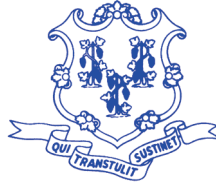


The Connecticut General Assembly

Legislative Commissioners' Office

Max S. Case
Commissioner
Larry G. J. Shapiro
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov
<http://www.cga.ct.gov/lco>

GUIDE TO DRAFTING LEGISLATION

Prepared by the
Legislative Commissioners' Office

Introduction

Many requests for legislation are made informally—a letter, a phone call or a meeting with a legislator addressing the problem or idea for improvement. To have the idea written up more formally and started in the legislative system, the legislator will generally turn to the Legislative Commissioners’ Office (more commonly known as LCO), the General Assembly’s legislative drafting office. All official legislation is drafted by or processed through the Legislative Commissioners’ Office. This guide is intended for people who do not draft legislation on a regular basis but want either to submit legislation in a more formally drafted manner or to understand some of the reasons their proposal was written the way it was.

In addition to this manual, LCO has an Editing and Proofreading Manual that will be available on line in the near future.

Who Can Introduce Legislation

Only legislators and committees can introduce legislation. (Members of the public may ask their state senator or state representative to introduce legislation, as discussed in the Introduction above.) During short sessions, legislators may only introduce proposed bills that relate to budgetary, revenue, or financial matters. Short sessions occur in even numbered years and run from early February to early May. The dates for 2000 are February 9 to May 3. Long sessions occur in odd numbered years. They run from early January to early June. The dates for 2001 are January 3 to June 6.

Types Of Bills

All legislation starts out as a bill but, depending on where the bill is in the process, there are different kinds of bills. They are explained briefly here.

Proposed Bills and Committee Bills

A *proposed bill* is introduced by an individual legislator and is submitted to a committee that has responsibility for the proposed bill’s subject matter (this is called referring the bill to the committee of cognizance). A proposed bill is not a fully drafted bill but rather a one-sentence statement in non-statutory language expressing what the legislator would like the committee to consider in the way of legislation on a particular subject. In even-

numbered year sessions, the state constitution and the legislative rules limit the introduction of proposed bills to budgetary, revenue and financial matters. Each proposed bill is sent to a committee, based on the bill's subject matter. The committee then screens the proposed bills sent to it. This screening is usually done by the committee chairpersons with input from other legislators. Those proposed bills that survive the screening process are brought before the full committee for consideration and for a vote to have the concept in the proposed bill fully drafted in formal statutory language. Once in this form it becomes a *committee bill*.

If a proposed bill does not survive the screening process to become a committee bill, it may die (i.e., the legislature never takes it up and nothing becomes of it) or the concept in the bill may get resurrected elsewhere—as a *raised bill* (discussed below), as part of a raised bill on a related subject or as an amendment to a related bill later in the session.

Raised Bills

A *raised bill* is also a fully drafted bill in statutory form that a committee has voted to have drafted. Unlike a committee bill, a raised bill originates from a concept that is not based on any proposed bill, but rather the committee votes on its own initiative to have the bill drafted on any subject within the committee's cognizance (the subject matter areas assigned to that committee).

Favorables or JF'ed Bills

If a committee believes a bill should be taken up by the full General Assembly, it votes to give the bill a favorable report. And because the committee is a joint (House and Senate) committee, the vote is a Joint Favorable Report. If the vote is a favorable report but with substitute language, as discussed below, the vote is a Joint Favorable Substitute. The common expression for such a bill is that it is "JF'ed." A bill can be JF'ed straight to the floor (sent to the House if a House bill, to the Senate if a Senate bill), or it can be JF'ed to another committee (referred to as a "change of reference"). A bill before the Public Health Committee that created a criminal penalty for contaminating drinking water, for example, would be JF'ed to the Judiciary Committee because it is the Judiciary Committee that deals with criminal matters. In the Judiciary Committee it could be considered and sent on to the floor as is, sent on with changes, sent to the Environment Committee (which also has cognizance over clean water issues) voted against or have no action taken on it.

Substitute Bills

A *substitute bill*, either a *substitute house bill (sHB)* or *substitute senate bill (sSB)*, is a bill that the committee votes to favorably report out of committee with changes in the bill's language. Such substitute language is sometimes merely a minor, technical change and other times is a complete rewriting of the bill.

The Parts of a Bill

Bill Number

A bill gets assigned a bill number by the House or Senate clerk after LCO (the drafting office) submits it for filing. That number stays with the bill throughout the process and no other bill will have that number during the legislative session.

If the bill started in the House, it will be a House Bill, which is indicated by “HB” before the bill number. If the bill started in the Senate, it will be a Senate Bill, which is indicated by “SB” before the bill number. If the bill later becomes a substitute bill, it will be designated “sSB” or “sHB.”

Senate bills are numbered from 1 to 5000. House bills are numbered from 5001 to 9999.

