Statutory Revision to make changes editorially violates the republication requirement of the State Constitution. The republication of a part of a *Florida Statutes* section for the purpose of incorporating changes that are being made by the bill to another *Florida Statutes* section constitutes an amendment of the section, subsection, or paragraph that is republished and as such, must conform to the constitutional requirements for republication.

The State Constitution provides a different republication requirement for amendments to the State Constitution which is discussed on page 131-132.

Directory Clauses.—Each section of a bill which amends existing provisions of the *Florida Statutes* or *Laws of Florida* is introduced by an directory clause to identify the provisions of existing law being amended.

The directory clause should be precise and brief. If more text is being republished than is being amended, the clause should identify as being amended all that is republished. It must NEVER identify more than is actually republished. The consequences of doing so are dire and are discussed on page 54-55 under the heading "Repeal by Omission." If the amendatory clause identifies all that is republished, it will not need to be amended if committee or floor amendments are adopted to provisions that are republished but not originally amended in the bill. However, if the drafter corrects the republication error in the example on page 50, which amends subsection (3) of s. 83.51, *Florida Statutes*, by republishing the entire section, the directory clause must be redrafted to indicate that the entire section is being amended—even though the only change to the section is made in subsection (3).

The directory clause may be used to indicate the renumbering of subsections or the relettering of paragraphs, and those subsections or paragraphs need not be republished in the bill unless they contain cross-references that must be changed because of that renumbering or relettering. For example, if a new paragraph (b), which is complete and intelligible standing alone, were added to subsection (2) of s. 83.51, *Florida Statutes,* reprinted on page 47, the bill would provide:

> Section 1. Present paragraphs (b), (c), (d), and (e) of subsection (2) of section 83.51, Florida Statutes, are redesignated as paragraphs (c), (d), (e), and (f), respectively, and a new paragraph (b) is added to that subsection, to read:
>
> 83.51 Landlord's obligation to maintain premises.—
>
> (2)
>
> <u>(b) Unless otherwise agreed to in writing, the landlord of a duplex apartment must make reasonable provisions for the removal of trash and garbage from the premises of the duplex apartment and must provide the tenant with outside receptacles for that purpose, and the landlord may not charge the tenant more for the removal of trash and garbage from the premises than the actual cost incurred by the landlord.</u>

The following two tables contain sample directory clauses and related title references for various types of amendments to the *Florida Statutes* and the *Laws of Florida*. The first table contains examples of directory clauses for amendments to existing law. Creating a separate directory clause for each section of law being amended facilitates drafting amendments and lessens the likelihood of unintentional repeals by omission caused by later amendments to the bill. The second table contains sample directory clauses and related title references for various types of amendments to the *Laws of Florida,* to laws amending the *Florida Statutes* which have not yet been incorporated in the *Florida Statutes,* and to acts presented to the Governor for approval.

Table 1 — Common Directory Clauses and Title References

Type of Amendment	Directory Clause	Title Reference
Amending a section.	Section 627.602, Florida Statutes, is amended to read:	amending s. 627.602, F.S.;
Amending a subsection.	Subsection (3) of section 627.602, Florida Statutes, is amended to read:	amending s. 627.602, F.S.;
Amending a paragraph.	Paragraph (c) of subsection (2) of section 627.602, Florida Statutes, is amended to read:	amending s. 627.602, F.S.;
Amending consecutive or nonconsecutive subsections.	Subsections (1), (2), and (5) of section 627.602, Florida Statutes, are amended to read:	amending s. 627.602, F.S.;
Adding subsections to the end of a section that has existing subsections.	Subsections (6) and (7) are added to section 627.602, Florida Statutes, to read:	amending s. 627.602, F.S.;
Adding a subsection to a section that has no subsections.	Section 627.602, Florida Statutes, is amended to read:	amending s. 627.602, F.S.;
Adding a new subsection and renumbering existing subsections.	Present subsection (3) of section 627.602, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:	amending s. 627.602, F.S.;
Adding a new subsection, renumbering and amending existing subsections.	Present subsections (1) through (6) of section 627.602, Florida Statutes, are redesignated as subsections (2) through (7), respectively, a new subsection (1) is added to that section, and present subsections (1) and (4) of that section are amended, to read:	amending s. 627.602, F.S.;
Adding a paragraph to the end of a subsection that has existing paragraphs.	Paragraph (d) is added to subsection (2) of section 627.602, Florida Statutes, to read:	amending s. 627.602, F.S.;
Adding a new paragraph and redesignating existing paragraphs.	Present paragraphs (c) and (d) of subsection (2) of section 627.602, Florida Statutes, are redesignated as paragraph (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:	amending s. 627.602, F.S.;
Transferring, renumbering, and amending a section.	Section 627.63, Florida Statutes, is transferred, renumbered as section 627.42, Florida Statutes, and amended to read:	transferring, renumbering, and amending s. 627.63, F.S.;
Republishing a provision of law for the purpose of incorporating changes made in a cross-reference.	For the purpose of incorporating the amendment made by this act to section 741.30, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 61.1825, Florida Statutes, is reenacted to read:	reenacting s. 61.1825(3)(a), F.S., relating to the State Case Registry, to incorporate the amendments made to s. 741.30, F.S., in a reference thereto;

Table 2 — Other Directory Clauses and Title References

Type of Amendment	Directory Clause	Title Reference
Amending a special law or general law of local application enacted before 1957.	Section 2 of chapter 24670, Laws of Florida, 1947, is amended to read:	amending chapter 24670, Laws of Florida, 1947;
Amending a provision in the *Laws of Florida* enacted after 1956.	Subsection (2) of section 7 of chapter 89-426, Laws of Florida, is amended to read:	amending chapter 89-426, Laws of Florida;
Amending a previously amended provision in the *Laws of Florida.*	Section 1 of chapter 99-550, Laws of Florida, as amended by section 1 of chapter 2005-469, Laws of Florida, is amended to read:	amending chapter 99-550, Laws of Florida, as amended;
Amending an act that amends the *Florida Statutes* but that has not yet been incorporated into the *Florida Statutes.*	Section 627.04, Florida Statutes, as amended by section 8 of chapter 2010-240, Laws of Florida, is amended to read:	amending s. 627.04, F.S.;
Amending an act that creates a section of the *Florida Statutes* which has not been incorporated into the *Florida Statutes.*	Section 627.33, Florida Statutes, as created by section 87 of chapter 2010-90, Laws of Florida, is amended to read:	amending s. 627.33, F.S.;
Amending a provision of an act on the Governor's desk for approval.	Subsection (12) of section 18 of Committee Substitute for Senate Bill 84, enacted in the 2009 Regular Session, is amended to read:	amending s. 18(12), CS for SB 84, enacted in the 2009 Regular Session;
Amending a provision in an act on the Governor's desk for approval which amends a section of the *Florida Statutes.*	Section 627.11, Florida Statutes, as amended by section 3 of Senate Bill 629, enacted in the 2010 Regular Session, is amended to read:	amending s. 627.11, F.S.;

Repeal by Omission.—When the directory clause, sometimes known as the "amendatory clause," of an act purports to set out an existing act, section, or subdivision, all matter omitted from the act, section, or subdivision which the directory clause purports to set out is expressly REPEALED.[22] Everything that the directory clause purports to amend must always be republished. Even if the Division of Statutory Revision finds sufficient evidence that an omission was inadvertent and publishes the omitted text in the *Florida Statutes*, that publication does not avert the repeal of the omitted text. It takes a subsequent act of the Legislature to reinstate that text, and, for constitutional reasons, the Legislature is able to reinstate

[22] State *ex rel*. McQuaid *et al* v. County Com'rs of Duval Co., 3 So. 193 (Fla. 1887). See generally, *Statutes and Statutory Construction*, Singer, Norman J., 6th ed., "Repeal by amendment" § 23.12.

that text only prospectively. Consider the dire consequences of the following:

> Section 1. Section 782.04, Florida Statutes, is amended to read:
>
> 782.04 Murder.—
>
> (5) The unlawful killing of a human being, when perpetrated without design to effect death, by a person engaged in the perpetration of any misdemeanor of the first degree is murder in the fourth degree and constitutes a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083.
>
> Section 2. This act shall take effect October 1, 2008.

The directory clause indicates that all of section 782.04, *Florida Statutes*, is amended, but the act does not republish subsections (1)-(4). Consequently, until the Legislature reconvenes there is no crime of first-degree murder, no crime of second-degree murder, and no crime of third-degree murder. Moreover, the Legislature will be constitutionally unable to reimpose those criminal sanctions for conduct that occurs on or after the effective date of the act and before the effective date of the corrective legislation.

Because of the doctrine of repeal by omission, changes must be drafted to the most current text of the law. If the drafter fails to include the changes made by an intervening session of the Legislature, those changes are undone. For general bills drafted for a regular session of the Legislature, this is most likely to occur if a special session was held after the preceding regular session and the changes made by that special session have not yet been published in the *Florida Statutes*. It can also occur when a section has been amended by a prior act that has a future effective date. In this case, the amended version of the section is not republished in the standing text of the *Florida Statutes* but is set out in 6-point type in a footnote following the section. The drafter must not disregard the history notes and footnotes to any section of the *Florida Statutes* which is amended.

Coding.—The rules of each house of the Legislature require that changes to existing law be coded. By convention, the coding for newly created local bills is the same as for existing laws.

Under Senate Rule 3.1:

(1) Words inserted in existing law must be <u>underlined</u>.

(2) Words deleted from existing law must be ~~hyphened through~~.
(3) Underlined insertions should precede ~~hyphened through deletions~~.

A change in capitalization is made without coding. For a change in tense or number, the entire word is hyphened-through and reinserted with the proper tense or number. Changes in punctuation are coded in the same manner as changes in wording.

If the changes to an existing section of general law are so extensive that coding would hinder understanding of the changes, the drafter should use the following underlined instruction in lieu of coding:

> Section 1. Section 83.51, Florida Statutes, is amended to read:
> (Substantial rewording of section. See
> s. 83.51, F.S., for present text.)
> 83.51 Landlord's obligation to maintain premises.—

This instruction should follow the directory clause and precede the new language. Both the instruction and the substantially reworded text are underlined.

The substantial rewording clause should be used rarely. It is the exception and not the rule since the changes made by the bill are no longer readily apparent. The reader must compare the bill and the current law side by side in order to find the changes. A side-by-side comparison is especially important when drafting the title so that the drafter does not omit from the title changes in the law for which the State Constitution requires notice. A substantial rewording clause should never be used to change the nature or the subject of an existing section of law. For example, a definition section may not be converted into an intent section or a penalty section may not be converted into an exemption section. Doing so destroys the continuous revision system of the *Florida Statutes* and makes legal research confusing. Rather than making such changes to an existing section, the current section should be repealed so that its section number will be retired and a new section of law should be created which can be assigned a section number that has never been used.

The function of coding is to clearly indicate changes to existing law. Coding is not used in the title or preamble of a bill or in a directory clause. Note, however, that coding is required by Senate Rule and not by the State

Constitution. If a bill containing uncoded changes is enacted, those changes are in fact made to the law.

SECTION CREATING NEW LAW

A section creating new law need not assign a *Florida Statutes* section number to that law. In fact, the drafter should not assign such numbers unnecessarily, but allow the Division of Statutory Revision, which better understands the organization of the statutes and is responsible for that organization, to decide whether to include the law in the *Florida Statutes* and, if so, determine its placement. There are also practical reasons for this recommendation. A section that does not assign a *Florida Statutes* section number to new law is easier to draft. The drafter does not need to spend time—time better used in writing—finding the best placement in the *Florida Statutes* for the new law.

Drafting a Section Creating New Law.—A section creating new law which is not assigned a *Florida Statutes* section number does not contain a clause comparable to a directory clause. For example:

> Section 1. (1) A person may not kill any member of the species *Trichechus trichechus* (West Indian Manatee).
> (2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.
> Section 2. This act shall take effect October 1, 2010.

When drafting a section without assigning a *Florida Statutes* section number, the drafter should use the same hierarchical arrangement and nomenclature used in the *Florida Statutes.* Also, the drafter should use the same conventions for punctuation and capitalization and for expressing numbers, except that, in references to provisions of the *Florida Statutes*, the words "*Florida Statutes*" is spelled out after the reference—as is done in subsection (2) of the example.

The drafter may include a section heading known as a "catch line." If a heading for any subsection of a section is provided, the drafter must provide headings to all subsections in that section, and likewise, if the drafter provides a heading to any paragraph of a subsection, headings for all paragraphs in that subsection must be provided. A section heading is not

given to the effective date section because that section does not appear in the *Florida Statutes:*

Section 1. Manatees; prohibited acts; penalties.—

(1) KILLING MANATEES.—A person may not kill any member of the species *Trichechus trichechus* (West Indian Manatee).

(2) PENALTY.—A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Section 2. This act shall take effect October 1, 2010.

If the new law is appropriate for inclusion in the *Florida Statutes,* if its proper statutory placement is known with certainty, and if assigning a *Florida Statutes* section number will make the text clearer and more concise by eliminating the need to repeat definitions or references, the drafter may assign a *Florida Statutes* section number. The drafter should remember the following points:

(1) Never assign a number to a section that is not a general law of a continuing and permanent nature and of statewide application. This includes any section creating a temporary study commission or directing a report to the Legislature by a specified date; any section of a local or special law; any section of a claim bill; a road, bridge, or building designation; an appropriation; a repealer; a severability clause; a saving clause; or an effective date section. Also, the drafter should never amend an existing section of the *Florida Statutes* to add any of these types of provisions.

(2) Do not rely on the assignment of a section number to give meaning. If the drafter feels that the assignment is critical to the meaning of the text, the text is unclear, and the text should be rewritten to state clearly what is intended.

(3) Never assign a number that is in current use or has been previously used (transferred or repealed). Check the current edition of the *Florida Statutes* to see whether the number is currently used and check the "Table of Repealed and Transferred Sections" in the index volume of the current *Florida Statutes* or in Search & Browse on the Legislative Intranet to determine whether the number has ever been used. Adding a zero to the end of a number does not change the number. If s. 25.39 is currently used or has ever been used, the drafter may not assign the number 25.390.

(4) The Division of Statutory Revision may disregard the number that is assigned; may omit the section from the *Florida Statutes* if the section is inappropriate for inclusion; or may assign another number to the section if the number assigned by the drafter is

inappropriate or if another law passed in the same session uses that same number. The drafter should not be alarmed if the Division of Statutory Revision omits the section. It is still law. Moreover, the reassignment of section numbers does not change the substance of the law.

Creating Clauses.—If the drafter assigns a *Florida Statutes* section number to a section creating new law, that assignment is prescribed in a clause similar to a directory clause. The following table contains sample creating clauses and related title references for the creation of a section or chapter of the *Florida Statutes*:

Provision Being Created	Creating Clause	Title Reference
Creating a section of the *Florida Statutes.*	Section 370.125, Florida Statutes, is created to read:	creating s. 370.125, F.S.;
Creating a chapter of the *Florida Statutes.*	Chapter 371, Florida Statutes, consisting of sections 371.105, 371.115, 371.125, and 371.135, is created to read:	creating ch. 371, F.S.;

Coding.—A section creating general law is underlined, except for the word "Section" and its following number when appearing as a section number of the bill. The effective date section of a bill is not underlined.

SAVING CLAUSE SECTION

There are two distinct uses for a saving clause. The first use is to continue in operation some function of a law which would otherwise be abrogated by the passage of an act. In civil actions, if the jurisdiction of a court depends upon a statute being repealed or modified, a saving clause is necessary to prevent loss of jurisdiction over pending cases and the extinction of valid claims that have not yet been litigated. For example:

> Section 19. <u>The repeal by this act of chapter 2005-323, Laws of Florida, does not affect the prosecution of any cause of action that accrued before the effective date of that repeal.</u>

A similar need does not occur when repealing or amending criminal statutes. Section 9, Article X of the State Constitution preserves the jurisdiction of the state to prosecute and punish crimes committed before the repeal or modification of a criminal statute.

The second use for a saving clause is to preserve in office a public official for a specified time if the nature of his or her office has been altered by law or by constitutional amendment, or to preserve a vested right, such as that of a person to continue to practice his or her profession once a licensing law is enacted. Used for these purposes, the saving clause is often referred to as a "grandfather clause."

The following examples demonstrate the two common uses and forms of a grandfather clause:

> Section 4. State Commissioner of Education.—The state Superintendent of Public Instruction in office on the effective date of this revision of the State Constitution shall become the Commissioner of Education.

> Section 3. A person who is engaged in the practice of professional therapeutic cosmetology on December 31, 2009, may continue that practice without obtaining a license under this act until January 1, 2011, by which date that person must comply with the licensure requirement of this act.

SEVERABILITY SECTION

Courts do not need a severability section to sever unconstitutional provisions or applications and allow the other provisions or applications to stand. The presence of a severability section will not keep a court from declaring an entire act unconstitutional if the court finds that it cannot sever the provisions. The legal insignificance of severability clauses is discussed on page 126. The following is a standard severability clause:

> Section 50. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

VALIDATION SECTION

A validation section is a curative provision that corrects a prior defective statute or validates administrative actions that did not comply with legal requirements:

> Section 7. All proceedings or acts performed by or on behalf of the Department of Revenue, or in which the department was a party, between January 1, 2009, and the effective date of this act, are ratified and validated in all respects if such proceedings or acts would have been valid had this act been in effect at the time such proceedings or acts were performed.

A curative act is generally used to cure procedural defects, such as the levy of a tax by resolution rather than by ordinance as required by statute.[23] It may even be used to cure a tax levy by an entity lacking authority to levy taxes.[24] A curative act cannot, however, cure an original lack of legislative power or retroactively authorize that which was originally beyond the Legislature's jurisdiction.[25] Thus, it cannot validate defective tax proceedings that the Legislature could not have authorized in the first place because they were unconstitutional, nor can it remedy a violation of constitutional due process or of the equal-protection clause.[26]

REPEALER SECTION

The drafter should never rely on an implied repeal or a general repealer (both are discussed beginning on page 125) or on a repeal by omission (discussed on pages 54-55) to repeal existing law. Existing law should be repealed only expressly.

Express Repealer Section.—Each subdivision of the *Florida Statutes*, and each subdivision of the *Laws of Florida*, which is being repealed in a bill must be specifically identified in the title and in a repealer section in the body of the bill. It is unnecessary to publish the text of the law being repealed in the repealer section of the bill. The repealer section is underlined.

If the law being repealed was amended at a previous legislative session, a reference using the words "as amended" is acceptable in the title. The repealer section in the body of the bill, however, should identify each amendatory law individually. The general subject matter of each provision being repealed must be expressed in the title in order to satisfy the notice requirement. The drafter should be aware of the following regarding repeals:

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[23] Hendricks v. Town of Green Cove Springs, 137 So. 229 (Fla. 1931).
[24] City of Jacksonville v. Basnett *et al*, 20 Fla. 525 (1884).
[25] *Statutes and Statutory Construction*, Singer, Norman J., 6th ed., "Curative Legislation" § 41.11.
[26] Utley v. City of St. Petersburg, 144 So. 57 (Fla. 1932) and New Smyrna Inlet District v. Esch, 137 So. 1 (Fla. 1931), *reh. denied*, 138 So. 49 (Fla. 1931).

(1) The fact that an act does not have an express repealing clause does not prevent it from repealing a prior act by implication. See page 125.
(2) A special or local law is not repealed by a later general law unless the repeal is clearly intended by the Legislature.[27] See pages 107-108.
(3) If law *B* is passed repealing law *A*, and law *C* is subsequently passed repealing law *B*, the repeal of law *B* does not revive law *A* unless law *C* expressly provides for such revival.[28] See page 116.
(4) When a right or remedy has been created wholly by a statute and that statute is repealed, the right or remedy created by the statute falls with it. The Legislature, however, may not abolish a right of access to the courts for redress for a particular injury if that right:
    (a) Was provided by statutory law predating the adoption of the Declaration of Rights of the State Constitution; or
    (b) Has become a part of the common law of the state under s. 2.01, *Florida Statutes*,

    unless the Legislature can show an overpowering public necessity for abolishing the right and no alternative method of meeting that public necessity can be shown.[29]
(5) The repeal of a statute in derogation of the common law reinstates the common law.[30] See page 117 for the rule of statutory construction for laws in derogation of the common law.

A repeal should always state the specific provisions to be repealed. It should not provide: "This *act* is repealed effective . . . ." If one or more additional sections are amended into the bill, such a repealer would constitute a repeal of all provisions of the amended bill, resulting in the unintended repeal of the added provisions.

The following table contains sample repealer clauses and related title references for repeals of various provisions in the *Florida Statutes* or *Laws of Florida:*

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[27] 48A *FLA JUR* 2d, "Statutes" § 225.
[28] Section 2.04, *Florida Statutes*.
[29] Kluger v. White, 281 So.2d 1 (Fla. 1973).
[30] State *ex rel*. Fussell v. McLendon, 109 So.2d 783 (Fla. 3rd DCA 1959).

Type of Repeal	Repealer Clause	Title Reference
Repealing a section of the *Florida Statutes*.	Section 99.012, Florida Statutes, is repealed.	repealing s. 99.012, F.S., relating to . . .
Repealing a subsection or paragraph of the *Florida Statutes*.	Subsection (7) of section 1.01, Florida Statutes, is repealed.	repealing s. 1.01(7), F.S., relating to . . .
Repealing a chapter of the *Florida Statutes*.	Chapter 522, Florida Statutes, consisting of sections 522.01, 522.02, 522.04, 522.05, and 522.07, is repealed.	repealing ch. 522, F.S., relating to . . .
Repealing a section of the *Laws of Florida* which was amended by subsequent acts.	Section 128 of chapter 79-40, Laws of Florida, as amended by section 1 of chapter 81-41 and section 24 of chapter 2004-312, Laws of Florida, is repealed.	repealing s. 128 of chapter 79-40, Laws of Florida, as amended, relating to . . .

Drafting bills to abrogate future repeals and continue provisions that are subject to legislative review and repeal is explained on pages 108-109.

Sunset Repeals.—Any law that provides an exemption from Section 24, Article I of the State Constitution requiring that records and meetings of state agencies and other public bodies be open to the public must be subject to repeal and a one-time review by the Legislature 5 years following enactment pursuant to the Open Government Sunset Review Act, s. 119.15, *Florida Statutes.* Provisions that are subject to review and repeal in accordance with the Open Government Sunset Review Act are drafted as an express repeal, except that the repeal date is a future date and the repeal contains a reference to the Open Government Sunset Review Act.

> (4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the effective date of an act saving such a law from repeal is typically October 1, the date of repeal of an act subject to this type of review is October 2, which ensures that the act abrogating the repeal takes effect before the repeal occurs. If the repeal were to occur first, the act abrogating that repeal would be ineffective.

Section 24(c), Article I of the State Constitution requires that a law providing an exemption from the public records and meetings requirement "state with specificity the public necessity justifying the exemption." A statement of public necessity is included in each such law; however, the statement should not be assigned a *Florida Statute* number as the statement

is not codified. See pages 82-83 for a discussion of the constitutional requirements.

Florida Government Accountability Act.—Beginning in 2008, state agencies, advisory committees of community colleges and state universities, the Executive Office of the Governor, and the Florida Public Service Commission were made subject to legislative review according to a 10-year, staggered review cycle.[31] However, unlike the former Sundown Act, or the Regulatory Sunset Act that was abolished by the Legislature in 1991, there is no express future repeal of statutory provisions which must be abrogated in order to ensure the continuation of a particular agency that is subject to review.

REVIVAL SECTION

A revival section restores legal existence and effect to a statute that has been repealed expressly or by implication. A repealed statute may be revived only by an express reenactment. The reenactment should take the same form as a section creating new law or a section creating a new section of the *Florida Statutes*. The number of a repealed *Florida Statutes* section is retired and may not be used again in the express reenactment, even if the exact wording of the original section is reenacted.

SUSPENSION SECTION

Just as the Legislature may repeal prior laws, it may suspend the operation of an existing statute. Suspension may be for a specified period, until a specified date, or until the occurrence of a specified condition or event. Such a section is almost never used in Florida. If the operation of a previously enacted statute is suspended, the drafter must be sure that the occurrence of the condition or event terminating the suspension can be determined with certainty. In addition, the drafter must include language that expressly revives the prior law at the end of the period of suspension.

EFFECTIVE DATE SECTION

When an Act Takes Effect.—The effective date of an act, which determines when the provisions of the act become operative, should not be confused with the date that the act becomes a law. The two dates may

[31] *See* ss. 11.901-11.921, *Florida Statutes*.

coincide, but the concept of taking effect is not synonymous with that of becoming a law.

Section 8, Article III of the State Constitution requires that every bill enacted by the Legislature be presented to the Governor, who may sign it into law; veto it; or do nothing, in which case it becomes a law 7 days after presentation to the Governor or, if the Legislature adjourns *sine die* before the act is presented to the Governor or adjourns *sine die* or takes a recess of more than 30 consecutive days during that 7-day period, it becomes a law 15 days after presentation to the Governor.[32] If the Legislature overrides the Governor's veto of an act, the act becomes a law when the veto is overridden by a two-thirds vote in each house. Thus, an act becomes a law when the Governor approves it; when, after it has been presented to the Governor, he or she has failed to veto it within the period specified in the State Constitution; or when the Legislature overrides the Governor's veto of the act. The act does not necessarily control the date that it becomes a law.

Once an act becomes a law, its effective date is determined by the State Constitution or by the terms of the act itself. Section 9, Article III of the State Constitution provides that each act that has become a law takes effect on the 60th day after adjournment *sine die* of the session of the Legislature in which it is enacted or as otherwise provided in the act. If the Legislature overrides the Governor's veto of an act, it takes effect on the 60th day after adjournment *sine die* of the session in which the veto is overridden, on a later date fixed in the act, or on a date fixed by resolution passed by both houses of the Legislature.

Section 9, Article III of the State Constitution applies only to laws. The effective date of amendments to the State Constitution is provided elsewhere and differs. The effective date of amendments to the State Constitution is discussed on page 133.

A bill need not have an effective date section. Until recently, reviser's bills prepared by the Division of Statutory Revision did not have one. If the reviser's bills became law, they took effect under the State Constitution 60 days after adjournment *sine die* of the session in which enacted. The purpose of the effective date section of a bill is to select a date other than this default date under the State Constitution. An effective date section that provides for

[32] Florida Society of Ophthalmology v. Florida Optometric Ass'n, 489 So.2d 1118 (Fla. 1986).

an act to take effect "upon becoming a law" provides for the act to take effect at the earliest possible time. A bill that contains an effective date must give notice of that fact in its title.

The effective date is usually the last section of the bill, is a section by itself, and is not underlined. An effective date is included in the directory clause when the same section of law is amended differently by separate sections of the bill, each to take effect at a different time. An effective date is also included in the directory clause if that section of the bill is scheduled to take effect on a date other than the overall effective date of the bill; however, the effective date of such a section may not occur earlier than the overall effective date of the bill.

The effective date of a distant future repeal is generally specified in the language of the repeal. In all circumstances, the effective date of a bill should be the bill's last section. If possible, the drafter should avoid including statements of applicability in the effective date section. Applicability statements, such as "This act applies to all proceedings commenced on or after July 1, 2010," should be placed in a separate section of the bill.

An "effective date" and the "date" that an act becomes a law are not dates but precise times. If an act provides that it takes effect upon becoming a law and the Governor signs it into law at 1:41 p.m. on May 5, 2009, it becomes a law and takes effect at precisely 1:41 p.m. on that date. If it applies only prospectively, it applies to those events that occur on or after 1:41 p.m. on May 5, 2009. If an act provides that it takes effect July 1, 2009, it takes effect at midnight June 30, 2009, and applies to those events that occur on or after that time.

Selecting an Effective Date.—An act cannot take effect before it becomes a law. Because persons who are affected by an act and persons who must administer it need time to learn of its provisions, October 1 is the most practical effective date. This date allows sufficient time for the act to become a law and be published in the *Laws of Florida* and for interested persons to learn of its provisions. October 1 is particularly appropriate for acts that impose a severe penalty or that require agencies to adopt rules. Too often, too little thought is given to selecting an effective date, which is typically governed by a false sense of legislative urgency rather than by

reason. In selecting an effective date, the drafter should consider other dates fixed by existing law. For example:

(1) January 1, for laws that affect the assessment of property for purposes of *ad valorem* taxation and for changes to election laws, which must receive clearance under the Federal Voting Rights Act.
(2) The licensing year, for laws that change the fees or requirements to engage in regulated businesses, occupations, or professions.
(3) The dates of the school year, for laws affecting schools.
(4) The reporting dates for financial disclosure or other reporting requirements, for laws that modify those requirements.
(5) Candidates' qualifying dates, for laws that require officials to be elected, and the dates of primaries and the general election, for laws that require issues to be approved by the electors.
(6) The state fiscal year, for state fiscal matters, and the fiscal year of a local governments, for local fiscal matters. The fiscal year for the state begins July 1 of each year and ends June 30 of the following year.[33] The fiscal year for most local governments begins October 1 of each year and ends September 30 of the following year.[34]

If the effective date selected could occur before the act becomes a law (the expiration of the time allowed under the State Constitution for the Governor to consider whether to approve or veto the act), the effective date could become a nullity, leaving the act with the default effective date provided in the State Constitution (60 days after adjournment *sine die* of the session in which it is enacted).[35] For this reason, a bill that is to take effect June 1 and is drafted for a session that is scheduled to adjourn *sine die* May 5 should provide:

> Section 5. This act shall take effect June 1, 2010, or upon becoming a law, whichever occurs later.

This ensures that if the act does not, for example, become a law until June 2, it will take effect on June 2 and there is no uncertainty as to its effective date. If it becomes a law before June 1, it will take effect June 1 (midnight, May 31).

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[33] Section 215.01, *Florida Statutes.*
[34] *See generally* s. 129.04, *Florida Statutes*, for counties; s. 166.241, *Florida Statutes*, for municipalities; and s. 218.33, *Florida Statutes*, for local governments.
[35] *See In re* Advisory Opinion to the Governor, 374 So.2d 959 (Fla. 1979).

If the provisions of an act must take effect at the earliest possible time, use the following standard clause. Including the word "immediately" in this standard clause expedites nothing and should not be used:

> Section 30. This act shall take effect upon becoming a law.

Multiple Effective Dates.—An effective date section that makes some provisions of an act operative at one time and others at another time is often confusing, always creates opportunity for errors in the amendatory process, and should be avoided. Multiple effective dates are sometimes necessary, but bills that contain them should be drafted and amended with extraordinary care so that each provision in the final act is scheduled to take effect at the proper time. The drafter can often avoid multiple effective dates by drafting specific dates into substantive provisions of the bill. For example:

> Section 4. <u>A person who, on or after January 1, 2010, fails to comply with the reporting requirements of section 3 of this act commits a misdemeanor of the second degree, punishable by a fine only as provided in s. 775.083, Florida Statutes.</u>
> Section 5. This act shall take effect October 1, 2009.

It does not matter in this example that section 4 takes effect October 1, 2009, when the rest of the act takes effect. By its own terms, section 4 will apply only to events occurring on or after January 1, 2010.

Retroactive Effective Dates.—An act may not take effect before it becomes a law, and once it becomes a law it is presumed to apply only prospectively. It is possible, however, for a bill to provide that its provisions apply retroactively, as long as:

(1) There is no constitutional proscription against making the provisions retroactive;
(2) The act overcomes the presumption that it applies only prospectively by explicitly providing for retroactive application;[36] and

[36] Dewberry v. Auto-Owners Ins. Co., 363 So.2d 1077 (Fla. 1978) and Bates v. State, 750 So.2d 6 (Fla. 1999).

(3) Its title conveys notice of this retroactive application.[37]

The federal and state constitutions prohibit *ex post facto* laws.[38] An *ex post facto* law is a law that makes conduct a crime although it was not a crime when it occurred; that aggravates a crime or makes it greater than it was when committed; that inflicts a greater punishment on criminal conduct than was provided by law when the conduct occurred; or that alters the legal rules of evidence for an offense previously committed to the detriment of the offender. Moreover, Section 9, Article X of the State Constitution prohibits the retroactive repeal or amendment of any criminal statute. Although there is not an express constitutional prohibition against the retroactive application of a noncriminal statute, if a law impairs either the obligations of a contract or a vested right, the law is invalid.

It must be noted that the presumption in favor of prospective application does not in fact apply to "remedial" legislation. A remedial statute or a statute that relates to remedies or modes of procedure, that does not create new or take away vested rights, and that operates only in furtherance of the remedy or the confirmation of rights already existing will not be considered by the courts to be a retrospective law, and the general rule against retrospective operation does not apply.[39] In addition, the Legislature may retroactively enact curative laws to ratify, validate, and confirm any act that the Legislature could have authorized in the first place, assuming that the act is not constitutionally prohibited at the time of ratification.[40]

Conditional Effective Dates.—A bill may be drafted to become effective upon the occurrence of specified conditions.[41] The conditions should be such that it can be determined with certainty whether the conditions have occurred and when they occurred. A bill should never provide: "This act shall take effect when economic conditions permit." How is anyone to know whether economic conditions are good enough or bad enough for the act to take effect? A conditional effective date is often

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[37] Chiapetta v. Jordan, 16 So.2d 641 (Fla. 1944).
[38] Section 10, Article I of the United States Constitution and Section 10, Article I of the State Constitution.
[39] City of Lakeland v. Catinella, 129 So.2d 133 (Fla. 1961) and City of Orlando v. Desjardins, 493 So.2d 1027 (Fla. 1986).
[40] Davis v. City of Clearwater, 139 So. 825 (Fla. 1932) and Dover Drainage Dist. v. Pancoast, 135 So. 518 (Fla. 1931).
[41] Gillete *et al.* v. City of Tampa, 57 So.2d 27 (Fla. 1952) and *In re* Advisory Opinion to the Governor, 239 So.2d 1 (Fla. 1970).

properly used for bills conforming the law to or implementing proposed constitutional amendments:

> Section 6. This act shall take effect on the effective date of the amendment to the State Constitution proposed in Senate Joint Resolution 24, which was passed in the 2009 regular session of the Legislature and which shall be submitted to the electors of the state for approval or rejection at the general election to be held in November, 2010.

See page 133 for a discussion of the effective date for a constitutional amendment. It is rarely the same as the date that the electors approve the amendment.

A bill to be entitled

An act relating to livestock; amending ss. 588.13 and 588.15, F.S.; prohibiting persons from allowing livestock to stray; providing for liability for damages sustained as a result of livestock straying within the boundaries of a municipality; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 588.13, Florida Statutes, is amended to read:

588.13 Definitions.—As used in ~~construing~~ ss. 588.12-588.25, the term ~~following words, phrases, or terms shall be held to mean~~:

(1) "Livestock" means an animal ~~shall include all animals~~ of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.

(2) "Owner" means a ~~shall include any~~ person~~, association, firm, or corporation, natural or artificial,~~ owning or having custody of or in charge of livestock.

(3) "Stray" means to wander ~~Livestock "running at large" or "straying" shall mean any livestock found or being~~ on any public land~~,~~ or on other land ~~belonging to a person other than the owner of the livestock,~~ without the landowner's permission~~, and posing a threat to public safety~~.

(4) "Public roads" means ~~as used herein shall mean~~ those roads within the state which are~~, or may be,~~

maintained by the state or~~,~~ a political subdivision of the state, ~~or a municipality,~~ including the full width of the right-of-way~~, except those maintained, and expressly exempted from provisions of this chapter, by ordinance of the county or municipality having jurisdiction~~.

Section 2. Section 588.15, Florida Statutes, is amended to read:

588.15 Liability of owner.~~—~~An ~~Every~~ owner ~~of livestock~~ who intentionally, willfully, carelessly, or negligently allows his or her ~~suffers or permits such~~ livestock to ~~run at large upon or~~ stray upon the public roads or within the boundaries of a municipality is ~~of this state shall be~~ liable in damages for all injury and property damage sustained by a ~~any~~ person by reason thereof.

Section 3. This act shall take effect July 1, 2009.

A bill to be entitled

An act relating to special deputy sheriffs; amending s. 30.09, F.S.; providing that certain special deputy sheriffs need not give bond; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (4) of section 30.09, Florida Statutes, is amended to read:

30.09 Qualification of deputies; special deputies.—

(4) EXCEPTIONS.—This section does not apply to the appointment of special deputy sheriffs appointed by the sheriff:

(b) To perform ~~undercover~~ investigative work.

The appointment of a special deputy sheriff in any such circumstance, except with respect to paragraph (g), may be made with full powers of arrest when the sheriff considers such appointment reasonable and necessary in the execution of the duties of his or her office. Except under circumstances described in paragraph (a), the appointees must possess at least the minimum requirements established for law enforcement officers by the Criminal Justice Standards and Training Commission. The appointment of any such special deputy sheriff must be recorded in a register maintained for such purpose in the sheriff's office, showing the terms and circumstances of such appointment.

Section 2. This act shall take effect October 1, 2010.

SAMPLE BILL: Without *Florida Statute* Number

A bill to be entitled

An act relating to prosecutions for homicide; abrogating a common-law rule of evidence relating to the causal connection between the injury and death; providing that it is no longer necessary that the death must have resulted within a year and a day from the time of injury; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The common-law rule of evidence applicable to homicide prosecutions known as the "year-and-a-day rule," which provides a conclusive presumption that an injury is not the cause of death or that whether it is the cause cannot be discerned if the interval between the infliction of the injury and the victim's death exceeds a year and a day, is abrogated and does not apply in this state.

Section 2. This act shall take effect October 1, 2008.

Chapter 4
Drafting Substantive Provisions

CONSTITUTIONAL AND STATUTORY FRAMEWORK

This chapter provides a rudimentary constitutional and statutory framework for drafting bills dealing with particular subjects.

Unlike the United States Constitution, which grants power, the State Constitution limits power.[1] Congress may enact law on a subject only if the United States Constitution grants it the power to enact law on that subject. The Legislature, however, has all powers that are not prohibited by the United States Constitution or the State Constitution and may enact law on any subject that is not thus prohibited. Even the Legislature itself cannot, by law, bind a future Legislature.[2]

The United States Constitution is written in broad terms because a grant of power must be broadly stated in order to be effective. The State Constitution, however, is written in narrow terms because limitations of power if broadly stated would leave the government powerless. Therefore, most limitations imposed on the Legislature by the State Constitution are very specific. This chapter sets out many of these specific limitations with respect to common subjects.

In addition to the very specific limitations expressed or implied in the State Constitution, there is one important and often overlooked general limitation implied in the State Constitution which touches every law that the Legislature enacts. This general limitation is that every law must be a valid exercise of the state's police power. The "police power" is the power vested in a sovereign to protect the public health, safety, or welfare. The police power does not merely encompass criminal statutes and the enforcement of criminal statutes, but is the basis for all laws. Laws imposing building-construction standards, laws regulating commercial transactions, laws governing liability for negligent acts, laws with respect to inheritances, remedial social legislation, and laws regulating business, occupations, and professions are all examples of the Legislature exercising its police power.

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[1] Peters v. Meeks, 163 So.2d 753 (Fla. 1964).
[2] Neu v. Miami Herald Pub. Co., 462 So.2d 821 (Fla. 1985).

The police power defines what is a legitimate state interest, and the Legislature is powerless to enact laws that do not serve a legitimate state interest. A law that is not enacted for the purpose of promoting the public health, safety, or welfare is unconstitutional.

Appendix C contains a list of state constitutional provisions relating to specific topics.

Finally, much legislation will be affected by existing statutes such as those providing administrative procedures, those setting out the organization and structure of government, those prescribing criminal penalties and criminal procedure, those mandating legislative review of laws, or those providing for the assessment and collection of taxes. This chapter also gives a brief synopsis of many statutory provisions with which the drafter should become familiar.

GOVERNMENTAL ORGANIZATION

Section 3, Article II of the State Constitution separates state government into three branches—the legislative, the executive, and the judicial. The "separation-of-powers doctrine" encompasses two fundamental prohibitions: First, a branch of government may not encroach upon the power of another, and secondly, a branch of government may not delegate its constitutionally assigned power to another branch.[3] Section 3, Article II of the State Constitution is the basis for invalidating laws delegating legislative or judicial power to executive agencies; laws delegating legislative or executive power to the judiciary; and laws by which the Legislature encroaches upon executive or judicial powers. This section also provides that: "No person belonging to one branch shall exercise any of the powers appertaining to either of the other branches . . . ." This section and Section 5, Article II of the State Constitution, which prohibits an officer of the state from holding more than one office, prohibit laws providing for legislators to serve as members of a governmental board or commission upon which executive or administrative powers are conferred.[4]

Organization of Executive Departments.—Section 6, Article IV of the State Constitution requires that all functions of the executive branch of state government be allotted among not more than 25 departments, exclusive

[3] Bush v. Schiavo, 885 So.2d 321 (2004), reh. denied, cert. denied, 543 U.S. 1121, 125 S.Ct. 1086 (2005).
[4] *See* State *ex rel.* Olustee Monument Commission v. Amos, 91 So. 125 (Fla. 1922).

of those specifically provided for or authorized in the State Constitution. Although it is not clear what agencies are excluded for the purpose of the limitation,[5] the Legislature in 1988, by proposing a constitutional amendment to authorize the creation of a Department of Veterans' Affairs and a Department of Elderly Affairs, took the position that the state had reached this limitation. However, in 1996, the Florida Supreme Court held that the departmental limitation does not prevent the Legislature from creating a new agency within an existing department and providing for the agency to report directly to the Governor, so long as the newly created agency is functionally related to the department in which it is placed.[6]

Section 6, Article IV of the State Constitution further requires that the administration of each department, unless otherwise provided in the State Constitution, be placed by law under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor, except that:

(1) The Legislature, by law, may require Senate confirmation or the approval by three members of the Cabinet for appointment to or removal from any designated statutory office; and
(2) A board that is authorized to grant and revoke licenses to engage in a regulated occupation must be assigned to an appropriate department and board members must be appointed for fixed terms, subject to removal only for cause.

Under this provision, the Legislature may not designate a board composed of the Governor and several, but not all, cabinet officers as the head of a department.

Chapter 20, *Florida Statutes*, prescribes the functions and internal organization of most executive departments. With a few exceptions, the functions of these departments are assigned by law to "divisions" within the departments; the functions of divisions are assigned by departments to

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[5] The Florida Supreme Court has opined that the Florida Public Service Commission is not an executive department for purposes of this limitation. *In re* Advisory Opinion to the Governor, 223 So.2d 35 (Fla. 1969). It would follow that the State Board of Administration, the Parole Commission, the Fish and Wildlife Conservation Commission, the Commission on Ethics, the State Board of Education, the Department of Law Enforcement, the Department of Veterans' Affairs, and the Department of Elderly Affairs are excluded for purposes of determining compliance with this limitation.
[6] Agency for Health Care Admin. v. Associated Industries of Florida, Inc., 678 So.2d 1239 (Fla. 1996).

"bureaus" within divisions; and the functions of bureaus are further assigned by departments to "sections" within bureaus. In most cases, the statutes do not specify the internal organization of a department below the division level.

An officer who is appointed by the Governor to administer a department is called a "secretary," and his or her appointment is generally made subject to confirmation by the Senate. A person who is appointed by the Governor and Cabinet is called an "executive director." An executive director is not the head of a department, but serves under the department head, which is usually the Governor and Cabinet. The appointment of many executive directors is made subject to confirmation by the Senate. The head of a division is a "director"; the head of a bureau is a "chief"; and the head of a section is an "administrator."

Section 20.03, *Florida Statutes*, defines terms relating to governmental organization in order to provide uniform nomenclature for use throughout the executive branch. A drafter should be familiar with this section before drafting any bill relating to the organization of an executive department.

Transfers of Functions among Agencies.—Section 20.06, *Florida Statutes*, defines two types of transfers that provide an efficient and convenient way to move agencies, programs, and functions from one executive department to another. These transfers should be used in conjunction with, and not as a substitute for, changes to existing law realigning powers, duties, and functions among agencies.

The drafter should not direct the Division of Statutory Revision to make the necessary changes to the *Florida Statutes* when transferring or renaming state agencies or when transferring the powers and duties of agencies. The division cannot make those changes editorially,[7] and years may pass before the *Florida Statutes* are changed to conform to those changes. In addition, because substantive decisions are required in order to conform the law to changes in governmental organization, the transfer of that responsibility to the division would likely constitute an unlawful delegation of legislative authority.

[7] McCulley Ford, Inc. v. Calvin, 308 So.2d 189 (Fla. 1st DCA 1974).

ADMINISTRATIVE PROCEDURES

Administrative Procedure Act.—The Administrative Procedure Act, chapter 120, *Florida Statutes,* prescribes uniform procedures that state executive agencies, if not expressly exempt from the act, and local agencies, if expressly subject to the act, must follow in adopting rules and in making decisions that affect a person's substantial interests. The primary purpose of the Administrative Procedure Act is to ensure that persons substantially affected by a proposed administrative rule or action receive notice and an opportunity to be heard and to ensure that the rule or action is not an invalid exercise of legislatively delegated authority. As an additional check on administrative action, the Administrative Procedure Act provides for judicial review of final agency action. The drafter should become acquainted with chapter 120, *Florida Statutes.*

When drafting a bill that authorizes or requires an agency covered by the Administrative Procedure Act to adopt rules or take actions that affect a person's substantial interests and if the procedures of the Administrative Procedure Act are adequate for such purpose, the drafter need not include administrative procedures in the bill or include a cross-reference to chapter 120, *Florida Statutes.* The purpose of a cross-reference to chapter 120, *Florida Statutes,* is to require that a given action under the bill be governed by the Administrative Procedure Act. In most cases, the action will be governed by the Administrative Procedure Act. If so, the cross-reference is unnecessary. Also, it may constitute a specific cross-reference and be counterproductive. The drafter should follow the following guidelines:

(1) If the intent is to require compliance with the Administrative Procedure Act and the action is covered by the general terms of the Administrative Procedure Act, the drafter should not insert a reference.
(2) If the intent is to require compliance with the Administrative Procedure Act and the action would not be covered by the Administrative Procedure Act without a specific requirement, the drafter should insert a general (NOT specific) reference to the Administrative Procedure Act in the text of the bill. The requirement should not be placed within the Administrative Procedure Act itself.
(3) If the intent is to exempt an action from the Administrative Procedure Act, place the exemption in the Administrative

Procedure Act rather than in the text providing for the action. The Administrative Procedure Act is intended to establish statewide uniformity for administrative procedures. It contains its own exemptions, and new exemptions should not be scattered throughout the statutes but should be incorporated into the Administrative Procedure Act itself.

Rulemaking.—Executive agencies adopt administrative rules to carry out laws assigned to them by the Legislature. A valid administrative rule has the force of law. An executive agency, however, has no inherent rulemaking authority. Its authority to adopt rules must be granted by a law enacted by the Legislature which contains standards that are sufficient to guide the agency.

There are two distinct issues regarding the validity of administrative rules. The first is: Is the rule a valid exercise of properly delegated legislative authority? In other words, is the rule supported by authority granted by the Legislature? The second issue is: Does the authority granted by the Legislature contain adequate standards to enable the agency to adopt the rule without substituting its own judgment for that of the Legislature? In other words, does the act under which the agency adopts the rule unlawfully delegate legislative authority to the agency in violation of the separation-of-powers doctrine in Section 3, Article II of the State Constitution? Both issues are important to the drafter. The first is important in recognizing when it is necessary to grant rulemaking authority to an agency. The second is important in prescribing the extent and limitations of that grant of authority.

A law granting rulemaking power to an agency must define the limitations of that power by including standards under which the agency may exercise its power. The standards must be sufficiently clear so that the agency does not have unbridled discretion. Vaguely drafted guidelines and standards for exercising rulemaking authority will elicit challenges to the act as an unlawful delegation of legislative authority. Such a grant of authority will be held unconstitutional if it allows the agency to determine what the law will be or to exercise primary and independent discretion, rather than merely to determine, within defined limits and subject to review, some fact upon which the law by its own terms operates.[8] For example, a law that

[8] State v. Atlantic Coast Line R. Co., 47 So. 969 (Fla. 1908) and Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla. 1977).

authorizes an agency to set the rate of taxation or the amount of license fees should set a maximum rate or fee and must not leave to the unbridled discretion of the agency the circumstances under which, or the class of persons upon whom, the taxes or fees are to be imposed.

There has been a shift in emphasis by federal courts and the courts in a minority of states from the requirement for legislatively imposed standards for administrative action to a requirement for procedural safeguards in the administrative process. The Florida Supreme Court, however, while recognizing this shift, has reaffirmed the doctrine of nondelegation of legislative power in this state.[9] The drafter should be aware of this shift in adapting federal legislation or legislation from other states for use in this state. Just because the law is valid in New York does not mean it will be valid in Florida.

There are some powers that the State Constitution specifically delegates to the Legislature which the Legislature may not further delegate to an executive agency. Examples are the power to:

(1) Create a tax;[10]
(2) Declare an act to be a crime or prescribe punishment for a crime;[11]
(3) Appropriate funds from the State Treasury;[12]
(4) Create, change, or abolish a county;[13] and
(5) Set or alter the salaries of justices or judges.[14]

These are but a few of the powers that only the Legislature may exercise under the State Constitution. The drafter should become familiar with the other limitations on the Legislature's authority to delegate its powers.