LCO Number

LCO numbers are unique, computer-generated numbers that appear on legislative documents that LCO produces except for Joint Favorable Substitute (JFs) bills. LCO numbers are used as a way of distinguishing different versions of the same or related bills and, more importantly, as a way of keeping track of various amendments to the same bill. Note that LCO numbers are random—a higher LCO number on one document does not mean that it’s a more recent version than a document with a lower LCO number.

Title

A title should be a concise statement that puts the reader on notice as to the bill’s subject. It should not proselytize, mislead the reader or conceal the bill’s content.

Connecticut does not have a one-bill one-subject rule. Consequently, the title might be long, in an attempt to cover all the bill’s subjects, or it might be short but very general. As the content of a bill changes as it works its way through the process, the title may change as well. The bill number, however, will always be the same.

Statement Of Purpose

Each type of bill, while still in committee, is accompanied by a Statement of Purpose, which is a statement of 150 words or fewer that explains what the bill does. The Statement of Purpose appears at the bottom of the bill but it is mentioned here because it is often the first thing people look at after the title. Be careful not to rely excessively on a Statement of Purpose: the words of the bill control the meaning. Further, if the bill is changed in committee, the Statement of Purpose may or may not continue to reflect the bill’s purpose. The Statement of Purpose is eliminated when the bill gets JF’ed out of committee.

Short Titles And Preambles

With rare exceptions, the Connecticut statutes do not use short titles or preambles. One exception is when either is a part of a uniform law, e.g., “This title shall be known and may be cited as the ‘Uniform Commercial Code.’ ”

Enacting Clause

An enacting clause is the traditional way of announcing the authority under which a law is enacted. It appears immediately after the bill's title. The specific wording is required by the state constitution: "*Be it enacted by the Senate and House of Representatives in General Assembly convened:*"

Prefatory Language

The prefatory language of a bill tells the reader whether the bill is creating new law or amending existing law.

If new, the prefatory language will be simply the word "new" in capital letters and in parentheses:

Example

Section 1. (NEW) The dinosaur footprint of Eubrontes is the state fossil.
Sec. 2. (NEW) Each person who excavates a site designated a prehistoric site shall....

If the bill is not creating an entirely new law but instead is changing (amending) an existing statute, the drafter uses standard prefatory language, such as in the example below, to inform the reader what statute is being changed. (But note that the existing law is not really "repealed," merely amended).

Example

Sec. 8. Subsection (a) of section 51-165 of the general statutes is repealed and the following is substituted in lieu thereof:

In even-year sessions, the drafter might be amending a statute that has been amended in the prior year but not yet codified, i.e., not yet published as a statute (see the section on codification for further explanation). If that is the case, it doesn't work to merely amend the existing statute because the existing statute won't reflect the changes made during the previous session. What has to be done is to amend the statute *as it has been changed by last year's public act*.

To find out if a statute has been amended in the prior, odd-numbered year, look in the reference table of *Connecticut Public and Special Acts* for that year. The Appendix contains a sample of a page from a reference table.

If the statute has been amended, the bill must make reference to the prior session's public or special act number in the prefatory language (and, of course, the text of the statute must reflect the changes as well).

Example

Sec. 12. Section 21a-196 of the general statutes, as amended by sections 4 to 6, inclusive, of public act 95-220, is repealed and the following is substituted in lieu thereof:

Sections of a bill

In order to make things easier to read, bills are divided into sections. If the bill is amending existing law, this division will already have been done. In that case, each section of the bill will correspond to a section of the statutes. If the bill is creating new law, divide it into sections in a way that breaks things up into logical blocks of information.

Order of the Sections

The order of sections, like deciding where to break things into sections, is mostly a matter of common sense. For example, a section establishing an agency should come before a section spelling out its duties; a section making something illegal should come before the penalty section. The general policy is that after the formal title and the enacting clause, the order of sections is as follows:

1. Definitions
2. Most significant rules and provisions
3. Secondary rules and provisions and important exceptions

(Note that #2 and #3 may be combined in many instances.)

4. Housekeeping provisions (e.g., updating references to statutes within the bill). This is usually something that can be left to LCO.
5. Penalties
6. Appropriations.
7. Repealer section, i.e., the outright repeal (as opposed to modification) of statutes.
8. Effective date.

This order may be varied to fit the needs of a particular situation, and few bills will have all the types of sections in this list.

Subsections, Subdivisions, Etc.

A subsection is usually the smallest independent unit in drafting bills. In Connecticut statutes, subsections are indicated by a lowercase letter in parentheses, e.g., (a), (b), (c). But if there is only one subsection, no designation is needed. In other words, if there is no “(b)” there is no need to label the lone subsection as “(a).”

Subsections are like paragraphs in formal English: each paragraph should contain a central thought, with all the sentences contributing to that thought.