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[9] Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978).
[10] "No tax shall be levied except in pursuance of law." Section 1, Article VII of the State Constitution.
[11] "No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." Section 18, Article I of the State Constitution.
[12] "No money shall be drawn from the treasury except in pursuance of appropriation made by law." Section 1(c), Article VII of the State Constitution.
[13] "Counties may be created, abolished or changed by law." Section 1(a), Article VIII of the State Constitution.
[14] "All justices and judges shall be compensated only by state salaries fixed by general law." Section 14, Article V of the State Constitution.

The Florida Supreme Court invalidated as an unlawful delegation of legislative authority a law that authorized an agency to protect the public against the "unfair or unreasonable economic practices" of barbers because that standard had no set meaning in law or common usage,[15] and also invalidated a law that assigned an agency the duty to accept or reject apprenticeship program applications solely according to "need," without any other standards to guide the agency.[16]

The drafter should not include references to specific administrative rules in a bill. Because of the rule of statutory construction governing specific cross-references, a law that incorporates an agency's rule by specific reference prevents the agency from later amending that rule.

PUBLIC RECORDS AND MEETINGS

The drafter should become familiar with the constitutional and statutory provisions governing laws affecting the meetings and records of governmental agencies. These provisions are found in Section 24, Article I of the State Constitution and in chapters 119 and 286, *Florida Statutes*.

Constitutional Requirements.—Section 24, Article I of the State Constitution grants the public the right to inspect or copy governmental records and to attend meetings of certain governmental collegial bodies, with specified exceptions, and allows the Legislature to enact additional exceptions by general law. The section requires that a general law exempting records or meetings from this right of public access contain only exemptions from the right of public access and provisions governing the enforcement of Section 24, Article I, but the bill may contain diverse exemptions for both records and meetings. The section further requires that the law state with specificity the public necessity justifying the exemption and that the law be no broader than necessary to accomplish this stated justification. Care should be given in writing this justification. Courts will invalidate exemptions that are broader than their stated justification.[17]

Open Government Sunset Review Act.—Section 119.15, *Florida Statutes*, the "Open Government Sunset Review Act," provides for the one-time review of each newly created exemption or expanded exemption from

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[15] Robbins v. Webb's Cut Rate Drug Co., Inc., 16 So.2d 121 (Fla. 1944).
[16] Florida Home Builders Assn. v. Division of Labor, Bureau of Apprenticeship, 367 So.2d 219 (Fla. 1979).
[17] Halifax Hospital Medical Center v. News-Journal Corp., 724 So.2d 567 (Fla. 1999).

the public-records law, s. 119.01, *Florida Statutes*, or the public-meetings law, s. 286.011, *Florida Statutes.* Each such exemption is nullified in the 5th year after enactment of the law creating or expanding the exemption, unless the exemption is reinstated by a subsequent law passed by the Legislature. Bills that create or expand an exemption from these laws should specify the date by which the exemption must be reinstated by the Legislature and should specifically require legislative review of the exemption in accordance with s. 119.15, *Florida Statutes.* See pages 63-64 for a discussion regarding drafting such a provision.

PUBLIC OFFICERS

Public Office.—The State Constitution imposes certain restrictions on the power of the Legislature to enact laws that provide:

(1) The qualifications of public officers;
(2) For the appointment, election, or removal of public officers;
(3) For filling vacancies in public office; and
(4) Terms of office for public officers.

Thus, it is necessary to determine whether a position is a public office. This determination is complicated because what may be a public office for one purpose may not be for another, and the restrictions imposed by the State Constitution on one class of officers may not apply to other classes. The term "public office" embraces the elements of tenure, emolument, and duty. Not all these elements are required for a position to be a public office, but one element is implicit in every public office—authority to exercise part of the sovereign power in making, executing, or administering the law.[18]

Prescribing Qualifications.—If the qualifications for an office are prescribed in the State Constitution, the Legislature may not change them by law and may not remove those qualifications or add additional qualifications. In fact, because the State Constitution provides for the conditions of eligibility and ineligibility for some offices with such specificity, courts assume that when the State Constitution creates an office and does not prescribe any special qualifications as essential, it intends that there be none.[19] If the office is created by law, however, the Legislature may

[18] State *ex rel.* Clyatt v. Hocker, 22 So. 721 (Fla. 1897).
[19] Thomas v. State *ex rel.* Cobb, 58 So.2d 173 (Fla. 1952). *See also* State *ex rel.* Askew v. Thomas, 293 So.2d 40 (Fla. 1974).

prescribe qualifications for the office.[20] Even when the Legislature may prescribe the qualification of an office, constitutional provisions such as the prohibition on dual officeholding and the separation-of-powers doctrine limit what those qualifications may be.

Appointments to Public Offices or Boards.—The State Constitution vests in the Governor the authority to make certain appointments, subject in some cases to confirmation by the Senate or the concurrence of the Cabinet. The Legislature cannot, of course, restrict the Governor's (or any other officer's) constitutional authority to make appointments, unless authorized by the State Constitution to do so.[21] The Governor has authority to make the following appointments, subject to the noted restrictions:

(1) The secretary of a department or a member of a board that is the head of a department, subject only to confirmation by the Senate or approval of three members of the Cabinet. (Section 6, Article IV of the State Constitution.)
(2) To fill vacancies in state or county office. (Section 1(f), Article IV of the State Constitution.)
(3) To fill vacancies in judicial office, from a list of persons nominated by a judicial nominating commission. (Section 11, Article V of the State Constitution.)
(4) To fill an office during the officer's impeachment trial or suspension. (Section 17, Article III and Section 7, Article IV of the State Constitution.)
(5) To the Fish and Wildlife Conservation Commission, subject only to confirmation by the Senate. (Section 9, Article IV of the State Constitution.)

Because of the separation-of-powers doctrine and the provisions prohibiting dual officeholding in the State Constitution, the Legislature may not provide for the appointment of legislators, justices, or judges to offices or boards that exercise executive powers and that are not purely advisory. Because the power to appoint persons to such an office or board is itself generally deemed to be an executive power,[22] it is constitutionally perilous to give this power of appointment to the President of the Senate, the Speaker

[20] Miami Laundry Co. v. Florida Dry Cleaning and Laundry Board, 183 So. 759 (Fla. 1938).
[21] Jones v. Chiles, 638 So.2d 48 (Fla. 1994).
[22] *See* The Federalist No. 47 (Madison).

of the House of Representatives, or any other member of the Legislature or to any justice or judge.

The manner of Senate confirmation is prescribed in s. 114.05, *Florida Statutes*.

Removal of Public Officers.—The State Constitution prescribes the method and grounds for removing certain officers, and the Legislature has no authority to provide any other method or grounds for removing those officers.[23] The State Constitution prescribes the method for removing the following officers on the following grounds:

(1) Impeachment by the House of Representatives and trial by the Senate for the Governor, the Lieutenant Governor, a cabinet member, a justice of the Supreme Court, or the judge of any court for misdemeanor in office. (Section 17, Article III of the State Constitution.)
(2) Expulsion of a member of the Legislature by each respective house. (Section 4(d), Article III of the State Constitution.)
(3) Suspension by the Governor and removal by the Senate for any state officer who is not subject to impeachment, other than a legislator, for any officer of the militia not in the active service of the United States, or for any county officer on the ground of malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony. (Section 7(a) and (b), Article IV of the State Constitution.)
(4) Suspension by the Governor for any elected municipal officer indicted for a crime, unless "these powers are vested elsewhere by law or the municipal charter." (Section 7(c), Article IV of the State Constitution.)
(5) Upon a recommendation by the judicial qualifications commission, removal by the Supreme Court of any justice or judge on grounds of the willful or persistent failure of the justice or judge to perform duties, or for other conduct unbecoming a member of the judiciary and demonstrating a present unfitness to hold office. This procedure is both an alternative to and in

[23] *In re* Investigation of Circuit Judge, 93 So.2d 601 (Fla. 1957).

addition to the power of impeachment. (Section 12(c)(1), Article V of the State Constitution.)

Filling Vacancies.—Section 3, Article X of the State Constitution provides that a "[v]acancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term." Note that, except in the case of a vacancy on a court as provided in Section 10(a), Article V of the State Constitution, a vacancy does not occur upon the expiration of a term. This is so because Section 5(b), Article II of the State Constitution requires that every officer "continue in office until a successor qualifies."

The State Constitution provides for filling vacancies in the following offices by the following procedures, and the Legislature may not provide another procedure for filling vacancies in these offices:[24]

(1) In the Legislature, by election. (Section 15(d), Article III of the State Constitution.)
(2) Office of Governor, by succession of the Lieutenant Governor and by further succession as provided by law. A successor serves for the remainder of the term. (Section 3, Article IV of the State Constitution.)
(3) On the Supreme Court or any other court, by appointment by the Governor from a list of persons nominated by a judicial nominating commission. (Section 11, Article V of the State Constitution.)
(4) Any other state or county office, by appointment by the Governor for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than 28 months; otherwise, the first Tuesday after the first Monday following the next general election, if the vacancy was filled by election for the unexpired portion of the term. (Section 1(f), Article IV and Section 5, Article VI of the State Constitution.)

[24] *In re* Advisory Opinion to the Governor, 313 So.2d 717 (Fla. 1975).

Terms of Office.—Section 13, Article III of the State Constitution prohibits the Legislature from creating any office the term of which exceeds 4 years, except as provided in the State Constitution.[25] A law that provides that an officer is to "serve at the pleasure of the Governor" creates an office the term of which is in excess of 4 years,[26] but will usually be construed by the courts as creating a term of only 4 years.[27] The State Constitution provides the following exceptions to this prohibition against terms in excess of 4 years:

(1) Officers and boards appointed by the Governor to head executive departments serve at the pleasure of the Governor. (Section 6, Article IV of the State Constitution.)
(2) Members of the Fish and Wildlife Conservation Commission serve 5-year terms. (Section 9, Article IV of the State Constitution.)
(3) Supreme Court Justices, judges of district courts of appeal, judges of circuit courts, and judges of county courts serve 6-year terms. (Section 10, Article V of the State Constitution.)
(4) Members of any appointive board dealing with education may serve terms in excess of 4 years. (Section 3, Article IX of the State Constitution.)
(5) Superintendents of schools serve terms of 4 years unless the electors vote to employ the superintendent as provided by general law. (Section 5, Article IX of the State Constitution.)
(6) The Secretary of the Senate serves at the pleasure of the Senate; the Clerk of the House of Representatives serves at the pleasure of the House of Representatives; and the Auditor General serves at the pleasure of the Legislature. (Section 2, Article III of the State Constitution.)

Because Section 5(b), Article II of the State Constitution provides that each state and county officer continues in office until his or her successor qualifies, there is no need to include such a provision in a bill creating a state or county office.

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[25] The same prohibition in the 1885 Constitution was held inapplicable to municipal offices. State *ex rel*. Landis v. Dyer, 148 So. 201 (Fla. 1933). This result might not occur under the present Constitution.
[26] This was true even when the Governor could serve but one 4-year term. State *ex rel*. Davis v. Botts, 134 So. 219 (Fla. 1931).
[27] Attorney General Opinion 77-134.

Except for decreasing the number of justices and judges as provided in Section 9, Article V of the State Constitution, the constitution does not prohibit abolishing an office in midterm.[28]

Election of Officers.—Section 5, Article VI of the State Constitution requires that a general election be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as otherwise provided in the State Constitution, to fill each vacancy in elective office for the unexpired portion of the term. Elections are routinely held in this state only in even-numbered years.

Holding Dual Offices.—Section 5(a), Article II of the State Constitution prohibits a person from holding at the same time two or more specified offices. This provision does not prohibit the Legislature from adding an officer to a board to serve as an *ex officio* member. An officer serving in an *ex officio* capacity is legally a member of the board in all respects and has the right to vote as a member of the board unless the law specifically prohibits the officer from doing so.

COURTS AND JUDGES

Courts.—Section 1, Article V of the State Constitution vests the judicial power of the state in a Supreme Court, district courts of appeal, circuit courts, and county courts. The Legislature may not create any other court by law, but may by general law create a civil traffic hearing officer system and may authorize military courts-martial to be conducted by military judges of the Florida National Guard. The Supreme Court and the district courts of appeal are appellate courts. Their jurisdiction is fixed in the State Constitution and may not be expanded or limited by law, except that:

(1) By general law, the Legislature may provide for the Supreme Court to hear appeals from final judgments entered in bond-validation suits and review action of statewide agencies relating to rates or service of certain utilities.[29]

[28] City of Jacksonville v. Smoot, 92 So. 617 (Fla. 1922).
[29] Section 3(b)(2), Article V of the State Constitution

(2) By general law, the Legislature may give district courts of appeal the power of direct review of administrative action.[30]

A bill may not, therefore, grant appellate courts original jurisdiction to hear any action. Circuit courts and county courts are trial courts, and their jurisdiction is prescribed by general law.

Changes in Districts, Circuits, and Number of Judges.—The Legislature must divide the state, by general law, into appellate court districts and judicial circuits. These districts and circuits must follow county lines. The procedure that the Legislature must follow to increase, decrease, or redefine appellate court districts or judicial circuits is prescribed in Section 9, Article V of the State Constitution and is the same procedure that the Legislature must follow in increasing or decreasing the number of judges. The Legislature may make these changes only if the Supreme Court has certified its findings and recommendations concerning the need for the change or if the Supreme Court has failed to make such findings and recommendations for 9 consecutive months after it has been requested to do so by concurrent resolution of the Legislature.

Even when this procedure has been followed and the Legislature may act, an extraordinary vote of two-thirds of the membership of each house is necessary for certain changes. If the change requires an extraordinary vote, the provisions of the bill making that change should be conditioned to take effect only if that extraordinary vote occurs. This extraordinary vote is required to:

(1) Create more judicial offices than are recommended by the Supreme Court for a county court, circuit court, or district court of appeal;
(2) Decrease the number of judicial offices for a county court, circuit court, or district court of appeal by a number greater than that recommended by the Supreme Court; or
(3) Increase or decrease the number of judges, appellate districts, or judicial circuits, or redefine appellate districts or judicial circuits, when the Supreme Court has failed to certify a need for 9 consecutive months after having been requested to do so by concurrent resolution.

[30] Section 4(b)(2), Article V of the State Constitution.

The Supreme Court has indicated that the extraordinary vote:

(1) Is required for the Legislature to include in a newly created district court of appeal a judicial circuit not requested by the Supreme Court or to provide additional judges for a district court of appeal if the certification of the Supreme Court did not recommend any additional judges for that district; and
(2) Is not required for the Legislature to provide fewer additional judges for a district court of appeal than requested by the Supreme Court or to omit from a newly created district court of appeal a judicial circuit requested by the Supreme Court.[31]

Judges.—Section 3(a), Article V of the State Constitution provides that the Supreme Court consists of seven justices. The Legislature may not alter the number of justices by law. Also, the qualifications of justices and judges are prescribed in Section 8, Article V of the State Constitution, and the Legislature may not by law remove any of those qualifications or impose additional qualifications such as residency requirements. Under Section 9, Article V of the State Constitution, the abolition of a judge's office may not take effect until the expiration of the judge's term.

Election or Appointment to Fill Newly Created Judicial Offices.—Section 10(b)(1) and (2), Article V of the State Constitution expressly preserves the election of circuit and county court judges by a vote of the electors. Section 11, Article V of the State Constitution also permits the Governor to fill a judicial vacancy, which occurs upon the creation of an office.[32] As a result, the Legislature may provide for a new judicial office that is filled by election or by appointment.[33]

In order to avoid confusion, a bill that creates a new judicial office should state the date on which the term of the new office begins and whether the office will be filled by election or by appointment. Bills providing for an election to fill a new judicial office have traditionally been enacted only during even-numbered years (general election years). Bills providing for a new judicial office to be filled by appointment have been enacted in both

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[31] *In re* Advisory Opinion to Governor, 374 So.2d 959 (Fla. 1979).
[32] Section 3, Article X of the State Constitution.
[33] Hoy v. Firestone, 453 So.2d 814 (Fla. 1984). *See also* Judicial Nominating Com'n, Eleventh Judicial Circuit in and for Miami-Dade County v. Cobb, 936 So.2d 565 (Table) (Fla. 2006) and *In re* Advisory Opinion to the Governor re: Appointment or Election of Judges, 824 So.2d 132 (Fla. 2002).

even-numbered and odd-numbered years. Generally, a bill to fill a new judicial office by election should take effect upon becoming a law so that the statutory qualifying period for the office does not occur before the bill takes effect. It may be necessary for the bill to specify an alternate qualifying period.

Rules of Practice and Procedure.—Section 2(a), Article V of the State Constitution requires the Supreme Court to adopt rules of practice and procedure for all courts. It also allows the Legislature to repeal a rule by general law enacted by two-thirds of the membership of each house. The Supreme Court takes the position that it has exclusive authority to adopt such rules and that the Legislature may by general law repeal a rule but may not enact, amend, or supersede a rule.[34] The Legislature and the courts cannot always easily distinguish between substance and practice and procedure. For this reason, the Florida Evidence Code, chapter 90, *Florida Statutes*, is enacted by the Legislature and, as a precaution, adopted by the Supreme Court as rules of practice and procedure.

APPROPRIATIONS

Section 1(c), Article VII of the State Constitution allows money to be withdrawn from the State Treasury only by an appropriation made by law. Consequently, the Legislature may not appropriate money by resolution, but may do so only by means of a bill enacted with the formality required by the State Constitution for enacting laws.[35]

Section 10, Article VII of the State Constitution, which prohibits the state or any of its subdivisions from using its credit or taxing power to aid a private entity, has been construed to allow the appropriation of public tax funds only for a public purpose. If there is a clearly identified and concrete public purpose as the primary objective and if there is a reasonable expectation that the purpose will be substantially and effectively accomplished, the state or its subdivisions may disburse, loan, or pledge public funds or property to a nongovernmental entity such as a nonprofit corporation; however, the public authority must retain some control in order to avoid frustration of the public purpose.[36] If the public purpose is unclear,

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[34] *In re* Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973).
[35] *In re* Advisory Opinion, 31 So. 348 (Fla. 1901).
[36] O'Neill v. Burns, 198 So.2d 1 (Fla. 1967). *See also* State v. Jacksonville Port Authority, 204 So.2d 881 (Fla. 1967).

a court is more likely to find such purpose if there is a specific legislative finding or declaration of the public purpose served by the appropriation.

Drafting an Appropriation Section.—An appropriation section should answer four questions:

(1) How much money?
(2) From what fund?
(3) To what agency?
(4) For what purpose?

> Section 44. The sum of $150,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of paying salaries and other administrative expenses necessary to carry out the provisions of this act during the 2009-2010 fiscal year.

An appropriation must be mentioned in the title and should be drafted in the present tense, not the future tense. A continuing appropriation should not provide that: "Funds shall be annually appropriated . . . ." This wording provides for funding to begin at some time in the future, but when? The wording should provide: "Funds are annually appropriated . . . ."

Section 216.301, *Florida Statutes*, requires that certain balances of appropriations revert to the fund from which appropriated. If the intent is that this section not apply, the drafter must expressly exempt the appropriation from this requirement.

General Appropriations Bill.—Funds to run state government are provided by a general appropriations bill that is enacted for each fiscal period. This period, established in s. 215.01, *Florida Statutes*, begins July 1 of each year and ends June 30 of the following year. Section 19(b), Article III of the State Constitution prescribes the format for the general appropriations bill. The bill is organized by funding categories and each budget subcommittee allocates the funds available to it in each category to the agencies and programs under its jurisdiction. The bill must be completed in time for both houses to confer, pass a conference report, and deliver the enacted bill to the Governor for his or her approval before July 1. Section 19(d), Article III of the State Constitution requires that the general appropriation bill be furnished to each member of the Legislature, each

member of the Cabinet, the Governor, and the Chief Justice of the Supreme Court at least 72 hours before final passage by either house.

Because of the complex fiscal constraints of the appropriations process, the general appropriations bill and any proposed amendments to it are prepared by the budget committees. Requests for funding which are not included in a substantive bill should be addressed to the proper budget subcommittee, not to the Office of Bill Drafting Services. Because of the inevitable competition for available funds, appropriation requests should be made as early as possible each year.

The general appropriations bill differs significantly from other bills. There are two constitutional provisions that have special significance for general appropriations bills.

First, Section 12, Article III of the State Constitution provides that "laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." This provision has been held to mean that:

(1) A general appropriations bill may not change or amend existing law on subjects other than appropriations; and
(2) The Legislature may place a qualification or restriction on an appropriation in the general appropriations bill only if it directly and rationally relates to the purpose of an appropriation and if the qualification or restriction, which is commonly called a "proviso," is a major motivating factor behind enactment of the appropriation.[37]

Second, Section 8(a), Article III of the State Constitution provides that the "Governor may veto any specific appropriation in a general appropriations bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates." The Governor's veto power is designed to nullify, not alter or amend, legislative intent.[38] In addition, the Legislature may not enact a general appropriations bill that

[37] Brown v. Firestone, 382 So.2d 654 (Fla. 1980).
[38] *Id*. at 664. *See also* Chiles v. Children A, B, C, D, E, and F, 589 So.2d 260 (Fla. 1991) and Florida Senate v. Harris, 750 So.2d 626 (Fla. 1999).

unduly and unreasonably precludes the exercise of this line-item veto power by the Governor.[39]

The drafter should consider these constitutional provisions in deciding whether a substantive bill is necessary or whether the budget committees can include the appropriation and its related proviso in the general appropriations bill.

Amending a Prior General Appropriations Act.—Sometimes it is necessary to draft a bill amending provisions of a prior general appropriations act. Drafting such a bill poses a unique problem. Normally, a bill that amends existing law does so expressly. It contains a directory clause to identify the provision being amended and republishes the text of the existing provision, incorporating the desired changes. Section 6, Article III of the State Constitution requires that laws amending existing laws republish in full the amended section, subsection, or paragraph of a subsection. A general appropriations act, however, has no identifiable subsections or paragraphs. Each appropriation is contained in an item within a section, and each section makes many appropriations to many agencies. Because of the difficulty in identifying the portions of the general appropriations act which must be republished and because of the resulting danger of repeal by omission, the safest way to modify the general appropriations act is by a later inconsistent act that is not expressly amendatory of, but that supersedes, the earlier conflicting provision.

TAXATION

Requirement for Statutory Authority.—Section 1(a), Article VII of the State Constitution prohibits any tax from being levied except in pursuant of law and preempts to the state, except as provided by general law, all forms of taxation other than *ad valorem* taxation on real and tangible personal property. Thus, the power to tax may be exercised only as prescribed and limited by a valid statute;[40] and, if the tax is not an *ad valorem* tax on real and tangible personal property, the statute must be a general law in order to be valid.[41] Therefore, in a bill authorizing local entities to levy a non-*ad valorem* tax, it is risky to limit that authority to only

[39] *In re* Advisory Opinion to the Governor, 239 So.2d 1 (Fla. 1970).
[40] Stewart v. Daytona & New Smyrna Inlet District, 114 So. 545 (Fla. 1927).
[41] City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1 (Fla. 1972) and Belcher Oil Company v. Dade County, 271 So.2d 118 (Fla. 1972).

certain local entities. If the criteria are so specific so as to make the bill a local bill, it is unconstitutional. See the discussion on general acts of local application on pages 106-107 for a discussion of what constitutes a local bill.

Constitutionally Mandated Taxes.—The State Constitution requires the Legislature to authorize certain taxes. These mandated taxes are:

(1) *Ad valorem* taxes for counties, school districts, and municipalities. (Section 9, Article VII of the State Constitution.)
(2) The gross receipts tax, chapter 203, *Florida Statutes*. (Section 19, Article XII of the 1885 Constitution, as amended; adopted by reference in Section 9, Article XII of the 1968 Constitution.)
(3) The constitutional gas tax (referred to in the Constitution as the "second gas tax"). (Section 16, Article IX of the 1885 Constitution, as amended; adopted by reference in Section 9, Article XII of the 1968 Constitution.)
(4) Motor vehicle license taxes. (Section 19, Article XII of the 1885 Constitution, as amended; adopted by reference in Section 9, Article XI of the 1968 Constitution.)

Ad Valorem Taxes.—The State Constitution contains the following requirements and limitations regarding *ad valorem* taxation of real property and tangible and intangible personal property:

(1) The state may not levy *ad valorem* taxes on real estate or tangible personal property. (Section 1(a), Article VII of the State Constitution.)
(2) *Ad valorem* taxes may not be levied on motor vehicles, boats, airplanes, trailers, trailer coaches, and mobile homes, as defined by law. (Section 1(b), Article VII of the State Constitution.)
(3) *Ad valorem* taxes levied by local governments must be at a uniform rate within each taxing unit. (Section 2, Article VII of the State Constitution.)
(4) The rate of taxation may not exceed:
    (a) For intangible personal property, 2 mills. (Section 2, Article VII of the State Constitution.)
    (b) For all other property, the rate prescribed in Section 9(b), Article VII of the State Constitution.

(5) Property may be exempted from *ad valorem* taxation only by general law and only if authorized or provided in Section 3, Section 4, or Section 6, Article VII of the State Constitution.[42]
(6) The assessment of property for *ad valorem* tax purposes must be pursuant to regulations prescribed by general law and must be at the fair market value or "just value" of the property, except as provided by Section 4, Article VII of the State Constitution.[43]
(7) Exemption of homesteads from *ad valorem* taxes must comply with Section 4(d)(8) and Section 6, Article VII of the State Constitution.

Estate, Inheritance, and Income Taxes.—Section 5(a), Article VII of the State Constitution bars the state from levying taxes on estates or inheritances or on the income of natural persons who are residents or citizens of the state in an amount greater than the aggregate amounts that may be credited against or deducted from any similar tax levied by the United States or any state. This state currently imposes estate taxes up to the limit that federal law allows to be deducted from the federal estate tax. Under the United States Internal Revenue Code, however, state income taxes may not be credited against or deducted from the federal income tax. Such taxes may be "deducted" from gross income in calculating taxable income, but may not be credited against or deducted from the federal income tax. Therefore, the state may not levy an income tax on the income of natural persons. Section 5(b), Article VII of the State Constitution limits any state income tax on unnatural persons to 5 percent of net income, as defined by law, or such greater rate as is authorized by a three-fifths vote of the membership of each house of the Legislature or as will provide for the state the maximum amount that may be credited against income taxes levied by the United States and other states. It also requires a minimum tax exemption for any tax on the income of unnatural persons.

Drafting Tax Statutes.—The drafter should consider the following suggestions when drafting tax provisions:

(1) The bill should precisely identify the transaction or subject taxed, the rate or amount of the tax, and the persons responsible for paying the tax and should precisely prescribe any exemptions from

[42] *See* L. Maxcy, Inc. v. Federal Land Bank of Columbia, 150 So. 248 (Fla. 1933).
[43] Walter v. Schuler, 176 So.2d 81 (Fla. 1965).

the tax. In the case of ambiguity, a tax is strictly construed against the state and in favor of the taxpayer, and an exemption is strictly construed against the taxpayer and in favor of the tax. See page 117 for a discussion of the rules of statutory construction with respect to tax statutes.

(2) The bill should provide procedures for collecting the tax, specifying:
   (a) The persons who must collect and remit the tax.
   (b) The agency to which the proceeds are to be remitted.
   (c) Accounting procedures for taxes collected and remitted and provisions for paying the costs of such accounting.
   (d) The records to be kept, by whom and for how long, and authority for inspecting them.
   (e) The frequency or dates for remitting proceeds.
   (f) Procedures for enforcing the collection of the tax, such as liens, interest and penalty payments, and other penalties.

(3) The bill should provide for the deposit of proceeds collected and for any other disposition of those proceeds.

(4) In selecting a date for imposing the tax, the drafter should consider dates currently provided by law for assessing, collecting, and remitting similar taxes.

(5) The title of the bill must give adequate notice of the nature of the tax to persons who will be subject to the tax.

(6) Before drafting the bill, the drafter should review existing laws that apply to taxes generally, such as chapter 72, *Florida Statutes*, relating to tax matters; s. 95.091, *Florida Statutes*, prescribing limitations on actions to collect taxes; and chapter 213, *Florida Statutes*, relating to state revenue laws.

Repeal or Reduction of a Tax.—Often tax proceeds are pledged as security for the issuance of bonds, and this pledge is a legally binding obligation. Section 10, Article I of the United States Constitution and Section 10, Article I of the State Constitution both prohibit state laws impairing the obligations of contracts. Before drafting a provision to abolish or reduce a tax, the drafter must be sure that the tax is not securing a bond issue. Also, Section 18, Article VII of the State Constitution limits reductions in the taxing authority or revenues of counties or municipalities. See page 108 for a discussion of this constitutional limitation on laws reducing local revenues.

TRUST FUNDS

Section 19(f), Article III of the State Constitution prohibits the creation of a trust fund of the state or other public body by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only. Section 215.32, *Florida Statutes*, defines a trust fund to be moneys received by the state which under law or under a trust agreement are segregated for a purpose authorized by law, and s. 215.3207, *Florida Statutes*, implies that the creation of a trust fund entails, at a minimum, naming the fund; providing for its administration; specifying its purposes and uses; and creating or specifying the revenues to be credited to or deposited into the fund. All of these matters should be included in the bill creating the trust fund. All other matters should be left to another bill that does not create the trust fund. There must be a separate bill for each trust fund that is created.

Section 19(f), Article III of the State Constitution also automatically terminates each trust fund, with specified exceptions, 4 years after the creation of the fund or within a shorter period as provided by law. A constitutional amendment adopted in 2005 provides for a one-time review of each newly created trust fund and removed a requirement that a trust fund be re-created every 4 years. A bill creating a trust fund should specify its termination date or, if the trust fund meets the criteria specified in Section 19(f)(3), Article III of the State Constitution, the bill should declare the trust fund to be exempt from automatic termination under the State Constitution.

CRIMINAL STATUTES

Because courts apply constitutional proscriptions and protections more stringently to criminal statutes than to other statutes and because of the rule of statutory construction which requires that penal statutes be strictly construed against the state and in favor of the accused, a law that criminalizes a person's conduct must be drafted very carefully.

A criminal law is particularly susceptible to successful challenge on grounds of being void for vagueness or on grounds of overbreadth. The due-process clauses of the state and federal constitutions prohibit a statute from forbidding or requiring the performance of an act in terms that are so vague that persons of common understanding must guess at the meaning of the act and differ as to its application. The test applied by the Florida Supreme Court is whether the words of a statute are sufficiently explicit to inform

persons subject to its provisions what conduct will render them liable to its penalties.[44] A statute is overbroad when its proscriptive language embraces not only acts properly and legally punishable, but others that are constitutionally protected or outside the police power of the state to regulate. Inclusive terms in a criminal statute generally cannot be reduced by construction to only those activities that are within the power of the Legislature to prohibit.[45] See pages 75-76 for a brief discussion of the police power.

General Penalty Provisions.—A criminal penalty that is nonspecific as to the acts prohibited or required is likely to be void for vagueness or for overbreadth. Unfortunately, the *Florida Statutes* are replete with general penalty provisions. For example, some chapters of the *Florida Statutes* requiring a license to engage in a regulated profession contain a section that provides:

> "The violation of any provision of this chapter is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

The Legislature might have intended to make it a crime for an unlicensed person to engage in the profession, but did it intend to make failure to complete continuing education requirements punishable as a crime or merely by administrative action against the licensee? Did the Legislature intend that a person go to jail for filing his or her license renewal application late? Did the Legislature intend that the failure of the licensing board to adopt required rules constitute a crime? The drafter should not leave questions such as these unanswered, but should specify in the text of the bill the conduct to which penal sanctions apply.

Terminology.—Many words and terms commonly used in criminal laws have been given a particular construction by the courts. For example, the term "found guilty" is not synonymous with the word "convicted." A defendant is "found guilty" when the trier of fact returns a verdict of guilty, regardless of whether the defendant pleaded guilty, not guilty, or *nolo contendere*, and regardless of whether the judge withholds adjudication of guilt. A person is "convicted" only if the judge enters an adjudication of

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[44] Brock v. Hardie, 154 So. 690 (Fla. 1934) and State v. Fuchs, 769 So.2d 1006 (Fla. 2000).
[45] Locklin v. Pridgeon, 30 So.2d 102 (Fla. 1947).

guilt. Precision in drafting is accomplished by choosing correctly the single word or term that conveys the correct concept and not by infusing the draft with a string of terms that have a related but narrower meaning in the hope that together they will encompass the concept. Consider the serious omission in the following example that imposes enhanced penalties for certain persons who commit arson:

> "A defendant who commits arson and who has been previously convicted of or previously pleaded guilty or *nolo contendere* to arson, regardless of adjudication of guilt, commits a life felony, punishable as provided in . . . ."

In this example, the penalty properly applies to a person who previously pleaded *nolo contendere*, even if adjudication of guilt was withheld. Yet, it does not apply to a person who previously pleaded not guilty but who was found guilty, if adjudication of guilt was withheld. All contingencies can be covered by using fewer, well-chosen terms:

> "A defendant who commits arson and who has been previously found guilty of arson commits a life felony, punishable as provided in . . . ."

In a four-to-three decision in 2005, the Florida Supreme Court held that a plea of *nolo contendere* serves as a prior conviction for purposes of the state sentencing guidelines, even if adjudication of guilt was withheld.[46] Prior to this decision, a plea of *nolo contendere* did not establish guilt in Florida.[47] This holding will likely be revisited as it does not follow earlier precedent of the courts and is at odds with the decisions of several federal courts.[48]

Many words frequently used in specifying the elements of a crime, such as the words "fraudulently," "intentionally," "knowingly," "maliciously," "wantonly," and "willfully," have a specific legal construction. The drafter should become familiar with the legal construction of these and other words and phrases relevant to drafting criminal statutes, many of which are included in Appendix A.

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[46] Montgomery v. State, 897 So.2d 1282 (Fla. 2005).
[47] Garron v. State, 528 So.2d 353 (Fla. 1988).
[48] U.S. v. Driskell, 277 F.3d 150 (N.Y. 2002).

Prospective Operation.—Two constitutional provisions limit most criminal laws to prospective operation.

Section 10, Article I of the United States Constitution and Section 10, Article I of the State Constitution prohibit *ex post facto* laws. An *ex post facto* law is one that makes criminal an act that was not a crime when it was committed or that increases the penalty therefor. It is a law that in relation to an offense or its consequences alters the situation of a person to his or her disadvantage.[49] The United States Supreme Court has held that a law reducing the amount of gain-time which may be deducted from a convicted prisoner's sentence is an *ex post facto* law as applied to a prisoner whose crime was committed before the effective date of the law.[50]

Section 9, Article X of the State Constitution provides that "repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This provision gives all criminal legislation prospective operation by also negating legislation that retroactively abolishes crimes or lessens penalties. These two constitutional proscriptions do not generally apply to procedural matters unless the change affects in some way the substantive rights of the defense.[51] However, the Supreme Court held that Section 9, Article X of the State Constitution prohibits retroactive operation of a law changing the *method* of executing a person under sentence of death.[52]

Effective Date.—A criminal statute should take effect on a date certain, and that date should be far enough in the future so that persons who are subject to the statute and persons who are responsible for its enforcement learn of its provisions. A criminal statute should not take effect upon becoming a law except in extraordinary circumstances.

Because of the constitutional requirement that the law in effect at the time a crime is committed governs the prosecution and punishment for the crime, it is unnecessary to include in the bill any statement that it applies only to offenses committed on or after the effective date of the act. Including

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[49] Higginbotham v. State, 101 So. 233 (Fla. 1924).
[50] Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 1960 (1981) and Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891 (1997).
[51] Dobbert v. Florida, 432 U.S. 282, 97 S.Ct. 2290 (1977) and Mathis v. State, 12 So. 681 (Fla. 1893).
[52] Washington v. Dowling, 109 So. 588 (Fla. 1926) and *Ex parte* Browne, 111 So. 518 (Fla. 1927).

such a statement implies the possibility of an alternative application, which is not constitutionally possible.

Classification of Offenses.—Section 10, Article X of the State Constitution defines the term "felony" as used in the State Constitution and in the laws of this state to mean "any criminal offense that is punishable if committed in this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary." The *Florida Statutes* prescribes a uniform system for classifying offenses as felonies, misdemeanors, and noncriminal violations, and defines the term "crime" as used in the laws of this state to include both felonies and misdemeanors.[53] Felonies are further classified into the following categories, listed in descending order of severity: capital felony; life felony; felony of the first degree; felony of the second degree; and felony of the third degree. The term "misdemeanor" is defined by statute to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of 1 year. Misdemeanors are further classified, in descending order of severity, as: misdemeanor of the first degree and misdemeanor of the second degree. The term "noncriminal violation" is defined by statute to mean any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. An offense that is declared to be a felony without specification of degree is a third-degree felony, and an offense that is declared to be a misdemeanor without specification of degree is a second-degree misdemeanor.[54]

Uniform Punishments.—Sections 775.082 and 775.083, *Florida Statutes*, prescribe uniform maximum penalties for each category of felony and misdemeanor. Section 775.082, *Florida Statutes*, prescribes the maximum terms of imprisonment. Section 775.083, *Florida Statutes*, prescribes the maximum fines that may be imposed in addition to or, when specifically authorized by statute, in lieu of imprisonment. The following table shows the maximum penalties prescribed under these sections for each category of offense.

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[53] Section 775.08, *Florida Statutes*.
[54] Section 775.081, *Florida Statutes*.

UNIFORM CRIME CLASSIFICATIONS AND PUNISHMENTS		
	Punishments	
	Imprisonment under s. 775.082	Fine under s. 775.083
Capital felony	Death or life without parole	
Life felony	Life or term of imprisonment up to life	$15,000 maximum
First-degree felony	30-year maximum	$10,000 maximum
Second-degree felony	15-year maximum	$10,000 maximum
Third-degree felony	5-year maximum	$5,000 maximum
First-degree misdemeanor	1-year maximum	$1,000 maximum
Second-degree misdemeanor	60-day maximum	$500 maximum
Noncriminal violation		$500, forfeiture, etc.
Traffic infraction		See s. 318.18
Maximum fines may be increased to twice the offender's monetary gain or twice the victim's loss.		

The drafter may specifically prescribe maximum penalties differing from these uniform penalties. When using the uniform penalties, however, be sure that the *Florida Statutes* section referred to carries with it the penalty intended. The phrase "punishable as provided in s. 775.082 or s. 775.083" makes the offense punishable by the maximum term of imprisonment, the maximum fine, or both for that category of offense. The phrase "punishable by a fine only as provided in s. 775.083" makes the offense punishable only by the maximum fine.

Section 775.084, *Florida Statutes,* enhances the maximum penalties for violent career criminals, habitual felony offenders, and habitual violent felony offenders, and provides mandatory minimum sentences for three-time violent felony offenders. A penalty must include a reference to this section in order for these enhanced penalties to apply. Until October 1, 1988, this section enhanced the maximum penalties for habitual misdemeanants. However, a reference to this section with respect to a misdemeanor is now obsolete and should not be used for a misdemeanor offense.

A cross-reference to s. 775.082, s. 775.083, or s. 775.084, *Florida Statutes,* constitutes a general reference for purposes of the doctrine of incorporation by reference. Therefore, future changes to these sections will automatically apply to existing crimes that reference these uniform penalty provisions.

In addition to the uniform penalties prescribed in ss. 775.082 and 775.083, *Florida Statutes,* s. 775.0823, *Florida Statutes,* provides mandatory minimum penalties for certain violent crimes committed against law enforcement officers and other state and judicial officers; s. 775.087, *Florida*

Statutes, provides such penalties for certain felonies committed by a person in possession of a firearm or destructive device; and s. 893.135, *Florida Statutes,* provides such penalties for trafficking in certain controlled substances.

Sentencing.—The Legislature has not only prescribed the maximum penalty for crimes and any applicable mandatory minimum penalty, but has also established the "Criminal Punishment Code," ss. 921.002-921.0027, *Florida Statutes,* for use in sentencing. This code replaced the sentencing guidelines that were repealed effective October 1, 1998.[55]

Principals.—Section 777.011, *Florida Statutes,* provides that anyone who aids, abets, counsels, hires, or procures an offense that is committed or attempted is as guilty of that offense as the person who actually commits or attempts the offense. Therefore, a bill that makes an act criminal need not also make it criminal to aid, abet, counsel, hire, or procure the offense, nor need it refer to s. 777.011, *Florida Statutes.*

Attempts, Solicitations, and Conspiracies.—Section 777.04, *Florida Statutes,* makes it an offense to attempt, solicit, or conspire to commit a crime and prescribes reduced penalties for that offense. This section applies if the bill makes no express provision for attempts, solicitations, or conspiracies. Consider the two following examples:

> "Whoever commits or attempts to commit arson commits a life felony."
>
> "Whoever commits arson commits a life felony."

In both examples, arson is a life felony. In the first example, an attempt to commit arson is also a life felony; in the second example, it is a felony of the first degree.

Bill of Attainder.—A number of states have recently enacted penalties that arguably deprive a person of liberty and property without due process of law. An example includes a penalty that limits a person's ability to earn a living by invalidating his or her professional license for failing to pay child support or certain taxes. The United States Constitution and

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[55] Section 1 of chapter 97-194, *Laws of Florida.*

Section 10, Article I of the State Constitution prohibit enactment of "bills of attainder," defined as "a law that legislatively determines guilt for prior conduct and inflicts punishment upon an identifiable individual without the protections of a judicial trial."[56] The drafter should be wary of drafting penalty provisions that violate the doctrine of separation of powers by imposing penalties without benefit of trial and depriving an individual of guaranteed rights or privileges. Although a Florida court has yet to consider this issue in depth, it appears that the establishment of an administrative procedure to appeal a license revocation or the denial of a constitutional right may not provide an adequate safeguard.[57]

LOCAL PROVISIONS

Distinction between Local and General Laws.—It is important to distinguish between general laws and local laws because the State Constitution imposes special requirements on local laws and prohibits local laws on specified subjects for which the law should be uniform statewide. The test used to distinguish general laws from local laws is:

> "A statute relating to subdivisions of the state or to subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a 'general law'; while a statute relating to particular subdivisions or portions of the state, or to particular places of classified localities, is a 'local law' . . . ."[58]

Laws relating to the exercise of state powers and functions are general laws even though they are local in operation or application. For example, laws creating counties or judicial circuits, appropriating state funds, or affecting the proprietary property of the state are general laws. Exceptions to general law which apply only to specified localities are local laws and, even if included in the *Florida Statutes*, are subject to the constitutional requirements and proscriptions governing local laws.[59]

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[56] *See* Cassady v. Moore, 737 So.2d 1174 (Fla. 1st DCA 1999), quoting United States v. Bennett, 928 F.2d 1548 at 1558 (11th Cir. 1991).
[57] United States v. Lovett, 328 U.S. 303, 66 S.Ct. 1073 (1946).
[58] State *ex rel*. Buford v. Daniel, 99 So. 804 (Fla. 1924).
[59] Housing Authority of City of St. Petersburg v. City of St. Petersburg, 287 So.2d 307 (Fla. 1973).

Constitutional Requirements.—Section 10, Article III of the State Constitution requires that a notice of intent to seek enactment of a local law be published in the manner provided by general law[60] or that the local law be conditioned to take effect only upon approval by vote of the electors of the area affected. A local law must satisfy one of these requirements or it is unconstitutional.[61]

Also, certain provisions of a local law may require a referendum even if notice of intent has been published. Examples include provisions authorizing *ad valorem* taxes, the issuance of certain bonds, and changes to a county charter.

Senate rules require that if a local bill is not conditioned to take effect upon approval by a vote of the electors of the area affected, an affidavit attesting to publication of the notice of intent, completed by the newspaper that published the notice, accompany the bill when it is filed with the Secretary of the Senate for introduction.[62]

Constitution Proscriptions.—The State Constitution prohibits local laws concerning certain subjects. Section 11, Article III of the State Constitution lists many, but not all, of these subjects. For instance, Section 1(k), Article VIII of the State Constitution prohibits moving a county seat by any method other than by a general law. In a recent case of first impression, the Florida Supreme Court held that the prohibition on a "grant of privilege to a private corporation" contained in Section 11(a)(12), Article III of the State Constitution prohibits special laws granting ". . . rights, benefits, and advantages to a corporation; and the term 'privilege' is not limited to economic benefit or favoritism."[63]

General Acts of Local Application.—Before 1971, in order to circumvent the constitutional requirements or proscriptions for local laws, population acts, commonly called "general acts of local application," were often enacted. A general act of local application uses a classification scheme, such as population or some other criterion, so that its application is restricted to particular localities. It is a general law if:

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[60] *See* ss. 11.02, 11.021, and 11.03, *Florida Statutes*.
[61] Barndollar v. Sunset Realty Corp., 379 So.2d 1278 (Fla. 1979).
[62] Senate Rule 3.3.
[63] Lawnwood Medical Center, Inc. v. Seeger, 990 So.2d 503 (Fla. 2008).

(1) The classification scheme is open so that other localities can potentially fall within the classification; and
(2) The classification bears a reasonable nexus to the subject matter and to the public purpose to be served, is based upon differences that inhere in or are peculiar to the class, and is not arbitrary.

If the general act of local application does not satisfy both of these criteria, it is a local act and is subject to all of the constitutional requirements and proscriptions applicable to local acts. Many of these population acts were held to be unconstitutional local acts.[64] In 1971, the Legislature repealed most population acts.[65] This repeal established the continuing policy of the Legislature that such acts not be used for local purposes.

Superseding or Prohibiting Local Law by General Law.—The rule of statutory construction is that specific provisions prevail over general provisions. Therefore, local laws prevail over inconsistent general laws. General laws may be drafted to supersede prior local laws by using the phrase "notwithstanding any provision of local law." This phrase applies only to local laws existing when the general law takes effect and does not prevent later inconsistent local laws from again superseding the general law.

Section 11(a)(21), Article III of the State Constitution provides that the Legislature may, by a general law enacted by a three-fifths vote of the membership of each house, prohibit special laws on a particular subject. The prohibition contained in the general law may be amended or repealed only by a like vote. Consequently, the Legislature may not pass a local law on a subject prohibited by a general law enacted by this procedure until it has expressly amended or repealed that general law by a three-fifths vote of the membership of each house.[66] This procedure is useful when the Legislature wishes statewide uniformity with respect to a particular subject. The Legislature has used it to provide uniform compensation for designated county officials,[67] to prescribe a maximum interest rate for bonds,[68] to prohibit local laws pertaining to the assessment or collection of taxes for

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[64] Lewis v. Mathis, 345 So.2d 1066 (Fla. 1977) and Vance v. Ruppel, 215 So.2d 309 (Fla. 1968).
[65] Chapter 71-29, *Laws of Florida*.
[66] The Attorney General, in Attorney General Opinion 83-27, opined that a local law prohibited under this provision may be enacted if it is passed by a three-fifths vote of the membership of each house of the Legislature. The Office of Bill Drafting Services, however, feels strongly that this opinion is wrong and agrees with an earlier Attorney General Opinion (69-80) which reached the opposite conclusion.
[67] Section 145.16, *Florida Statutes*.
[68] Section 215.845, *Florida Statutes*.

school purposes,[69] and to provide uniformity with respect to other subjects. A list of these prohibited subjects appears in the footnote to Section 11(a)(21), Article III of the State Constitution.

General Laws Mandating Local Government Action.—The State Constitution restricts the authority of the Legislature to enact certain general laws that affect counties or municipalities. A proposed general law that:

(1) Requires counties or municipalities to spend funds or to take action requiring them to spend funds;
(2) Is anticipated to reduce the authority, as it existed on February 1, 1989, of counties or municipalities to raise total aggregate revenues; or
(3) Reduces, below that existing on February 1, 1989, the total aggregate percentage share of a state tax which is shared with counties and municipalities,

must comply with Section 18, Article VII of the State Constitution, unless it is specifically exempted or excepted from that section.

FUTURE REPEALS

Each provision of the *Florida Statutes* which is scheduled for future repeal and review contains a footnote that identifies the provision subject to repeal, the section and chapter of the *Laws of Florida* which accomplishes the repeal, and the date that the repeal is effective. The drafter should always read the footnotes appended to sections of the *Florida Statutes.* An amendment to a section scheduled for future repeal is negated unless the future repeal is first nullified.

There are two ways to abrogate a future repeal. The preferred way is to repeal the repealer by an express repeal before the repealer provision can take effect.

Section 8. Section 34 of chapter 2008-6, Laws of Florida, is repealed.
Section 9. This act shall take effect upon becoming a law.

[69] Section 1011.77, *Florida Statutes.*

It is important that the effective date of the repeal of a repealer occur on or before the effective date of that repealer. Also, it is important to abrogate every repeal that applies to that provision of the *Florida Statutes*. Many times a provision of the *Florida Statutes* is repealed on the same date (or worse, on different dates) by more than one law. Failure to abrogate even one of these repeals will result in that provision being repealed. The second way to abrogate a future repeal is less direct and wordier:

> Section 8. Notwithstanding section 19 of chapter 2003-411, Laws of Florida, sections 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, and 627.739, Florida Statutes, shall not stand repealed on October 1, 2007, as scheduled by such law, but those sections, as amended by this act, are revived and readopted.
> Section 9. This act shall take effect upon becoming a law.

CLAIM BILLS

A claim bill presents a claim to be paid by the state; by a political subdivision of the state such as a county, municipality, school district, or special district; or by an agency of a political subdivision of the state such as a sheriff's office. If the bill directs that a claim be paid by a political subdivision, the claim bill is a local bill and must comply with the constitutional notice or referendum requirement for local bills. See page 106 for a discussion of this requirement. If the bill presents a claim to be paid by the state from state funds only, it is not a local bill.

Section 768.28, *Florida Statutes,* waives the sovereign immunity of the state and its subdivisions in tort actions up to a specified amount per person and per occurrence. If a court awards a person damages exceeding these limits in a judgment against the state or one of its subdivisions, the means by which that person can collect the amount of the excess judgment is by a claim bill. There is no legal requirement that a person initiate legal action before seeking relief from the Legislature. However, the Legislature is more likely to act favorably on a claim bill if a claimant has first sought a judicial remedy before appealing to the Legislature and even more likely to act favorably on a claim seeking payment of an excess judgment awarded by a court.

Senate rules allow claim bills introduced in the Senate to be heard by a special master who determines the validity of the claim and prepares a report containing findings of fact, conclusions of law, and recommendations.

The report accompanies the claim bill to the committees to which it is referred.

There is a sample claim bill on page 111. A claim bill should follow the following general form:

(1) The title should state the name of the person for whom relief is sought and include notice of an appropriation, identifying the entity paying the appropriation.
(2) The facts upon which the claim is based should be stated in detail in “WHEREAS” clauses that follow the title and precede the enacting clause.
(3) Text contained in the body of the bill may affirm that the facts stated in the preamble are true if there has been a formal determination of such facts, and the body of the bill also specifies the amount of the appropriation, the person to whom that amount is appropriated, and the fund from which the appropriation is made.

A bill to be entitled

An act for the relief of Reubin F. Jarnigan; providing an appropriation to compensate him for property damages he sustained as result of the negligence of the Department of Transportation; providing an effective date.

WHEREAS, s. 768.28, Florida Statutes, provides that a judgment rendered in excess of the statutory tort liability of an agency may be reported to the Legislature to be paid by further act of the Legislature, and

WHEREAS, as a result of a jury verdict, a judgment for $149,500 was entered in the Circuit Court for Polk County on March 8, 2005, against the Department of Transportation to compensate Reubin F. Jarnigan for property damages suffered by him in a multiple-vehicle accident on February 8, 2004, and

WHEREAS, this judgment has been affirmed by the Florida Second District Court of Appeal, and the appellate court's decision has become final, and

WHEREAS, the negligence of the Department of Transportation included burning vegetation adjacent to an interstate highway and causing and allowing smoke from the fire to cover the highway and obscure the vision of the motoring public, and

WHEREAS, this judgment has been partially satisfied but there remains unsatisfied the amount of $49,500, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $49,500 is appropriated from the General Revenue Fund to the Department of Transportation for the relief of Reubin F. Jarnigan for property damages sustained.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Reubin F. Jarnigan in the amount of $49,500 upon funds of the Department of Transportation in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. This act shall take effect upon becoming a law.

Chapter 5
Statutory Construction

To ensure that a law will be applied as the Legislature intends, the drafter should be familiar with the basic principles of statutory construction. These principles have been developed to aid courts in giving effect to the intent of the Legislature; they provide uniformity in interpretation and thereby achieve greater consistency in application; and they predict how a court will interpret an act of the Legislature. For the most part, the rules are grounded in common sense.

WHEN THE RULES MAY BE APPLIED

The Florida Supreme Court has held that rules of statutory construction:

> "[A]re useful only in case of doubt and should never be used to create doubt, only to remove it. Where the legislative intent as evidenced by a statute is plain and unambiguous, then there is no necessity for any construction or interpretation of the statute, and the courts need only give effect to the plain meaning of its terms."[1]

The reason for this rule is twofold. First, because of the doctrine of separation of powers, courts may not legislate; and they would be doing so if they speculated on constructions when the language of the law itself conveys an unequivocal meaning.[2] Second, courts presume that the Legislature knows the meaning of words and expressed its intent by using the words found in the statute.[3]

GENERAL PRINCIPLES

Presumption in Favor of Constitutionality.—Statutes are presumed to be constitutional. The construction of a statute which upholds

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[1] State v. Egan, 287 So.2d 1, at 4 (Fla. 1973).
[2] Heredia v. Allstate Insurance Co., 358 So.2d 1353 (Fla. 1978) and Nicoll v. Baker, 668 So.2d 989 (Fla. 1996).
[3] Thayer v. State, 335 So.2d. 815 (Fla. 1976); Stoletz v. State, 875 So.2d 572 (Fla. 2004); and Mitchell v. State, 911 So.2d 1211 (Fla. 2005).

the statute is favored over one that results in its being held unconstitutional. This rule was concisely stated by Justice Alderman:

> "Legislative enactments are presumed valid. When . . . possible and consistent with the protection of constitutional rights, this Court will resolve all doubts as to the validity of a statute in favor of its constitutionality."[4]

Consideration of a Statute as a Whole.—A court will determine intent from a reading of the statute as a whole, rather than from a reading of some part in isolation. Again, as stated by Justice Alderman:

> "It is a fundamental rule of statutory construction that the entire statute under consideration must be considered in determining legislative intent. Effect must be given to every part of the section and every part of the statute as a whole. The Court will view the entire statute to determine legislative intent."[5]

Construction That Defeats Purpose of Statute Is Not Favored.—A court will avoid construing a statute in such a manner as to defeat the purpose of the statute. The Florida Supreme Court has stated:

> "[W]hen reasonably possible and consistent with legislative intent, we must give preference to a construction which will give effect to the statute over another construction which would defeat it . . . ."[6]

Inference Cannot Be Substituted for Clear Expression.—From the doctrine of separation of powers and from the rule that the plain language of the Legislature controls the meaning of statutes, it follows that:

> "Inference and implication cannot be substituted for clear expression."[7]

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[4] State v. Rodriquez, 365 So.2d 157, at 158 (Fla. 1978). *See also* Sunset Harbour Condominium Ass'n v. Robbins 914 So.2d 925 (Fla. 2005).
[5] Rodriquez, 365 So.2d, at 159.
[6] Schultz v. State, 361 So.2d 416, at 419 (Fla. 1978). *See also* Dept. of Legal Affairs v. Rogers, 329 So.2d 257 (Fla. 1976).
[7] Carlile v. Game and Fresh Water Fish Commission, 354 So.2d 362, at 364 (Fla. 1977).

Change in Language Is Presumed to Change Meaning.—Usually, when the Legislature changes the language of a statute, it intends to change the law. The Florida Supreme Court *presumes* this to be the case:

> "When the Legislature amends a statute by omitting words, we *presume* it intends that statute to have a different meaning from that accorded it before amendment."[8]

The Florida Supreme Court, however, recognizes that there are other reasons to change the language of a law which can overcome this presumption:

> "The mere change of language does not necessarily indicate an intent to change the law for the intent may be to clarify what was doubtful and to safeguard against misapprehension as to existing law."[9]

STATUTORY RULES OF CONSTRUCTION

Definitions.—Several sections of the *Florida Statutes* specify the construction of words for use throughout the statutes. Among the most important is s. 1.01, *Florida Statutes.* The most useful rules of construction it contains are:

(1) The singular includes the plural and *vice versa*.
(2) The masculine includes the feminine and the neuter and *vice versa*.
(3) The term "person" includes individuals and all types of business entities.
(4) The term "political subdivision" includes all types of local governments.

Amendatory Acts Passed at the Same Session.—Section 1.04, *Florida Statutes,* sets out the rule for construing amendatory acts passed at the same session and amending the same statute. Such acts are read together and full effect is given to each, if that is possible. Language carried forward unchanged in one amendatory act is not in conflict with a changed version of that language contained in another act passed during the same session.

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[8] Capella v. City of Gainesville, 377 So.2d 658, at 660 (Fla. 1979), *emphasis* added.
[9] State *ex rel.* Szabo Food Services, Inc., of North Carolina v. Dickinson, 286 So.2d 529, at 531 (Fla. 1973). *See also* Palma Del Mar Condominium Ass'n No. 5 of St. Petersburg, Inc. v. Commercial Laundries of West Florida, Inc., 586 So.2d 315 (Fla. 1991).

Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously. Acts passed during the same session must be utterly repugnant with each other before the courts will apply other rules of construction to resolve the conflict.

Amendatory Acts Passed at a Special Session.—If a special session of the Legislature is held before the *Florida Statutes* from the prior regular session are complied, proviso language is added to each of the bills enacted during the special session stating that the Legislature intends for the laws to be construed together if possible. The following is a sample statement of legislative intent:

> Section 6. <u>If any law that is amended by this act was also amended by a law enacted during the 2010 Regular Session or any 2010 Special Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.</u>

Repealed Statutes not Revived by Implication.—If a statute is passed repealing a former statute, and a third statute is passed repealing the second after it has become effective, the repeal of the second statute does not revive the first unless the third statute expressly provides for the revival of the first statute.[10]

Other Statutory Rules.—A statute may direct that it be liberally or strictly construed, or it may provide for severability. These provisions are seldom necessary since the principles of statutory interpretation are comprehensive in scope and under most circumstances provide unambiguous guidance.

STRICT OR LIBERAL CONSTRUCTION

A strict construction is one that ordinarily limits meaning to the narrow meaning that is clearly expressed by the words used in the law. A liberal construction is ordinarily one that makes the statutory rule or principle apply to more things or in more situations than would be the case under a strict construction.

[10] Section 2.04, *Florida Statutes*.

Criminal Statutes Strictly Construed.—A well-established rule of statutory construction is that criminal statutes are to be construed strictly in favor of the person against whom the penalty is to be imposed. This construction is based on the common law Rule of Lenity. Justice Sundberg gave the following rationale:

> "This rule is founded on the principles of fairness and justice, that a person is entitled to clear notice of what acts are proscribed and is therefore given the benefit of the doubt when the criminal statute is ambiguous. Applying the rule that criminal statutes must be strictly construed, nothing not clearly and intelligently described in a statute's very words, as well as manifestly intended by the legislature, shall be considered included within its terms."[11]

Tax Statutes Strictly Construed.—The general rule of construction is that statutes imposing taxes must be strictly construed against the tax. If a tax statute is ambiguous as to whether particular property or a particular person or transaction is embraced by the language imposing the tax, the benefit of doubt must be given to the person burdened.[12] Conversely, if a tax statute is ambiguous as to a tax exemption, the language providing the exemption will be strictly construed in favor of the tax and against the person claiming the exemption.[13] Therefore, a tax exemption must be expressed and unambiguous, and the court will not enlarge an exemption by construction or authorize an implied exemption.[14]

Statutes in Derogation of the Common Law Strictly Construed.—The "common law" consists of the common and statute laws of England which are of a general and not a local nature, with certain exceptions, in existence on July 4, 1776.[15] The Florida Supreme Court has held:

> "Statutes in derogation of the common law are to be construed strictly. They will not be interpreted to displace the common law further than is clearly necessary."[16]

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[11] Ferguson v. State, 377 So.2d 709, at 711 (Fla. 1979). *See also* Drury v. Harding, 461 So.2d 104 (Fla. 1984).
[12] State *ex rel*. Rogers v. Sweat, 152 So. 432 (Fla. 1934).
[13] Steuart v. State *ex rel*. Dolcimascolo, 161 So. 378 (Fla. 1935).
[14] Orange State Oil Co. v. Amos, 130 So. 707 (Fla. 1930).
[15] Section 2.01, *Florida Statutes*. *See* s. 775.01, *Florida Statutes*, for the adoption of common-law crimes.
[16] Carlile v. Game and Fresh Water Fish Commission, 354 So.2d 362, at 364 (Fla. 1977).

Exceptions Strictly Construed.—Exceptions to prohibitions are usually construed strictly against the person attempting to take advantage of the exception. The Third District Court of Appeal explained the rule:

> "Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception. . . . And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted. . . . Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception."[17]

Remedial Statutes Liberally Construed.—Generally, remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries. Modern social legislation such as workers' compensation laws, automobile insurance laws, and collective bargaining laws are generally regarded as being remedial in nature. The Florida Supreme Court has stated the following rule for construing remedial statutes:

> "[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent."[18]

AVOIDING OR RESOLVING CONFLICTS

Harmonize If Possible.—Courts will adopt a construction that avoids apparent conflicts between statutes whenever possible. The Florida Supreme Court expressed this rule as follows:

> "All statutes relating to the same subject matter should be so construed with reference to each other that effect may be given to all the provisions of each if this can be done by any fair and reasonable construction. We must assume that the Legislature intended to enact effective laws. . . ."[19]

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[17] State v. Nourse, 340 So.2d 966, at 969 (Fla. 3rd DCA 1976).
[18] City of Miami Beach v. Berns, 245 So.2d 38, at 40 (Fla. 1971).
[19] Ferguson v. State, 377 So.2d 709, at 711 (Fla. 1979).

The Florida Supreme Court gave the following rationale for harmonizing apparently conflicting provisions:

> "The legal presumption is that the Legislature did not intend to keep really contradictory enactments in the statute books . . . ."[20]

Specific Provision Prevails over General Provision.—In order to avoid conflict and harmonize apparently conflicting statutes, a specific provision prevails over a general provision with which it differs. This rule is applied not to *resolve* conflicts but to *avoid* possible conflicts by giving effect to both provisions. The general provision continues to apply in all cases that are not covered by the specific provision. The Florida Supreme Court noted:

> "It is a well settled rule of statutory construction, however, that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same or other subjects in general terms. In this situation 'the statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy, if any.'"[21]

Because it gives some effect to both provisions, courts apply this rule before resorting to the rule of construction providing that later acts prevail, even when the application of either rule gives the same results. The Florida Supreme Court stated:

> "[W]e are obliged to read the provisions of the general law together with the subsequent special act and harmonize them if possible, and if there is unresolvable conflict between the provisions, the later special act, *as a more specific expression* of the legislative will, will be given effect."[22]

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[20] State *ex rel*. School Board of Martin County v. Department of Education, 317 So.2d 68, at 73 (Fla. 1975), *quoting* Curry v. Lehman, 47 So. 18, at 21 (Fla. 1908).
[21] Adams v. Culver, 111 So.2d 665, at 667 (Fla. 1959), *quoting* Stewart v. DeLand-Lake Helen, etc., 71 So. 42, at 47 (Fla. 1916), *quoting* State *ex rel*. Loftin v. McMillan, 45 So. 882, at 884 (Fla. 1908).
[22] Tribune Co. v. School Board of Hillsborough County, 367 So.2d 627, at 629 (Fla. 1979), *emphasis* added.

One application of this rule which deserves special notice is that a specific provision will prevail over a general statement of legislative intent.[23]

If the Legislature has preempted the regulation of an issue to the state and a conflict arises between a municipal or county ordinance and a statute, the conflict is resolved in favor of the statute.[24]

Later Expression of Legislature Controls.—When all other rules fail to harmonize provisions and avoid a conflict, courts resolve that conflict by looking to the last expression of the legislative will. The Florida Supreme Court, in applying the rule in a criminal statute, held:

> "[A]n earlier penal statute must yield to a later one dealing with the same subject and providing a different penalty."[25]

This is a rule of last resort. To apply it, the court must find *implied* in the later act a repeal of provisions *expressed* in the earlier act; and implied repeals are disfavored in the law.

RESOLVING AMBIGUITIES

Last Antecedent.—The rule of the last antecedent is used to determine the words to which modifiers apply. As stated in 82 *C.J.S. Statutes* § 334:

> "By what is known as the doctrine of the 'last antecedent,' relative and qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote; nor are they ordinarily to be construed as extending to following words. This rule is, however, merely an aid to construction to be applied only where there exist uncertainties and ambiguities in the statute, and when other and more important rules of construction fail; and the clear intent of the legislature takes precedence as a canon of construction."

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[23] Roger Dean Enterprises, Inc. v. Department of Revenue, 371 So.2d 101 (Fla. 4th DCA 1978), *aff'd* 387 So.2d 358 (Fla. 1980).
[24] *See* Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So.2d 637 (Fla. 2nd DCA 2007); City of Coral Gables v. Seiferth, 87 So.2d 806 (Fla. 1956); and City of Wilton Manors v. Starling, 121 So.2d 172 (Fla. 2nd DCA 1960).
[25] State v. Young, 357 So.2d 416, at 417 (Fla. 2nd DCA 1978).

Ordinary Meaning.—A word that is not defined in a statute is given its commonly accepted meaning. The rule was stated succinctly by the Florida Supreme Court:

> "When a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense. We have consistently held that it is appropriate to look to the ordinary dictionary definition of common words used in legislation."[26]

Pari materia.—A statute relating to the same subject matter must be read *in pari materia* (upon the same matter or subject) and the meaning of that statute is determined in light of other statutes concerning the same subject matter. The rule is applicable with special force where the statutes in question were enacted by the same Legislature as part of a single act.[27]

AIDS TO CONSTRUCTION

Preamble and Intent Clauses.—The preamble of an act, consisting of "WHEREAS" clauses, is often used to present the factual background of legislation and is sometimes used to state the purposes for which legislation is enacted. Although the operative provisions of an act are those that follow the enacting clause, courts may use the preamble of an act to determine the intent of the Legislature.[28]

The intent of the Legislature is sometimes stated in a general legislative intent section that can be an aid to construction. A drafter, however, should avoid using such a section and draft the substantive provisions of bills with such clarity that the intent is clear. Such a section indicates intent but does not control interpretation. A specific substantive provision prevails over conflicting provisions in a general intent section.[29]

Title.—The purpose of the title of an act is to convey notice, not intent, but courts have looked to the title as a guide to legislative intent. The Florida Supreme Court stated:

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[26] State v. Stewart, 374 So.2d 1381, at 1383 (Fla. 1979).
[27] *See* Major v. State, 180 So.2d 335 (Fla. 1965); Davis v. State, 146 So.2d 892 (Fla. 1962); and Amos v. Conkling, 126 So. 283 (1930).
[28] *See* Finn v. Finn, 312 So.2d 726 (Fla. 1975).
[29] *See* Roger Dean Enterprises, Inc. v. Department of Revenue, 371 So.2d 101 (Fla. 4th DCA 1978), *aff'd* 387 So.2d 358 (Fla. 1980).

> "Reference to the title of the legislative act is also appropriate in determining legislative intent. . . . Clearly, the title makes no reference to the issue of venue. In the absence of such a statement in the title we must conclude that venue was not intended to be covered, or that the act is unconstitutional for failure to give notice of subject matter."[30]

Administrative Interpretation.—Courts will generally uphold the interpretation that is given to a statute by the administrative agency having authority to enforce the statute unless the agency's interpretation clearly contravenes the terms of the statute. The Florida Supreme Court held:

> "This Court has often reiterated the principle that a construction of a statute by the administrative body in whom the authority to administer is reposed is entitled to great weight and should not be overturned unless clearly contrary to the language of the statute."[31]

Legislative History.—The subjective intent of a legislator is not available as a means of determining the intent of the Legislature. Appellate courts have on several occasions refused to consider the testimony of legislators in determining intent:

> "We do not overlook the support given appellants' contention by affidavits of members of the Senate as to what they intended to accomplish by the act brought in question. The law appears settled that such testimony is of doubtful verity if at all admissible to show what was intended by the Act."[32]

Recent court decisions occasionally refer to committee staff analyses or other documentation of legislative history, but only to support conclusions already firmly based on the rules of statutory construction.

INCLUSION AND EXCLUSION

Expressing One Thing Excludes Others.—A long-standing rule of statutory construction, known by its Latin equivalent "*expressio unius est*

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[30] Carlile v. Game and Fresh Water Fish Commission, 354 So.2d 362, at 365 (Fla. 1977), citation omitted.
[31] Greyhound Lines, Inc., Greyhound Lines-East Division v. Yarborough, 275 So.2d 1, at 3 (Fla. 1973).
[32] Security Feed and Seed Co. v. Lee, 189 So. 869, at 870 (Fla. 1939). *See also* Donato v. American Telephone and Telegraph Co., 767 So.2d 1146 (Fla. 2000).

exclusion alterius," is that the mention of one thing implies the exclusion of another thing. In the words of the Florida Supreme Court:

> "[W]here a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned."[33]

This rule is strictly an aid to construction and not a rule of law, and a court will not apply the rule if its use would lead to a result contrary to the intent of the Legislature.[34]

Things of the Same Type.—If a list contains general terms, such as "including, but not limited to," the general terms will be construed to apply, under the doctrine of *ejusdem generis*, to things or persons of the same general nature or class as those listed. As Justice Sundberg explained:

> "Under the well-established doctrine of *ejusdem generis*, where general words follow the enumeration of particular classes of persons, the general words will be construed as applicable only to persons of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown. . . . This rule of statutory construction is based on the principle that if the legislature had intended the general words to be used in their unrestricted sense, they [sic] would not have made mention of the particular classes."[35]

INCORPORATION BY REFERENCE

A provision of state or federal law which can be specifically identified and which is generally available to the public may be incorporated in a bill by reference. For example, building or safety codes may be made a part of the law by citing, rather than republishing, the codes. These references must be drafted carefully because the rules of construction distinguish between general and specific references. Examples of a general reference are: "as provided by federal law" or "under the probate law of this state." Examples of a specific reference are: "as provided in s. 120.54(3)(c), *Florida Statutes*," or "consistent with s. 9 ASHREA Standard 90-75." However, in an effort to provide a measure of uniformity to the law, a specific reference to certain

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[33] Thayer v. State, 335 So.2d 815, at 817 (Fla. 1976). *See also* State v. Hearns, 961 So.2d 211 (Fla. 2007).
[34] Smalley Transportation Co. v. Moed's Transfer Co., 373 So.2d 55 (Fla. 1st DCA 1979).
[35] Soverino v. State, 356 So.2d 269, at 273 (Fla. 1978), citations omitted.

sections of law constitutes a general reference under the doctrine of incorporation by reference. Sections 456.072, 775.082, 775.083, 775.084, and any section within chapter 938, *Florida Statutes*, are examples of that exception, which must be expressly stated within the law.

General References.—When a general cross-reference appears in a statute, courts will treat the cross-reference as incorporating future amendments:

> "[W]hen the adopting statute makes no reference to any particular statute or part of statute by its title or otherwise, but refers to the law generally which governs a particular subject, the reference in such a case includes not only the law in force at the date of the adopting act, but also all subsequent laws on the particular subject referred to, so far at least as they are consistent with the purpose of the adopting act."[36]

Because of this rule of construction, the drafter should not use a general cross-reference to a code or law other than Florida law. Because Florida courts strictly adhere to the rule that the Legislature may not delegate its authority to make laws, when material other than Florida law is incorporated in a statute by reference, only the version of that material in existence at the time the Legislature made the incorporation will be given effect. An attempt to incorporate future versions of federal law or of building codes would delegate to Congress or to the drafters of the building code the power to make Florida law, which resides solely with the Legislature.[37]

Specific References.—When a statute specifically refers to another statute, that reference will be treated as a reference to the other statute only as it existed at the time the reference was adopted:

> "It is proper for [a] statute to adopt all or a part of another statute by specific and descriptive reference thereto. When this is done the adoption takes the statute as it exists at that time. Further, the adoption of another statute by specific reference takes the second statute as it

[36] Reino v. State, 352 So.2d 853, at 859 (Fla. 1977). *See also* Hecht v. Shaw, 151 So. 333 (Fla. 1933).
[37] Section 1, Article III of the State Constitution. *See also* Freimuth v. State, 272 So.2d 473 (Fla. 1972) and Florida Industrial Commission v. State *ex rel*. Orange State Oil Co., 21 So.2d 599 (Fla. 1945).

then exists, unaffected by any subsequent amendment or repeal unless a contrary intent clearly appears."[38]

Because of this rule of construction, the drafter should not insert unnecessary specific references to sections, subsections, or paragraphs of the *Florida Statutes*. Such references will mislead readers rather than assist them in finding the applicable law because the provision is likely to be a later version of the provision that is incorporated by reference.[39]

The republication of a section, subsection, or paragraph of the *Florida Statutes* to incorporate changes to a specific provision of the *Florida Statutes* constitutes an amendment of the section, subsection, or paragraph that is republished. As an amendment, the republication must conform to the constitutional requirements for republication discussed beginning on page 46.

IMPLIED REPEALS

Courts seldom have difficulty interpreting statutory provisions expressly repealing particular legislation or parts of statutes. If a repeal is clearly stated, the courts must follow and apply the expressed legislative will. Most interpretative problems arise when the repeal involves questions concerning whether an implied repeal exists or questions concerning the extent of an implied repeal. Although an act need not contain a repealing clause and may repeal a prior act by implication, a repeal by implication is disfavored in the law.[40] In order for a court to hold that a later act repeals an earlier act by implication, there must be:

(1) A positive repugnancy between the two;
(2) Clear intent that the last act prescribes the sole governing rule; or
(3) A complete revision of the subject matter by the later act.[41]

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[38] Overstreet v. Blum, 227 So.2d 197, at 198 (Fla. 1969), citation omitted. *See also* Hecht v. Shaw, 151 So. 333 (Fla. 1933).
[39] For an in-depth discussion of the perils of incorporation by reference see: F. Scott Boyd, *Looking Glass Law: Legislation by Reference in the States*, 68 La. L. Rev., 1201-1283 (2008) and Ernest E. Means, *Statutory Cross Reference —The "Loose Cannon" of Statutory Construction in Florida*, 9 Fla. St. U. L. Rev., 1-31 (1981).
[40] State v. Collier County, 171 So.2d 890 (Fla. 1965) and Palm Harbor Special Fire Control Dist. v. Kelly, 516 So.2d 249 (Fla. 1987).
[41] Walton County v. Board of Public Instruction of Walton County, 161 So.2d 45 (Fla. 1st DCA 1964). S*ee also* Sweet v. Josephson, 173 So.2d 444 (Fla. 1965).

Strictly speaking, a repeal by omission is an expressed repeal and not an implied repeal. A statement such as "all laws or parts of laws in conflict herewith are repealed to the extent of a conflict" should not be used since such a statement does not constitute an expressed or implied repeal. The drafter should not rely on a repeal by implication, a repeal by omission, or a general repeal, but should identify each conflicting provision and expressly amend or repeal the provision.

SEVERABILITY

Courts are under a duty to sever unconstitutional provisions from a law and allow the remainder of the law to stand if that is possible, regardless of the lack of a severability clause in the law. This duty springs from the doctrine of separation of powers. Conversely, if it is not possible to sever a provision, courts will not do so even if the law contains a severability clause. It is possible to sever an unconstitutional provision if:

(1) The expressed legislative purpose can be accomplished independently of the void provisions;
(2) The valid and invalid provisions are not inseparable;
(3) An act complete in itself remains after the invalid provisions are stricken; and
(4) The Legislature would have passed the valid part without the invalid part.[42]

Under the doctrine of severability, the party challenging a citizen-initiated constitutional amendment has the burden of proving that any remaining portion of the amendment is not severable from the portion that has been found to be unconstitutional.[43]

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[42] State *ex rel.* Boyd v. Green, 355 So.2d 789 (Fla. 1978). S*ee also* Richardson v. Richardson, 766 So.2d 1036 (Fla. 2000).
[43] Ray v. Mortham, 742 So.2d 1276 (Fla. 1999).

Chapter 6
Resolutions and Memorials

GENERALLY

Resolutions and memorials are not subject to the approval and veto powers of the Governor, are not subject to constitutional title requirements, and, except for certain types of joint resolutions and concurrent resolutions, do not have the effect of law. Substantive law must not be placed in resolutions other than those proposing or ratifying a constitutional amendment. A state building, bridge, or road is named by law—not by a resolution or memorial.

SENATE RESOLUTIONS

Uses.—A Senate Resolution is used for dealing with any housekeeping measure that does not involve the House of Representatives, for disciplining a Senator, or for expressing commendations or condolences by the Senate.

Procedure.—A Senate Resolution does not require the concurrence of the House of Representatives. A Senate Resolution is read only twice, except that Senate Resolutions expressing condolence or commemoration which are of a statewide nonpolitical significance may be shown as introduced, read, and adopted by publication in full in the *Senate Journal*.[1] Such resolutions are not required to be signed by the President of the Senate, but may be for formality.

Form.—A resolution relating solely to housekeeping matters need contain only a title, a resolving clause, and a body. Those expressing commendation or condolence contain:

(1) A brief title expressing the subject.
(2) A preamble reciting factual material.
(3) The resolving clause: "Be It Resolved by the Senate of the State of Florida:" following the preamble.

[1] Senate Rule 4.14.

(4) A body, which usually contains the names of persons who are to receive a copy of the resolution and a requirement for affixing the Senate Seal on copies of the resolution.

Presentation Copies.—Embossed copies, suitable for keepsakes or framing, are often presented to the person commended or to the family of the deceased when the resolution is read and adopted. The sponsor of the resolution is responsible for making the necessary arrangements for a presentation date and for the presence of family or guests and anyone who is to receive a copy, and for requesting the appropriate number of copies in advance. If there is insufficient time for preparing the presentation copies, the Secretary of the Senate may send copies to the recipients at a later date.

CONCURRENT RESOLUTIONS

Uses.—A concurrent resolution is used for many purposes. However, the uses listed in subsections (13) and (14) can be accomplished more efficiently using a separate resolution of each house. A concurrent resolution to request the observance of a special day or to express commendations or condolences pose logistical problems in arranging a common date on which both houses are to act. In addition, a copy cannot be presented until both houses have passed the resolution. For these reasons, the Secretary of the Senate urges the use of a Senate Resolution and House Resolution rather than a concurrent resolution. If separate resolutions are used, each house will not need to coordinate its schedule to the other house, and the recipient will receive two distinct keepsakes instead of one. A concurrent resolution is used to:

(1) Ratify a proposed amendment to the United States Constitution.
(2) Request Congress to call a constitutional convention for the purpose of proposing an amendment to the United States Constitution.
(3) Request the Florida Supreme Court to certify its recommendations regarding the number of judges or the number or configuration of judicial districts of circuits under Section 9, Article V of the State Constitution.
(4) Request an investigation by the Department of Law Enforcement under s. 943.04, *Florida Statutes*.
(5) Fix the effective date for laws passed over the Governor's veto under Section 9, Article III of the State Constitution.

(6) Request that the Governor return to the Legislature, for further consideration, an act that was sent to the Governor for approval.
(7) Extend a legislative session under Section 3(d), Article III of the State Constitution.[2]
(8) Adjourn a session for more than 72 hours, as required in Section 3(e), Article III of the State Constitution.
(9) Adjourn *sine die* more than 72 hours before the scheduled expiration of any session.
(10) Create an interim joint committee.
(11) Set a joint rule or policy for both houses.
(12) Repeal an obsolete state constitutional schedule provision in accordance with Section 20(i), Article V of the State Constitution.
(13) Request observance of a special day or week. (This use is discouraged.)
(14) Express jointly the commendation or condolence of both houses. (This use is discouraged.)

Procedure.—Senate rules require that a concurrent resolution be read twice, passed by both houses, and signed by the presiding officers of each house. Concurrent resolutions that are used to recall a bill from the Governor's desk, adopt Joint Rules of the Legislature, extend a session of the Legislature, or establish an effective date for a bill passed over the Governor's veto may be introduced, read the first and second time, and adopted on the same day.[3]

Form.—The form for a concurrent resolution is the same as that for a Senate Resolution, except that the resolving clause is: "Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:" for Senate Concurrent Resolutions, and "Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:" for House Concurrent Resolutions.

Presentation Copies.—Copies for personal presentation may be made in the same manner as for Senate Resolutions. If a Senate Concurrent Resolution provides for copies to be transmitted or dispatched to Congress

[2] The State Constitution does not require a concurrent resolution to extend a legislative session, but there is precedent for using a concurrent resolution for this purpose.
[3] Senate Rule 4.13.

or to some federal or state officers or agencies, the Secretary of the Senate will send the copies following adjournment *sine die* of the Legislature.

JOINT RESOLUTIONS

Uses.—A joint resolution is used to:

(1) Propose an amendment or revision of the State Constitution under Section 1, Article XI of the State Constitution.
(2) Rescind a proposed amendment or revision of the State Constitution.
(3) Apportion the Legislature under Section 16, Article III of the State Constitution. (Redistricting of congressional districts is done by law.)
(4) Repeal an obsolete schedule provision under Section 6, Article VIII or Section 11, Article XII of the State Constitution.
(5) Fix the effective date for laws passed over the Governor's veto under Section 9, Article III of the State Constitution.[4]
(6) Extend a legislative session under Section 3(d), Article III of the State Constitution.[5]

Procedure.—Joint resolutions are read three separate times and signed by the presiding officers of each house. Joint resolutions are not presented to the Governor, but are filed directly with the Secretary of State. A joint resolution proposing the amendment or revision of the State Constitution must be passed by three-fifths of the membership of each house under Section 1, Article XI of the State Constitution. All other joint resolutions need be passed by only a simple majority of each house.

Form.—The resolving clause "Be It Resolved by the Legislature of the State of Florida:" is used for all joint resolutions by both houses of the Legislature. The title of a Senate Joint Resolution is preceded by the words "Senate Joint Resolution."

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[4] The State Constitution does not require a joint resolution to fix the effective date of laws passed over the Governor's veto, but there is precedent for using a joint resolution for this purpose.
[5] The State Constitution does not require a joint resolution to extend a legislative session, but there is precedent for using a joint resolution for this purpose.

JOINT RESOLUTIONS TO AMEND THE STATE CONSTITUTION

Amendment or Revision.—Although constitutional amendments or revisions proposed by initiative of the people under Section 3, Article XI of the State Constitution, other than those limiting the power of government to raise revenue, must "embrace but one subject and matter directly connect therewith," amendments or revisions proposed by the Legislature may embrace more than one subject. Under Section 1, Article XI of the State Constitution, the Legislature may propose by joint resolution the "amendment of a section," the "revision of one or more articles," or the revision of "the whole" of the State Constitution. However, the Florida Supreme Court has indicated in *dicta* that it might invalidate an amendment to a section which is not "functionally relevant and reasonably germane" to the provision that it amends.[6]

The Legislature could not always propose a "revision" of the entire Constitution by joint resolution,[7] and courts have spilt much ink distinguishing between an "amendment" and a "revision."[8] Even now, it may matter whether the Legislature refers to its proposed changes as an "amendment" or a "revision." The Supreme Court has described the function of a "section amendment" as being to alter the substance of a single section of the constitution containing particularized statements of organic law and the function of an "article revision" as being to restructure an entire class of governmental powers or rights, such as legislative powers, taxation powers, or individual rights.[9]

Title.—Joint resolutions contain a title by convention, but the State Constitution does not require a joint resolution to have a title. The title may be as broad as the heading of the article being amended or as limited as the heading of the section being amended.

Directory Clause.—The republication requirement of Section 6, Article III of the State Constitution does not apply to joint resolutions. Section 1, Article XI of the State Constitution, however, specifies constitutional amendments no smaller than a section. Therefore, the drafter should NEVER republish less than an entire section when amending the

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[6] Smathers v. Smith, 338 So.2d 825 (Fla. 1976).
[7] *See* Rivera-Cruz v. Gray, 104 So.2d 501 (Fla. 1958), *construing* Sections 1 and 2 of Article XVII of the 1885 Constitution.
[8] *See* Adams v. Gunter, 238 So.2d 824 (Fla. 1970) and Weber v. Smathers, 338 So.2d 819 (Fla. 1976).
[9] Smathers v. Smith, 338 So.2d 825 (1976).

State Constitution. The directory clause that the Senate uses for a joint resolution amending a section is:

> Be It Resolved by the Legislature of the State of Florida:
>
> That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

If the joint resolution creates a new section of the State Constitution, the directory clause may begin: "That the creation of Section 28 of Article X of the State Constitution is agreed to . . . ." If it repeals a section of the State Constitution, the directory clause may begin: "That the repeal of Section 12 of Article IV of the State Constitution is agreed to . . . ." Any combination of these clauses may be used. If a new section is proposed for an Article of the State Constitution for which other newly proposed sections are likely to appear on the same ballot, the directory clause may read: "That the creation of a new section in Article XII of the State Constitution is agreed to . . . ." This allows the correct number to be added to each new section and avoids possible conflicts in numbering which necessitate a note in the published document.

Body.—In the body, the article number and article heading precede the sections, which are placed in numerical order and republished in their entirety. Rules require coding in the same manner as for general bills. The drafter should choose each word used in the text with great care. Courts are committed to give each word in the State Constitution its full sphere of operation, and presume that the Legislature chooses the words with greater care than it chooses those of statutes. Moreover, it is much more difficult and costly to correct drafting errors in constitutional amendments. Corrections must be passed by an extraordinary vote of the Legislature and approved by at least 60 percent of the electors voting on the measure.

The capitalization rules and numbering system used in the *Florida Statutes* are not followed in the State Constitution. In the numbering system used in the State Constitution, articles are designated by Roman numerals; sections are designated by whole Arabic numerals; subsections are designated by lower-case letters enclosed by parentheses; and paragraphs are designated by whole Arabic numerals enclosed in parentheses.

Repeals.—The body of a joint resolution repealing a section need not republish that section. However, if a repealed section is republished, it must be hyphened-through. For the sake of legal research, the number of a section of the State Constitution which has been repealed, like a *Florida Statutes* section number, must never be reused.

Effective Date.—Under Section 5(e), Article XI of the State Constitution, a proposed amendment to or revision of the State Constitution, if approved by at least 60 percent of the electors voting on the measure, takes effect on the first Tuesday after the first Monday in January following its approval by the electors or on such other date as is specified in the proposed amendment or revision. The default effective date under the State Constitution is preferred. If a different effective date is needed, the drafter may include it in the directory clause that immediately follows the resolving clause. For example:

> Be It Resolved by the Legislature of the State of Florida:
>
> That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election, or at an earlier special election specifically authorized by law for that purpose, and, if approved, shall take effect January 1, 2013:

In this case, the effective date will appear in a footnote to the section in the published version of the State Constitution. Although a schedule section for the effective date could be added, such schedules clutter the constitution and should be avoided unless absolutely necessary. An effective date other than the default effective date under the State Constitution is an implied constitutional amendment and must be mentioned in the ballot statement.

Schedule Provisions.—Temporary, transitional provisions are placed in a schedule of the State Constitution. The Legislature may repeal obsolete schedule provisions in Section 20, Article V of the State Constitution, relating to the judiciary, by concurrent resolution;[10] and it may repeal obsolete schedule provisions in Section 6, Article VIII of the State Constitution, relating to local government, or in Article XII of the State Constitution, which is a schedule for the entire constitution, by joint

[10] Section 20(i), Article V of the State Constitution.

resolution.[11] A vote of 60 percent of the electors is not required to repeal these schedule provisions. Temporary provisions that may be changed by law should also be placed in a schedule.[12]

Election.—Section 5, Article XI of the State Constitution requires that each proposed constitutional amendment or revision be submitted to the electors of the state at:

(1) The next general election held more than 90 days after the joint resolution is filed with the Secretary of State; or
(2) An earlier special election that is held more than 90 days after the joint resolution is filed with the Secretary of State, but only if the special election is specifically provided by a law that is:
    (a) Limited to a single amendment or revision; and
    (b) Enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature.

A general election is held in this state only on the first Tuesday after the first Monday in November of each even-numbered year.[13] It is unnecessary to refer to the date of the election in the directory clause of the joint resolution. The Legislature may submit more than one proposed joint resolution to the electors at the same special election, but it must pass a separate law by the requisite three-fourths vote for each joint resolution submitted to the electors at that special election. The date of the special election may coincide with the date for another election such as a state primary election or presidential preference primary. Making the special election coincide with another election results in greater voter participation and reduces costs.

Ballot Statement.—Section 101.161, *Florida Statutes*, requires each joint resolution to embody a statement of the substance of the proposed constitutional amendment and a ballot title, both to appear on the ballot. The ballot statement must be written in clear and unambiguous language. There is not a limit on the number of words that may be contained in a ballot statement proposed by joint resolution, but the ballot title or "caption" may not exceed 15 words. The ballot also includes a

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[11] *See* Section 6(g), Article VIII and Section 11, Article XII of the State Constitution.
[12] *See* Section 8(i), Article II of the State Constitution for an example of temporary provisions that may be changed by law.
[13] Section 5, Article VI of the State Constitution.

financial impact statement that is prepared by the Financial Impact Estimating Conference. The purpose of the ballot statement is to give adequate notice to the voters and advise them of the meaning and ramifications of the changes. If the ballot statement is misleading, the proposed amendment may be stricken from the ballot.

The Florida Supreme Court has reached various conclusions with regard to ballot statements. In one instance, the court ordered that the proposed amendment be removed from the ballot on the grounds that the ballot statement would mislead the public. Although the statement paraphrased the reworded provision, it did not inform voters of the terms of the existing constitutional provision that was being deleted.[14] In a later advisory opinion, the court held that a proposed amendment requiring a two-thirds vote of approval by the electors before imposition of a new tax or fee pursuant to constitutional amendment need not refer to the prior majority requirement or to the specific constitutional provision being amended.[15]

In a sharply divided opinion, the Florida Supreme Court held that approval by the voters of a proposed constitutional amendment did not cleanse the amendment of defects in the title and ballot statement which failed to disclose the chief purpose of eliminating the prohibition against "cruel or unusual punishment,"[16] and the amendment, which had been approved by the voters, was declared invalid.

Form.—The Senate uses the following form for a ballot statement:

> BE IT FURTHER RESOLVED that the following statement be placed on the ballot:
>
> CONSTITUTIONAL AMENDMENT
> ARTICLE I, SECTION 22
> NUMBER OF JURORS.—Proposing an amendment to the State Constitution, effective October 1, 2013, to allow a jury of not fewer than three persons for trial of a second-degree misdemeanor.

If the amendment is to take effect on a date other than the default effective date under the State Constitution, the ballot statement must mention the effective date.

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[14] Askew v. Firestone, 421 So.2d 151 (Fla. 1982).
[15] *In re* Advisory Opinion to the Attorney General re: Tax Limitation, 673 So.2d 864 (Fla. 1996).
[16] Armstrong v. Harris, 773 So.2d 7 (Fla. 2000).

AMENDMENTS TO THE UNITED STATES CONSTITUTION

Article V of the United States Constitution provides the procedures for proposing and ratifying amendments to the United States Constitution. The two powers granted to state legislatures by Article V are:

(1) To ratify an amendment proposed either by Congress or by a constitutional convention, when Congress chooses ratification by the state legislatures as the method for ratifying the amendment; and
(2) To apply to Congress to call a convention to propose such amendments.

A document for exercising these powers is not specified in the United States Constitution. Florida uses a concurrent resolution to ratify an amendment and uses a memorial or a concurrent resolution to apply to Congress for a constitutional convention.

Ratification.—Congress has the power to determine whether a proposed amendment to the United States Constitution must be ratified by three-fourths of the state legislatures or by ratifying conventions in three-fourths of the states. Implicit in this power granted to Congress is the authority to make the amendment inoperative unless it is ratified within a specified time.[17] Also, the question of whether a state may reverse its prior ratification of a proposed amendment is a political question for Congress to decide.[18] A determination made by Congress that ratification by three-fourths of the state legislature has occurred is conclusive.[19] In determining that the Fourteenth Amendment was ratified in 1868 and that the Fifteenth Amendment was ratified in 1870, Congress refused to allow a state to withdraw or rescind its prior ratification. This action by Congress does not have the effect of *stare decisis* and is not binding on Congress. It appears that the power to ratify an amendment to the United States Constitution is a continuing power until it is exercised and that failure to adopt a ratification resolution does not prevent a subsequent ratification.

In ratifying an amendment, the Legislature is not performing a legislative function. It is performing a power under the United States

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[17] Dillon v. Gloss, 256 U.S. 368, 41 S.Ct. 510 (1921).
[18] Coleman v. Miller, 307 U.S. 433, 59 S.Ct. 972 (1939).
[19] Leser v. Garnett, 258 U.S. 130, 42 S.Ct. 217 (1922).

Constitution as an agent of the Federal Government acting on behalf of the people. The power to ratify cannot be transferred to a referendum of the people, even by a provision of a state constitution;[20] and a state constitutional provision is invalid if it requires that a majority of the members of the Legislature be elected after the proposed amendment is submitted for ratification in order for the Legislature to exercise its power of ratification. For this reason, Section 1, Article X of the Florida Constitution has been declared unconstitutional.[21]

If Congress chooses to submit a proposed constitutional amendment to a convention in each state rather than to the state legislatures and does not provide how those conventions are to be constituted, the convention in this state would be governed by chapter 107, *Florida Statutes*.

Application to Congress to Call a Convention.—The legislatures of two-thirds of the states can force Congress to call a convention for the purpose of proposing amendments to the United States Constitution under Article V of the United States Constitution. The United States Constitution does not specify a formal document by which the states are to apply to Congress. It appears, however, that Congress has exclusive authority to determine whether it has received the requisite number of applications. Conceivably, different wording, and perhaps, but more unlikely, even different forms of documents, may not count toward the requisite number of applications to call the same convention. Precedent exists in Florida for using a memorial or concurrent resolution for this purpose. Whether such a convention can be limited to consider amendments on particular subjects is a controversial question. In order to attempt to limit the proposals of a convention, the application should use restrictive language as to its purpose, such as “for the sole purpose” or “for the exclusive purpose,” and should express the subject matter in terms general enough to allow the convention some discretion and to permit compromise.

MEMORIALS

Uses.—A memorial is a document addressed to Congress, to the President of the United States, or to an executive or legislative body or official to express the consensus of the Legislature or to petition action on matters within the jurisdiction of the addressee. Both houses must pass a

[20] Hawke v. Smith, 253 U.S. 221, 40 S.Ct. 495 (1920).
[21] Trombetta v. State of Florida, 353 F. Supp. 575 (1973).

memorial, and it is not subject to approval or veto by the Governor. The Legislature also uses a memorial to request Congress to propose an amendment to the United States Constitution or to enact legislation.

Form.—In the Senate, the words "Senate Memorial" precede the title, which begins with the words "A memorial to . . . ." Although not required, a memorial usually contains a preamble. The resolving clause "Be It Resolved by the Legislature of the State of Florida:" is used by both houses of the Legislature. The body is similar to that of a Senate Resolution. The last clause designates the officials to whom copies of the memorial are to be dispatched. The presiding officers of each house sign a memorial.

Senate Resolution

A resolution commending the Florida State University football team for its 1999 football season.

WHEREAS, the Florida State University football team, under the direction of Head Coach Bobby Bowden and his excellent staff, has defeated all its opponents during the 1999 season, and

WHEREAS, the 1999 football season is the first perfect season for a Florida State team since 1979 and the first 12-0 season ever, and

WHEREAS, Florida State University is ranked number 1 in the Associated Press football poll and number 2 in the United Press International football poll, the highest national rankings it has yet achieved, and

WHEREAS, Florida State University has achieved a berth in a major postseason bowl, the Sugar Bowl, where it will play Virginia Tech, which is 7-0 in the Big East Conference, and

WHEREAS, by its achievements, the Florida State University football team has brought national honor and recognition to Florida State University and the State of Florida, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida State University football team, Head Coach Bobby Bowden, and the coaching staff are commended for their outstanding accomplishments in bringing Florida

State University to national prominence and excellence in intercollegiate football.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to the Florida State University football team and to Coach Bobby Bowden as a tangible token of the sentiments of the Florida Senate.

Senate Resolution

A resolution honoring the memory of Senator George G. Kirkpatrick, Jr.

WHEREAS, Senator George G. Kirkpatrick, Jr., served with distinction in the Florida Senate from 1980 through 2000, and

WHEREAS, it is most appropriate that the Florida Senate commemorate the passing of one of its former members who served his district and the State of Florida so admirably, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That this legislative body does pause in its deliberations to pay its respects to the late Senator George G. Kirkpatrick, Jr., and that the Florida Senate in session assembled does record this testimonial of esteem and bereavement:

IN MEMORIAM

GEORGE G. KIRKPATRICK, JR.

George G. Kirkpatrick, Jr., was born on December 24, 1938, in Gainesville, Florida, and served as the Senator from the Fifth District in the Florida Senate from 1980 until 2000. During his tenure in the Florida Senate, Senator George G. Kirkpatrick, Jr., authored the Solid Waste Management Act of 1988, which established recycling programs statewide; sponsored the Sadowski Affordable Housing Act in order to make housing more accessible to low-income Floridians; sponsored the Preservation 2000

program to preserve sensitive state lands; was tireless in his efforts to preserve the Rodman Reservoir; and championed workforce development and economic development programs that have greatly benefited the workers of this state. Through his work in the Florida Legislature and as the Executive Director of the Independent Colleges and Universities of Florida, Senator Kirkpatrick also worked successfully to improve higher education throughout this state. His contributions to the State of Florida and the people of this state were numerous, and his legacy as a champion of children, a protector of the environment, and an advocate for higher education shall live on for years to come. Senator George G. Kirkpatrick, Jr., died unexpectedly on February 5, 2003, in Tallahassee, and is survived by his wife, Monika, his children Catherine and Grier, and three grandchildren.

BE IT FURTHER RESOLVED that a copy of this resolution, signed by the President of the Senate, with the Seal of the Senate affixed, be transmitted to Mrs. Monika Kirkpatrick, widow of George G. Kirkpatrick, Jr., as a tangible token of the sentiments expressed in this resolution and as a lasting symbol of the respect of the members of the Florida Senate.

Senate Resolution

A resolution to discipline State Senator Dewey Cheatham of the 41st Senate District of the State of Florida.

WHEREAS, based on a sworn complaint, the Florida Commission on Ethics, on April 1, 2008, found probable cause that State Senator Dewey Cheatham had violated certain constitutional provisions, laws, and Senate Rules relating to breach of the public trust, standards of conduct, and disclosure requirements pertaining to specified interests, and

WHEREAS, under s. 112.324, Florida Statutes, the President of the Senate referred the finding of probable cause to the Senate Judiciary Committee for a hearing on the merits, and

WHEREAS, the Senate Judiciary Committee adopted rules of procedure and held a 5-day adversary hearing on the merits of the charges, taking testimony from 23 witnesses and considering 94 exhibits, and

WHEREAS, the committee unanimously found that Senator Dewey Cheatham had violated certain provisions of s. 112.313, Florida Statutes, as well as Senate Rules governing legislative conduct and ethics, recommends that he be fined $5,000 and not be seated in the Florida Senate until the fine is paid, and further recommends that the Senate take no further action on the remainder of the charges contained in the findings of probable cause by the Commission on Ethics, and

WHEREAS, under Senate Rules, penalties imposed by the Florida Senate for violation of the Senate Rule relating to legislative conduct and ethics must be upon recommendation of the Committee on Rules, and

WHEREAS, the Senate Committee on Rules, after hearing and upon reasonable notice and an opportunity of the respondent to be heard, did on April 30, 2008, recommend that the Senate impose the discipline recommended by the Judiciary Committee, and

WHEREAS, the Senate has received the reports of the committees in this matter and has considered those reports in special session assembled for that purpose, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That Senator Dewey Cheatham of Senate District 41 did violate s. 112.313, Florida Statutes, and Senate Rules governing legislative conduct and ethics, and

That Senator Dewey Cheatham is reprimanded for those violations, and

That Senator Dewey Cheatham is fined the sum of $5,000, and

That Senator Dewey Cheatham will not be seated in the Florida Senate until the fine is tendered to the Chief Financial Officer.

SAMPLE CONCURRENT RESOLUTION: Adjournment more than 72 hours

Senate Concurrent Resolution

A concurrent resolution calling for adjournment of the special session of the Legislature at 12 midnight on June 13, 2008, to reconvene at 10 a.m. on June 17, 2008.

WHEREAS, the Governor of the State of Florida called a special session of the Legislature beginning at 11 a.m. on June 10, 2008, for the purpose of enacting a General Appropriations Act and such revenue acts are necessary to adequately and properly finance the General Appropriations Act, and

WHEREAS, legislative measures passed independently by both houses of the Legislature will of necessity require consideration by a conference committee, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That both houses of the Legislature adjourn at 12 midnight June 13, 2008, to reconvene on Tuesday, June 17, 2008, at 10 a.m. During such adjournment, per diem shall be paid only to those Senators and Representatives actually engaged in meetings of the conference committees on appropriations and tax measures.

SAMPLE CONCURRENT RESOLUTION: *Sine Die* adjournment

Senate Concurrent Resolution

A concurrent resolution providing for sine die adjournment of the 2010 Regular Session.

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That the 2010 Regular Session of the Legislature shall adjourn sine die at 5 p.m. on April 1, 2010.

SAMPLE CONCURRENT RESOLUTION: Requesting Governor to Return Bill

Senate Concurrent Resolution

A concurrent resolution requesting the Governor of the State of Florida to return Senate Bill 340 to the Legislature for the purpose of further consideration.

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That the Legislature respectfully requests the Governor of Florida to return Senate Bill 340, introduced by the Senator from District 25, to the Legislature for the purpose of further consideration.

SAMPLE CONCURRENT RESOLUTION: Ratifying Amendment to the U.S. Constitution

Senate Concurrent Resolution

A concurrent resolution ratifying the proposed amendment to the Constitution of the United States relating to equal rights for men and women.

WHEREAS, the Equal Rights Amendment was first introduced in Congress in 1923 and was filed every session thereafter from 1923 to 1972, and

WHEREAS, the Equal Rights Amendment was finally approved by Congress in 1972 and sent to the states for ratification with a 7-year deadline, and

WHEREAS, Congress submitted the Madison Amendment to the states as part of the proposed Bill of Rights on September 25, 1789, which relates to the timing of Congressional pay raises, but it was not ratified until 203 years later in 1992, making it the Twenty-seventh Amendment to the United States Constitution and establishing a precedent such that the Equal Rights Amendment is sufficiently contemporaneous and therefore remains viable, and

WHEREAS, in 1998 Florida voters, by a margin of 65 percent to 35 percent, approved a similar amendment to the Florida Constitution when they approved Revision 9, which added and clarified that "all natural persons, female and male alike, are equal before the law," therefore clearly indicating that ratification of the federal Equal Rights Amendment would be fully consistent with the will of the majority of voters in this state, and

WHEREAS, Article V of the United States Constitution allows the Legislature of the State of Florida to ratify

this proposed amendment to the Constitution of the United States, and

WHEREAS, the Legislature of the State of Florida finds that the Equal Rights Amendment for men and women is reasonable and sufficiently contemporaneous and needed in the United States Constitution because while women enjoy more rights today than they did when the Equal Rights Amendment was first introduced in 1923 or when it passed out of Congress in 1972, hard-won laws against gender discrimination do not rest on any unequivocal constitutional foundation and the laws can be inconsistently enforced or even repealed, and

WHEREAS, elements of gender discrimination remain in statutory and case law, and courts have had difficulty applying a consistent standard to gender classifications which are not inherently suspect or comparable to racial or ethnic classifications under equal-protection analysis, and

WHEREAS, the Equal Rights Amendment for men and women is necessary in order to have a clear constitutional guarantee that gender is considered a suspect classification and entitled to the same strict scrutiny that courts reserve for race, religion, and national origin, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That the proposed amendment to the Constitution of the United States set forth below is ratified by the Legislature of the State of Florida.

"Article ____

"SECTION 1. Equality of rights under the law shall

not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification."

BE IT FURTHER RESOLVED, that certified copies of the foregoing preamble and resolution be immediately forwarded by the Secretary of State of the State of Florida, under the great seal, to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, and the Administrator of General Services of the United States.

Senate Concurrent Resolution

A concurrent resolution amending Joint Rule 2.2 of the Joint Rules of the Legislature.

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That Joint Rule 2.2 of the Joint Rules of the Legislature is amended to read:

JOINT RULES

JOINT RULE TWO

GENERAL APPROPRIATIONS BILL

2.2—General Appropriations Bill; Definitions

For the purposes of Joint Rule 2, the term "general appropriations bill" means a bill that makes appropriations ~~which provides~~ for the salaries of public officers and other current expenses of the state and that contains no subject other than appropriations. The term does not include a bill that ~~which~~ contains appropriations that ~~which~~ are incidental and necessary solely to implement a substantive law ~~is not included within the term~~.

SAMPLE CONCURRENT RESOLUTION: Unusual Use

House Concurrent Resolution

A concurrent resolution relating to the conference committee report on House Bill 1045.

WHEREAS, the conference committee report on House Bill 1045, relating to financial matters pertaining to political subdivisions, inadvertently omitted a phrase agreed to by the conferees, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:

That, before House Bill 1045 is enrolled and transmitted to the Governor, the staff of the Engrossing and Enrolling Office of the House of Representatives, under the supervision of the Clerk of the House, shall insert the words "who is employed full time," between the words "plan" and "shall" on line 478 of the Delete All Amendment offered by the Conference Committee on House Bill 1045.

Senate Joint Resolution

A joint resolution proposing an amendment to Section 22 of Article I of the State Constitution, relating to trial by jury, to reduce the number of jurors which may be authorized by law for the trial of certain misdemeanors.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 22 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 22. Trial by jury.—

The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law<u>, but the number of jurors shall be at least three for second-degree misdemeanor cases and at least six for all other cases</u>.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 22

NUMBER OF JURORS.—Proposing an amendment to the State Constitution to allow a jury of not fewer than three persons for trial of second-degree misdemeanors.

SAMPLE JOINT RESOLUTION: Repealing Constitutional Provision

Senate Joint Resolution

A joint resolution proposing the repeal of Section 1 of Article X of the State Constitution, which limits the power of the Legislature to ratify amendments to the United States Constitution.

Be It Resolved by the Legislature of the State of Florida:

That the repeal of Section 1 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 1

RATIFICATION OF U.S. CONSTITUTIONAL AMENDMENTS.—Proposing an amendment to the State Constitution to repeal the provision that prohibits the Legislature from ratifying a proposed amendment to the United States Constitution unless a majority of the members of the Legislature have been elected subsequent to the submission of the amendment for ratification.

A bill to be entitled

An act relating to a special election to be held on September 1, 2009, for the approval or rejection by the electors of this state of a joint resolution creating Section 19 of Article VII of the State Constitution, to authorize the issuance of state bonds to finance or refinance state conservation programs and postsecondary educational infrastructure; providing for publication of notice and for procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Pursuant to Section 5 of Article XI of the State Constitution, there shall be a special election on September 1, 2009, at which there shall be submitted to the electors of this state for approval or rejection Senate Joint Resolution 76, proposing the creation of Section 19 of Article VII of the State Constitution, to authorize the issuance of state bonds to finance or refinance state conservation programs and postsecondary educational infrastructure.

Section 2. Publication of notice shall be in accordance with Section 5 of Article XI of the State Constitution. The special election shall be held as other special elections are held.

Section 3. This act shall take effect upon becoming a law, but only if it is enacted by the affirmative vote of at least three-fourths of the membership of each house of the Legislature.

SAMPLE JOINT RESOLUTION: Rescinding an Adopted Joint Resolution

Senate Joint Resolution

A joint resolution rescinding and withdrawing House Joint Resolution 829, relating to bonds for housing and related facilities, which was adopted by the Legislature in the 2009 Regular Session.

Be It Resolved by the Legislature of the State of Florida:

That House Joint Resolution 829, adopted in the 2009 Regular Session and entitled "A joint resolution proposing the creation of Section 19 of Article VII and Section 27 of Article XII of the State Constitution, relating to bonds for housing and related facilities," is rescinded and withdrawn.

BE IT FURTHER RESOLVED that the proposed creation of Section 19 of Article VII and Section 27 of Article XII of the State Constitution shall not be submitted to the electors of this state for approval or rejection at the general election to be held in November 2010, and the Secretary of State shall withhold House Joint Resolution 829 from the ballot of the 2010 general election.

SAMPLE JOINT RESOLUTION: Effective date of Bill Passed Over a Veto

Senate Joint Resolution

A joint resolution fixing the effective date for Senate Bill 288, relating to taxation, which was passed in the 2010 Regular Session and vetoed by the Governor.

Be It Resolved by the Legislature of the State of Florida:

That, pursuant to Section 9 of Article III of the State Constitution, Senate Bill 288, enacted during the 2010 Regular Session of the Legislature, shall take effect July 1, 2010.

SAMPLE JOINT RESOLUTION: Extending a Session

Senate Joint Resolution

A joint resolution extending the 2010 regular legislative session pursuant to Section (3)(d) of Article III of the State Constitution.

WHEREAS, the sixty days of the 2010 regular session of the Florida Legislature will expire April 30, 2010, and the necessary tasks of the session have not been completed, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the 2010 regular session of the Florida Legislature is extended until 6 p.m., May 7, 2010, pursuant to Section (3)(d) of Article III of the State Constitution.

BE IT FURTHER RESOLVED that the regular session so extended shall consider only the following matters:

(1) House Bill 1835, the General Appropriations Act.

(2) House Bill 1837, the Implementing Act, including legislation necessary to fund the General Appropriations Act.

All other measures in both houses shall be indefinitely postponed and withdrawn from consideration of the respective house and neither presiding officer shall recognize any motion to take up any measure postponed and withdrawn.

BE IT FURTHER RESOLVED that upon recess or adjournment Friday, April 30, 2010, either house may reconvene upon the call of its presiding officer.

Senate Memorial

A memorial to the Congress of the United States, urging Congress to appropriate sufficient funds to allow Amtrak to continue to operate.

WHEREAS, the National Railroad Passenger Corporation, known as Amtrak, serves the residents of this state and its numerous visitors, and

WHEREAS, Amtrak directly employs many residents of this state and has substantial investments in this state in the form of passenger facilities, and

WHEREAS, the budget presented to the Congress of the United States by the President would, if enacted, deprive Amtrak of the federal funding required for its continued existence, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to provide sufficient funding to allow Amtrak to continue to operate and to serve this state as it has in the past.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Chapter 7
Amendments to Bills

WHAT MAY BE AMENDED

An amendment is a proposal to change a bill, resolution, or memorial. It may add sections, change the wording of a provision, or delete a provision.

Any bill, joint resolution, concurrent resolution, or memorial in the possession of the Senate, and any Senate Resolution, may be amended in a committee meeting or on the floor of the Senate by an amendment offered by a Senator. The Senate may not further amend a measure that has passed the Senate and that is returned to the Senate as amended by the House of Representatives. The Senate may only:

(1) Amend the House amendments;
(2) Concur in the House amendments;
(3) Refuse to concur in the House amendments and ask the House to recede; or
(4) Request a conference committee.

The measure as sent to the House is beyond the reach of the amendatory process of the Senate. The reason for this is that the Senate and House have already agreed to everything except the amendment added by the House.

Amendments may be offered in committee or on the floor of either chamber. Amendments are prepared in a computer-generated format, although handwritten amendments are allowed during committee meetings. During a session of the Senate, the Office of Bill Drafting Services assigns attorneys to the floor to assist Senators in drafting amendments. Amendments may not be handwritten on the floor during a session, but should be drafted in advance to meet notice requirements of the Senate rules. Both the Senate and the House of Representatives require an amendment document to be bar-coded prior to filing so that the amendment can be made available for viewing in the chamber amendment-display system and readily accessed for purposes of the journals and the engrossing and enrolling clerks.

Because the filing deadlines for committee and floor amendments may vary from year to year pursuant to changes in rules, it is wise to check with the Secretary of the Senate or the particular committee to determine the current deadline.

AMENDMENT FORMAT

Bill Number.—The upper left corner contains the bill number. The version or type is designated by the appropriate abbreviation:

(1) "CS/SB" is a committee substitute for a Senate bill or "CS/HB" is a committee substitute for a House bill.
(2) "SJR" is a Senate Joint Resolution or "HJR" is a House Joint Resolution.
(3) "SCR" is a Senate Concurrent Resolution or "HCR" is a House Concurrent Resolution.
(4) "SM" is a Senate Memorial or "HM" is a House Memorial.
(5) "SR" is a Senate Resolution or "HR" is a House Resolution.
(6) "CS/SB 754, 2nd Eng." is the second engrossment of the Committee Substitute for Senate Bill 754.

Sponsor's Name.—The name of the Senator who is sponsoring the amendment appears on the amendment. A committee amendment contains the name of the committee.

Types of Amendments.—Amendments can be of various types as follows:

(1) AMENDMENT TO AMENDMENT. An amendment pending on a bill may itself be amended, but a pending amendment to an amendment may not be amended. The amending of pending amendments stops at one. When amending a pending amendment, the amendment is drafted to the pending amendment, not to the bill. The line numbers entered on the amendment are the line numbers of the amendment being amended. See the example on page 173.

(2) SUBSTITUTE AMENDMENT OR SUBSTITUTE AMENDMENT FOR AMENDMENT. An unlimited number of substitute amendments may be offered for any pending

amendment. If a substitute amendment is adopted, no further consideration is given to the amendment for which it was substituted. If a substitute amendment is withdrawn or defeated, consideration resumes on the amendment for which it was substituted.

(3) TITLE AMENDMENT. For purposes of amendments, the preamble of a bill is part of the title and amended using a title amendment. A title amendment must accompany a substantive amendment if the title of the bill will no longer give adequate notice of the contents of the bill as amended or if the title will mislead. Usually the title amendment is a part of the main amendment; however, it is occasionally necessary to prepare a title amendment as a separate document.

(4) DIRECTORY CLAUSE AMENDMENT. This is used to make changes only to the directory clause of the bill and is used to avoid removing extraneous material from the bill in order to reach the directory clause.

Amendment Directions.—If a bill is being amended, the line number of the bill is referenced. If an amendment is being amended, the line number of that amendment is referenced. An amendment may merely delete text, may delete and insert text, or may insert text.

DRAFTING THE TEXT OF AMENDMENTS

Grammar, Usage, and Style.—The same principles of grammar, usage, and style which apply to drafting the text of bills apply to drafting the text of amendments.

One-Subject Limitation.—The subject matter of an amendment must fall within the scope of the subject of the bill. Whenever an amendment adds new material to a bill, the drafter must compare the subject of that material with the subject of the bill for compliance with the constitutional requirement that a bill "embrace but one subject and matter properly connected therewith . . . ."[1]

[1] Section 6, Article III of the State Constitution.

It is often necessary to amend the "relating to" clause in the title of the bill in order for the material in the bill and the material in the amendment to be encompassed by a single subject expressed in the title. If it is impossible to identify a single subject to which both the bill and the amendment relate, that amendment should not be placed on that bill. Doing so could render the bill unconstitutional. See the discussion on the one-subject limitation beginning on page 33.

Germanity.—Senate rules require that, within the constraints of the one-subject limitation, the provisions of an amendment must be germane to those of the bill.[2] In order to be germane in the Senate, an amendment must be related to the same subject as the original measure, must be a natural and logical expansion of the subject matter of the original proposal, and must not raise a new, independent issue.

The subject expressed in the title of a bill is often broader than the actual subject of the bill, and amendatory material that might fall within the scope of the subject as expressed in the title might not be germane to the actual subject of the bill. For example, if a bill entitled "An act relating to county government" deals strictly with personnel and retirement, an amendment dealing with the levy of *ad valorem* taxes by counties would not be germane even though its subject falls within the scope of the subject as expressed in the title. Such an amendment would more likely be germane to a bill relating to taxation.

Germanity is used as a parliamentary device, and its invocation is discretionary with Senators. Senators often exercise this discretion, however, and the drafter should consider the possibility that a Senator will invoke it with respect to an amendment.

Current Version of Bill.—An amendment must be drafted to the most current official version of a bill. Before the beginning of committee meetings, the most current official version of a Senate bill is the bill as filed with the Secretary of the Senate in its PDF format, and the most current official version of a House bill is the bill as filed with the Clerk of the House of Representatives in its PDF format. Once committee meetings are held, and during the legislative session, the most current version of the bill may be a committee substitute that is voted out of a previous committee of reference

[2] *See* Senate Rules 2.39, 2.41, 7.1, and 7.4.

or it may be an engrossed version of the bill that is amended on the floor on second reading or that is amended on third reading as passed by the Senate or the House.

Often a companion measure that originated in the other house will be substituted for a bill under consideration on the floor. This is a common practice that each house uses to expedite the passage of a bill through the Legislature when that bill and its companion measure are both in possession of that particular house. If a companion bill is to be substituted on the floor, it may be necessary to draft two versions of the amendment—one for the bill on the calendar since the substitution might not occur, and a second amendment to the current version of the companion bill. The instructions for an amendment to a companion bill may differ from the instructions needed for the bill on the calendar. Current practice in the Senate allows a House companion bill to be substituted for a Senate bill on the calendar if the House companion is identical or similar to the Senate bill.

Coding.—Improper coding is the most common error made in amendments. Coding is not used to show the changes an amendment makes to a bill but to show changes being made to existing law. If existing law is being changed by the amendment, the changes in the amendment are coded just as the changes are coded in the bill. The text is not coded when inserted in or deleted from:

(1) The title or preamble of a bill.
(2) Directory (or amendatory) clauses of a bill.
(3) A concurrent resolution, memorial, or Senate Resolution.
(4) A joint resolution that does not amend the State Constitution.
(5) The effective date of a bill.

The text is coded when inserted into or deleted from an existing provision of the *Florida Statutes*, an existing provision of general or local law appearing in the *Laws of Florida*, or an existing provision of the State Constitution.

Primary Amendments.—Each amendment requires a separate vote. Thus, the ideal number of primary amendments should equal the number of issues that the sponsor is addressing by the amendatory process. A single amendment for each issue ensures that with one vote on an issue all changes that must be made to the bill are made; and it avoids making Senators take a

position on multiple issues by a single vote. Also, an amendment that addresses only one issue is easier for Senators to explain in debate.

It is not always possible to draft a single amendment to address each issue. If widely separated, noncontiguous provisions of a bill require amendments in order to address a single issue, the drafter may draft separate conforming amendments or prepare an amendment that has multiple body amendments. Occasionally, the sponsor wants a single vote on multiple issues and requires that one amendment be prepared to address all issues. A single amendment addressing multiple issues often must republish much of the bill, and, if the bill originated in the other house, that republication reopens more of the bill to amendment by the other house on its return to that house.

Ancillary Conforming and Technical Amendments.—Often conforming and technical amendments must accompany or be made a part of an amendment in order to accomplish the objective. One or more of the following are often needed:

(1) TITLE AMENDMENT. A title amendment is most often needed to satisfy the requirements of Section 6, Article III of the State Constitution. See pages 35-36 for a discussion of titles generally.
(2) DIRECTORY OR AMENDATORY CLAUSE. If an amendment adds, removes, or amends a subsection or paragraph within a section of the *Florida Statutes* and if that addition, removal, or amendment is not encompassed by the terms of the directory clause currently in the bill, the directory clause must be amended. See pages 51-52 for a discussion of directory clauses generally.
(3) INTENT SECTION. If the bill has a section containing legislative purpose or intent, that section may need to be amended to ensure that the expressed purpose or intent continues to be accurate following the amendment.
(4) DEFINITIONS. An amendment may alter a bill so as to leave a definition moot or incorrect. The drafter should always reread the definitions in a bill that is being amended in order to ensure that those definitions remain applicable.
(5) EFFECTIVE DATE. The effective date of a bill must be compatible with the changes made by an amendment. Often it is necessary to amend the effective date in order to effectuate the effective date that is needed by the amendment. If the bill has

multiple effective dates, each effective date must apply to the appropriate section of the bill as amended. See page 68 for a discussion of multiple effective dates.

(6) BALLOT STATEMENT. An amendment to a joint resolution that proposes an amendment to or revision of the State Constitution will frequently require that the drafter amend the ballot statement to conform to the amended text of the proposed constitutional amendment or revision. See pages 134-135 for a discussion of ballot statements.

(7) CROSS-REFERENCES. Cross-references to a bill section or to a section of the *Florida Statutes*, the *Laws of Florida*, or the State Constitution, whether the cross-references appear in material republished in the bill or not, must be checked for accuracy. This is especially important for references to sections of the bill. An amendment that adds or deletes sections, subsections, or paragraphs in a bill is likely to make a cross-reference appearing in another part of the bill erroneous.

SPECIAL TYPES OF AMENDMENTS

"Piggyback" Amendments.—"Piggybacking" is the practice of amending the contents of one bill onto another bill, which is commonly referred to as a "vehicle." Unless the subject of each bill is identical or unless the material in the bills can be encompassed by a single subject that can be expressed in the title, piggybacking the bills violates the constitutional requirement that bills encompass one subject.

Even when both bills relate to one subject, there are great dangers in piggybacking bills. Conflicting effective dates, improper internal cross-references, inapplicable definition and penalty sections, and differing and conflicting changes to the same section of the *Florida Statutes* all make the piggybacking of bills a very dangerous game. If one bill is "piggybacked" onto another bill, the drafter must carefully read each bill in its entirety and identify and correct any internal inconsistencies and conflicts, and it is usually necessary to make some changes to the language of both bills.

Deleting Everything after and before the Enacting Clause or Resolving Clause.—The enacting clause itself may not be deleted as it is required by Section 6, Article III of the State Constitution. Everything after the enacting clause, however, may be deleted by amendment and

accompanied by a corresponding insertion. This procedure is used to substitute the text of one bill for that of another on the same subject or to simplify the amendment of a bill which, if done by separate amendments, would be overly complex and time-consuming. An amendment deleting everything after the enacting clause will likely require a title amendment deleting everything before the enacting clause in order to insert a new title that conforms to the provisions of the body amendment. Although "delete all" amendments are currently authorized by Senate rule, such amendments are frequently disallowed due to the possibility of subterfuge. Deleting everything after the enacting clause on a bill that originated in the other house reopens the entire bill to the amendatory process in the other house on its return to that house. See page 175 for an example of an amendment that deletes everything after and before the resolving clause for a joint resolution proposing an amendment to the State Constitution.

Conference Committee Amendments.—An amendment that is adopted as part of a conference committee report is an amendment that deletes everything before and after the enacting clause. The sponsor of the amendment is the conference committee on the particular bill and such amendment is not subject to further amendment. See page 179 for an example of a conference committee amendment.

AMENDMENT CHECKLIST

Before drafting an amendment, the drafter should determine:

(1) The most current version of the bill, whether there is more than one committee substitute, or whether the bill has been engrossed more than once.
(2) Whether the "relating to" clause in the title will continue to cover the bill as amended.
(3) If the amendment is germane to the subject of the bill.

After drafting an amendment, the drafter should double-check whether the line numbers are correct and determine if conforming amendments are needed for:

(1) The title or preamble.
(2) Directory (or amendatory) clauses.
(3) Section headings (catch lines).
(4) The intent section.
(5) Definitions.
(6) Cross-references.
(7) The effective date.
(8) The ballot statement of a joint resolution proposing a constitutional amendment.

REVIEWING A BILL AFTER AMENDMENTS ARE ADOPTED

The drafter should read the bill as it will appear with all amendments engrossed in order to ensure that the amendments do not operate at cross-purposes, negate each other, or render provisions inoperable. It is possible for two properly drafted amendments, if both are adopted, to effect a result not contemplated by either amendment. Suppose, for example, existing law provides: "A distributor of beer may not distribute intoxicating liquors." Suppose also that one amendment inserts the words "<u>or wine</u>" after the word "beer," so that a distributor of wine may not distribute intoxicating liquors. Suppose further that another amendment inserts the words "<u>wine or</u>" before the words "intoxicating liquors" to prevent a distributor of beer from distributing wine. If both amendments are adopted, the provision will read: "A distributor of beer <u>or wine</u> may not distribute <u>wine or</u> intoxicating liquors." The effect would be to put wine distributors out of business, which is not the intent of either amendment.

If amendments that are adopted in committee have an unintended effect, the bill can be corrected in the next committee of reference or on the floor. If amendments that are adopted on the floor during the second reading of a bill have an unintended effect, the bill can be corrected when it is taken up on third reading, or, if such amendments are adopted on third reading, the bill can be recalled for reconsideration from the other house or from the Governor if necessary in order to make the necessary correction.

Florida Senate 2009 SENATOR AMENDMENT

Bill No. 466

CHAMBER ACTION

Senate . House

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Senator Sparrow moved the following **amendment:**

Senate Amendment (with title amendment)

Between line(s) 1616 and 1617,

insert:

Section 22. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.021 or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state

to provide liability insurance coverage for counties, municipalities, ~~or~~ other public agencies of this state, <u>or real or personal property that is owned by a not-for-profit organization under s. 202 of the Supportive Housing for the Elderly Program or s. 236 of the National Housing Act,</u> which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line(s) 83

and insert:

made by the act; amending s. 163.01, F.S.; redefining the term "local government liability pool" for purposes of the Florida Interlocal Cooperation Act; providing an effective date.

Florida Senate 2009 SENATOR AMENDMENT

Bill No. 678

CHAMBER ACTION

Senate . House

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Senator Snipe moved the following **amendment to amendment (473591):**

Senate Amendment (with directory and title amendments)

Between line(s) 38 and 39

insert:

(3) An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

(d) Require that notice be provided in a newspaper of general circulation in the county no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.

==== D I R E C T O R Y C L A U S E A M E N D M E N T ====

And the directory clause is amended as follows:

Delete line(s) 26 and 27

and insert:

Section 3. Subsection (2) and paragraph (d) of subsection (3) of section 163.31801, Florida Statutes, are amended to read:

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line(s) 79 and 80

and insert:

as otherwise provided by law; amending s. 163.31801, F.S.; revising legislative findings concerning impact fees; providing the method by which notice must be given before a new or amended impact fee is imposed; amending s.

SAMPLE DELETE ALL AMENDMENT TO A SENATE JOINT RESOLUTION

Florida Senate 2010 SENATOR AMENDMENT

Bill No. 2036

CHAMBER ACTION

Senate	.	House
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Senator Titmouse moved the following **amendment:**

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendment to Section 3 of Article III and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE III

LEGISLATURE

SECTION 3. Sessions of the legislature.—

(a) ORGANIZATION SESSIONS. On the fourteenth day following each general election the legislature shall convene for the exclusive purpose of organization and selection of officers.

(b) REGULAR SESSIONS. A regular session of the legislature shall convene on the first Tuesday after the first Monday in June ~~March~~ of each odd-numbered year, and on the first Tuesday after the first Monday in June ~~March~~, or such other date as may be fixed by law, of each even-numbered year.

(c) SPECIAL SESSIONS.

(1) The governor, by proclamation stating the purpose, may convene the legislature in special session during which only such legislative business may be transacted as is within the purview of the proclamation, or of a communication from the governor, or is introduced by consent of two-thirds of the membership of each house.

(2) A special session of the legislature may be convened as provided by law.

(d) LENGTH OF SESSIONS. A regular session of the legislature shall not exceed sixty consecutive days, and a special session shall not exceed twenty consecutive days, unless extended beyond such limit by a three-fifths vote of each house. During such an extension no new business may be taken up in either house without the consent of two-thirds of its membership.

(e) ADJOURNMENT. Neither house shall adjourn for more than seventy-two consecutive hours except pursuant to concurrent resolution.

(f) ADJOURNMENT BY GOVERNOR. If, during any regular or special session, the two houses cannot agree upon a time for adjournment, the governor may adjourn the session sine die or to any date within the period authorized for such session; provided that, at least twenty-four hours before adjourning the session, and while neither house is in recess, each house shall be given formal written notice of the governor's intention to do so, and agreement reached within that period by both houses on a time for adjournment shall prevail.

ARTICLE XII

SCHEDULE

Legislative sessions.—The amendment to Section 3 of Article III changing the date for convening regular sessions of the legislature shall apply beginning with the regular session in 2012.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE III, SECTION 3

ARTICLE XII

DATE FOR CONVENING REGULAR LEGISLATIVE SESSIONS.—Proposing an amendment to the State Constitution to change the date on which regular sessions of the Legislature will convene (unless otherwise specified by law for an even-numbered year) from the first Tuesday after the first Monday in March to the first Tuesday after the first Monday in June.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the resolving clause

and insert:

Senate Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article III and the creation of a new section in Article XII of the State Constitution, relating to sessions of the Legislature, to change the date for convening regular sessions of the Legislature.

Florida Senate 2010 CONFERENCE COMMITTEE AMENDMENT
Bill No. 2680

CHAMBER ACTION

Senate	.	House
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The Conference Committee on Senate Bill 2680 recommended the following **amendment:**

Conference Committee Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 192.011, Florida Statutes, is amended to read:

192.011 ~~All~~ Property to be assessed.—The property appraiser shall assess all property located within the county, except inventory, whether such property is taxable, wholly or partially exempt, or subject to classification

reflecting a value less than its just valuation ~~value~~ at its present ~~highest and best~~ use. Extension on the tax rolls shall be made according to rules adopted ~~regulation promulgated~~ by the department in order properly to reflect the general law. Streets, roads, and highways that ~~which~~ have been dedicated to or otherwise acquired by a municipality, a county, or a state agency may be assessed, but need not be.

Section 2. This act shall take effect upon becoming a law and applies to assessments beginning January 1, 2011.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the valuation of property; amending s. 192.011, F.S.; deleting a requirement that a property appraiser consider the highest and best use of property in determining just valuation; providing for application; providing an effective date.

Appendix A

GLOSSARY

Act—A bill that has passed both houses of the Legislature.

Adjournment sine die—The final adjournment of a regular or special session of the Legislature until the next regular or special session.

Administrative Procedure Act—Chapter 120, *Florida Statutes,* which provides uniform procedures for state executive agencies to follow in adopting rules and issuing orders. Generally, it applies to local governments only when a law expressly provides for it to do so.

Amendment—A proposal to effect a change to a bill, resolution, or memorial.

Apportionment—The act of determining the number of members of each house of the Legislature. Section 16, Article III of the State Constitution requires the Legislature every 10 years to fix the number of members of the Senate at no fewer than 30 and at no more than 40 and the number of members of the House of Representatives at no fewer than 80 and no more than 120. In addition, the Legislature is to redraw (redistrict) the Senate and House districts and the congressional districts (Congress apportions, the states redistrict) to ensure equal representation. The apportionment and redistricting of the Legislature is accomplished by a joint resolution, which the Governor may not veto. Congressional redistricting is accomplished by law, which the Governor may veto.

Becoming a law—Under Section 8, Article III of the State Constitution, an act becomes a law when the Governor approves it or when the time within which the Governor may veto the act has elapsed and he or she has failed to act.

Bill—A proposed act filed in either house of the Legislature.

Case law—Decisions of courts applying or construing constitutions, statutes, the common law, and legal instruments.

Catch line—A short heading at the beginning of a statute which indicates the subject matter of the text and serves as an aid in locating provisions of law.

Coding—Underlining and strikethrough of text which is required by the rules of both houses of the Legislature in order to indicate changes being made to the text of an existing law or an existing constitutional provision.

Committee bill—A bill filed by a legislative committee by a vote of the committee, rather than by an individual member of the Legislature.

Committee substitute—A bill proposed by a committee for a bill considered and amended by that committee. Each committee to which a bill is referred may adopt a committee substitute for that bill. If the previous committee of reference adopted a committee substitute for the bill, the next committee may adopt a committee substitute for that committee substitute, which is referenced as a "CS for CS for SB ___."

Conviction—Adjudication of guilt by a judge after a finding of guilt by the trier of fact (judge or jury) based on the evidence or on a plea of guilty or *nolo contendere*.

Crime—A felony or misdemeanor.

Defendant—A person being prosecuted for a crime or noncriminal infraction in a criminal case, or against whom affirmative relief is sought in a civil case.

Dicta—Opinions of a judge which do not embody the resolution or determination of the court.

Division of Statutory Revision—The unit of the Office of Legislative Services which is responsible for editing, compiling, indexing, and publishing the *Florida Statutes* under the continuous permanent statutory revision plan established in ss. 11.241-11.243, *Florida Statutes*.

Engrossing—The process of incorporating into a bill, by the house in which the bill originated, amendments adopted on the floor of either house. A bill may be engrossed several times.

Enrolling—The process of converting a bill into an act for presentation to the Governor.

Ex post facto law—A law that makes criminal an act that was not a crime at the time it was committed or that increases the penalty or consequences of an act after it was committed. Such laws are prohibited by Section 10, Article I of the United States Constitution and Section 10, Article I of the State Constitution.

Felony—Any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in state prison.

Filing—Delivery to the Secretary of the Senate or the Clerk of the House of Representatives of a proposed bill, signed by its sponsor and any co-sponsors, to be introduced in the Legislature.

Florida Statutes—An edited compilation of the general laws of the state which are of a permanent nature. The *Florida Statutes* is published in its entirety every year following the regular session of the Legislature.

Flush-left material—Text that is published flush with the left margin and preceded by a blank line and that applies to one or more subdivisions of the text preceding the flush-left text.

Fraudulently—By false representation of fact, whether by word or conduct, or by concealment of that which should be disclosed, which is intended to deceive and induce another to relinquish something of value or surrender a legal right.

Germanity—The state of having a significant, related, and pertinent bearing upon a point at hand. With respect to an amendment in the Senate, the state of being related to the same subject as the original measure, being a natural and logical expansion of the subject matter of the original proposal, and not raising a new or independent issue.

Guilty—A finding by a trier of fact (judge or jury) that the defendant has committed the act of which accused, based on the evidence or on a plea of guilty or *nolo contendere*. The term "guilty" is not synonymous with the term "convicted." A person may be found guilty without an adjudication of guilt.

Instanter—Latin for *immediately*. A motion to take up an issue immediately.

Intent—A state of mind indicating the presence of will, the mind being fully aware of the nature and consequences of an act about to be undertaken, and with such knowledge, electing to proceed.

Introduction—The reading of a bill (including a committee substitute) the first time, usually by title only, in a house of the Legislature. Under Section 7, Article III of the State Constitution, the publication of the title of the bill in the journal of a house constitutes its introduction in that house.

Knowingly—Having general knowledge of or cognizance sufficient to warrant further inspection or inquiry.

Laws of Florida—A verbatim publication of the general and special laws of the state, which is published each year following the regular session of the Legislature and which contains the laws, printed in the order that they are numbered by the Secretary of State, in addition to resolutions and memorials passed by the Legislature.

Maliciously—Done intentionally to inflict injury or under circumstances that imply evil intent or ill will.

Memorial—A legislative document addressed to an executive agency or another legislative body to express the consensus of the Legislature, or to petition that certain action be taken, on a matter within the jurisdiction of the agency or body to which it is addressed.

Minor—In Florida, an individual who has not attained the age of 18 years.

Misdemeanor—Any criminal offense that is, or if committed in this state would be, punishable by a term of imprisonment in a county correctional facility for not more than 1 year.

Noncriminal violation—An offense that is, or if committed in this state would be, punishable only by a fine, forfeiture, or other civil penalty.

One-subject rule—The provision in Section 6, Article III of the State Constitution which requires that "[e]very law shall embrace but one subject and matter properly connected therewith . . . ."

Ordinary meaning—The commonly accepted dictionary definition used in everyday language.

Plaintiff—A party seeking affirmative relief in court.

Proviso—A clause that is used to except something from the enacting clause or to qualify a provision in a bill. Provision language is used in a general appropriations bill to qualify or restrict a specific appropriation.

Referendum—A vote of the electors. It is required in Florida to amend the State Constitution; as a condition for the effectiveness of a local act for which notice of intent to seek enactment has not been published; for the approval of bonds pledging the full faith and credit of the state; for local governments to issue bonds payable from *ad valorem* taxation and maturing more than 12 months after issuance; and for local governments to levy *ad valorem* taxes in excess of constitutional millage limitations. A referendum is often required by general law for the levy by local governments of excise taxes.

Resolution—A formal legislative document that is not subject to the approval or veto of the Governor, that is not subject to the constitutional one-subject limitation or to the constitutional title requirements, and, except for certain uses of joint resolutions and concurrent resolutions, does not have the effect of law.

Reviser's bill—A bill prepared and submitted by the Division of Statutory Revision to make grammatical, editorial, or other technical changes in the *Florida Statutes* or to remove from the *Florida Statutes* "statutes and laws, or parts thereof, which have expired, become obsolete, been held invalid by a court of last resort, have had their effect or have served their purpose, or which have been repealed or superseded, either expressly or by implication . . . ." Reviser's bills are also used by the division in carrying out broad directives of the Legislature such as conforming the Florida Statutes to agency reorganizations or changing terminology. A list of subjects prohibited in reviser's bills appears in s. 11.242(3), *Florida Statutes*.

Sine die—Latin for *without day*. The motion to "adjourn sine die" is the last action of a session of the Legislature. Each house may adjourn on its own motion.

Sovereign immunity—The doctrine that the sovereign can do no wrong. Thus, a sovereign government cannot, without its consent, be held liable for any damages caused by it while engaged in a governmental function. Florida has waived its sovereign immunity within specified limits and, in the guise of waiving its sovereign immunity, has extended it to other entities. See s. 768.28, *Florida Statutes*.

Special master—A person appointed by a house of the Legislature to consider and make recommendations to that house with respect to certain actions that the house may take. Under the rules of each house, claim bills are referred to a special master for findings of fact and law and recommendations concerning their passage. In addition, the rules of the Senate provide for special masters on matters of those appointments and suspensions of public officers by the Governor which the Senate has the power to confirm or reject under the State Constitution.

Sponsor—The legislator or legislators who sign the jacket of a bill as introducers and file it with the Secretary of the Senate or the Clerk of the House of Representatives for introduction, or the committee that votes to file it with the Secretary of the Senate or the Clerk of the House of Representatives for introduction.

Stare decisis—The policy of courts to abide by and adhere to decided cases and not, in a later case, to disturb a settled point.

Taking effect—Becoming operational or applying. A law (it must have already become a law) takes effect on the 60th day after adjournment *sine die* of the session in which the law was enacted or as otherwise provided in that law. See Section 9, Article III of the State Constitution.

Temporarily postponed or "TP'd"—The postponing of consideration of a bill on the agenda of a legislative committee or the membership of either house meeting in session or the postponing of another legislative matter.

Veto—Objection by the Governor to an act passed by the Legislature. The Governor's objections, together with the act, are returned to the house of origin, and the act does not become a law unless the Legislature at its next session votes to override the Governor's veto by a two-thirds vote. The power of veto is a legislative power that is specifically granted to the Governor by the State Constitution. See Sections 8 and 19(b), Article III of the State Constitution. Except for appropriations for which the Governor has a line-item veto, a veto must extend to the entire act.

Wantonly—Done in reckless disregard for the rights or safety of others and characterized by extreme recklessness and indifference to the rights or safety of others or to the consequences of the act.

Willfully—Done intentionally, knowingly, and purposefully by a person intending the result, and not done accidentally or carelessly.

Appendix B

RULES FOR DRAFTING AND USING DEFINITIONS

When to define a term.—Define a term:

(1) Only to attain a specific construction and concise wording.
(2) Only if there is not a concise term that expresses the concept without vagueness or ambiguity.

How to draft a definition.—

(1) Draft definitions only after all substantive provisions have been drafted.
(2) Choose only one word or phrase to receive a given meaning. Do not define two words conjunctively or disjunctively to have the same meaning.
(3) Choose the narrowest term that in its ordinary meaning embraces the concept, and make the statutory meaning of that term more limited than its ordinary meaning.
(4) Choose the elements of the definition carefully and express them clearly and concisely.
(5) Never include substantive law in a definition.
(6) Never use the term being defined in the definition
(7) Place the definitions before the text to which they apply, arrange them alphabetically, and introduce them with a statement that concisely and precisely limits the text to which they apply. Never precede definitions with a statement, such as "where the context permits," which alerts the reader that the drafter did not rely on the definitions and neither can the reader.

Using defined terms.—When using a defined term:

(1) Use it only in its defined sense.
(2) Never substitute another term for the defined term.
(3) Never modify it with an element of its definition
(4) Do not follow it with the words "as defined in . . . ."

Appendix C

STATE CONSTITUTIONAL CHECKLIST

AD VALOREM TAXATION

Agricultural land, assessment of ..... Article VII, Section 4(a)
Bonds payable from *ad valorem* taxation ..... Article VII, Section 12
Businesses, exemption for ..... Article VII, Section 3(c)
Conservation lands, exemption for ..... Article VII, Section 3(f)
Article XII, Section 28
Disabled persons, widows, and widowers, exemption for ..... Article VII, Section 3(b)
Disabled veterans, additional homestead exemption for ..... Article VII, Section 6(e)
Forced sale of homestead, exempt from ..... Article X, Section 4
Grandparent or parent living quarters, reduction in assessment ..... Article VII, Section 4(f)
Greenbelt, assessment of ..... Article VII, Section 4(a), (b)
Historic property, exemption and assessment of ..... Article VII, Sections 3(d), (4)(e)
Homestead portability ..... Article VII, Section 4(d)(8)
Article XII, Section 27
Homesteads, exemption and assessment of ..... Article VII, Sections 4(d), 6
Intangible personal property millage rate ..... Article VII, Section 2
Just valuation of property ..... Article VII, Section 4
Livestock, assessment or exemption of ..... Article VII, Section 4(c)
Local governments, levy by ..... Article VII, Section 9
Low-income seniors, additional homestead exemption for ..... Article VII, Section 6(d)
Article XII, Section 26
Motor vehicles, trailers, and mobile homes, exemption for ..... Article VII, Section 1(b)
Municipal property, exemption for ..... Article VII, Section 3(a)
Non-homestead property, assessment of ..... Article VII, Section 4(g), (h)
Personal property, exemption for ..... Article VII, Section 3(b)
Renewable energy source devices, exemption for ..... Article VII, Section 4(i)
Article XII, Section 29(a)
Renters, relief for ..... Article VII, Section 6(c)
Save-Our-Homes cap ..... Article VII, Section 4(d)
State *ad valorem* tax prohibited ..... Article VII, Section 1(a)
Stock in trade, assessment or exemption of ..... Article VII, Section 4(c)
Tangible personal property, exemption for ..... Article VII, Section 3(e)
Article XII, Section 27
Uniform rate requirement ..... Article VII, Section 2

Wind-resistance improvements, assessment of ..... Article VII, Section 4(i)
Article XII, Section 29(b)

Working waterfront properties, assessment of..... Article VII, Section (4)(j)
Article XII, Section 30

APPROPRIATIONS, FINANCE, AND NON-AD VALOREM TAXATION

Appropriations acts .....Article III, Sections 8, 12, 19
Article VII, Section 1(c)
Balanced budget requirement ..... Article VII, Section 1(d)
Blaine amendment ..... Article I, Section 3
Bonds ..... Article VII, Sections 10, 11, 12, 14, 15, 16, 17
Article XII, Section 9
Estate tax ..... Article VII, Section 5(a)
Gas tax ..... Article XII, Section 9(c)
Gross receipts tax .....Article XII, Section 9(a)(2)
Income tax.....Article VII, Section 5
Lottery proceeds.....Article X, Section 15
Mandates on counties and municipalities .....Article VII, Section 18
Minimum wage .....Article X, Section 24
Pledging taxing power or credit.....Article VII, Section 10
Relief from illegal taxes.....Article VII, Section 13
Revenue shortfalls..... Article IV, Section 13
Article III, Section 19(h)
Slot machine taxes .....Article X, Section 23(b)
State revenue limit ..... Article VII, Section 1(e)
Spending in aid of religion..... Article I, Section 3
Spending power, limits on .....Article VII, Section 1
State court system funding.....Article V, Section 14
Taxes preempted to the state..... Article VII, Section 1(a)
Taxation and Budget Reform Commission.....Article XII, Section 6
Taxing power, limits on ..... Article VII, Sections 1, 5, 9
Article XI, Section 7
Tobacco education and prevention funding.....Article X, Section 27
Trust funds ..... Article III, Section 19(f)

BILL REQUIREMENTS

Appropriations bills format.....Article III, Section 19(b)
Approval or veto ..... Article III, Sections 8, 9, 19(b)
Effective date, constitutional amendments .....Article XI, Section 5(e)
Effective date, laws..... Article III, Section 9
Enacting clause ..... Article III, Section 6
General appropriations act .....Article III, Sections 12, 19
Line-item veto..... Article III, Sections 8, 19(b)
Local laws, notice or referendum..... Article III, Section 10

Mandates for counties and municipalities.....Article VII, Section 18
Procedure for passage ..... Article III, Section 7
Public-records or public-meetings exemptions.....Article I, Section 24
Republication requirements ..... Article III, Section 6
Single-subject limitation ..... Article III, Section 6
Title requirement..... Article III, Section 6

CRIMINAL LAW

Double jeopardy.....Article I, Section 9
Excessive punishment.....Article I, Section 17
Ex post facto laws .....Article I, Section 10
"Felony" defined.....Article X, Section 10
Grand jury .....Article I, Section 15
Habeas corpus .....Article I, Section 13
Imprisonment for debt.....Article I, Section 11
Indictment or information.....Article I, Section 15
Pretrial release and detention.....Article I, Section 14
Pardons and restoration of civil rights ..... Article IV, Section 8
Public defenders.....Article V, Section 18
Repeal of criminal statutes.....Article X, Section 9
Rights of accused and of victims .....Article I, Section 16
Searches and seizures.....Article I, Section 12
Self-incrimination ..... Article I, Section 9
State attorneys.....Article V, Section 17
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Trial by jury .....Article I, Section 22

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Bond referenda..... Article VII, Sections 11, 12
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Disqualification of electors..... Article VI, Section 4
Primary, general, and special elections..... Article VI, Section 5
Public financing for campaigns ..... Article VI, Section 7
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"Vote of the electors" defined.....Article X, Section 12

GOVERNMENTAL ORGANIZATION

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Boards regulating occupations.....Article IV, Section 6(b)
Cabinet members ..... Article IV, Section 4
Department of Elderly Affairs ..... Article IV, Section 12
Department of Veterans Affairs..... Article IV, Section 11
Fish and Wildlife Conservation Commission..... Article IV, Section 9
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Heads of departments..... Article IV, Section 6
Judicial power and structure of judiciary.....Article V, Section 1
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Legislative power and structure of Legislature.....Article III, Sections 1, 2, 3
Lieutenant Governor ..... Article IV, Section 2
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Organization of executive agencies ..... Article IV, Section 6
Parole Commission .....Article IV, Section 8(c)
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Article XII, Section 9(c)(5)
State Board of Education ..... Article IX, Section 2
Article XII, Section 9(a)(2)

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Access to courts ..... Article I, Section 21
Attorneys, admission and discipline .....Article V, Section 15
Circuit courts..... Article V, Sections 1, 5, 8, 10, 11, 20
Clerks of the circuit court .....Article V, Sections 14, 16
Article VIII, Section 1(d)
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District courts of appeal ..... Article V, Sections 1, 2, 4, 8
Funding .....Article V, Section 14
Article XII, Section 25
Judges, discipline and removal .....Article V, Section 12
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Judges, qualifications of.....Article V, Section 8
Judges, retention, election, and terms .....Article V, Section 10
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