The creation of each subsection informs the reader that the bill has reached a new step in

the subject's development. It also makes it easier to make reference to parts of a statute. There are no rules on when to further divide a subsection other than clarity and ease of reading. The designations are as follows:

1. Section.

- (a) Subsection
- (1) Subdivision
- (A) Subparagraph
- (i) Clause
- (I) Subclause

Each subsection is a separate paragraph and must be indented. Subsequent divisions do not have to be separate paragraphs.

The subparagraph is the smallest unit that can be cited. For example, something that appeared under the designation of "(I)" would be cited as "subparagraph (A)(i)(I) of subdivision (1) of subsection (a) of section...."

Parenthetical numbers, (1), (2), (3) etc., can be used even if there is no previous subsection division. In other words, even if there is no "(a)," parts of a bill can be numbered *if they are part of a sentence*.

Example

Section 1. (New) As used in sections 1 to 4, inclusive, of this act:

- (1) "Commissioner" means the Commissioner of Public Health;
- (2) "License" means any license, certification or permit issued pursuant to section 20-13a of the general statutes; and
- (3) "Practitioner" means "practitioner" as defined in subsection (a) of section 14-92 of the general statutes.

Sec. 2. In order to qualify as a practitioner, a person shall (1) notify the commissioner, in writing, not later than thirty days before commencing practice, (2) obtain a license, and (3) pay a fee of five dollars.

Effective Date

October 1

All public acts are effective on October 1 unless they state otherwise. Thus, to be effective October 1, no effective date is needed.

July 1

Budget-related bills and bills containing appropriations are usually given effective dates of July 1, which is the start of the state's fiscal year. The standard wording is "This act shall take effect July 1, 2000."

From passage

Public acts should be effective from passage only in compelling circumstances and with consideration given to fairness in giving people adequate advanced warning of the new law. There are also potential due process problems with acts that are effective upon passage. The standard wording is "This act shall take effect from its passage."

Bills that are effective from passage take effect on the date the Governor signs the bill, *not* on the date the bill passes both houses. All special acts are effective from passage unless they state otherwise. Thus, for a special act to be effective from passage, no effective date is needed.

Multiple effective dates

Occasionally, different sections of a bill will have different effective dates. They are listed in chronological order. But when submitting informal drafts, consider stating the effective date in plain language or outline form and leave it to the drafting office to put it in the official format.

The effective date section (if any) is always the last section of a bill.

The Contents of a Bill, or, How To Draft

Every statute should state who has to do what, who may do what or who is prohibited from doing what. It should state it clearly and in plain language.

There are three main errors that people frequently make in drafting legislation: 1) they try to make it sound legal; 2) they know the subject matter so well that what's clear to them is not necessarily clear to the rest of the world; or 3) the bill is drafted by a group that was more concerned about coming to a consensus and finding language everyone in the group could agree on than they were with finding clear language and a well organized structure.

The most important aspect of good drafting is thinking the bill through. Will it be clear to a reader who isn't an expert in the field? What are the ramifications? For example, if a law says "All citizens shall have the right to free medical care in times of national or state emergencies" does that mean the state is required to provide free medical service? that private medical personnel are required to provide service but the state will reimburse them? If the medical provider declines, is there a penalty?

Usage and Style

Although the goal is plain language, the drafter is hobbled by certain facts:

One is that some statutes, although being amended today, have been around for fifty or one hundred years. If the drafter suddenly uses modern, plain language in the middle of an older statute, the reader (and often a court) is left to guess whether the change was merely an attempt to "clean up" the language or whether the legislature intended some substantive change.

Another fact is that some bills may become new statutes that will be around fifty or a hundred years in the future and what is plain language today may not be plain language in the future. Because of these two facts, drafters should not abandon style and usage conventions too readily.

Changing an Existing Statute: deleting old language and adding new language

Deletions are indicated by bold brackets and new language by underscore. Remember to delete, then add (i.e., the brackets come before the new language). However, punctuation doesn't stand alone, so it has to be deleted along with deleted wording and, if still needed, added back in as "new" punctuation.

Example

Violators [shall] may be fined not more than [three] thirty dollars, [and fifty cents.]

Definitions

Use definitions sparingly. Do not provide the commonly understood meaning of a common word. Definitions should be used when a word is used in just one of several dictionary meanings or if it has a technical meaning peculiar to the bill. For example, "alcohol" may need to be defined depending on whether the context is drinking, storage of flammable liquids or fuel additives.

Definitions can be used to avoid repetition. For example, if a bill needs to make frequent reference to "the Department of Mental Health and Addiction Services", defining the term once ("Department" means the Department of Mental Health and Addiction Services.) allows the use of just "department" thereafter—assuming the bill deals with only one department.

Do not make substantive law part of a definition, e.g., do not say, "'Alcohol" means any series of hydroxyl compounds used as a motor vehicle fuel additive and no motor vehicle fuel containing alcohol shall be sold unless clearly labeled as containing alcohol."

Multiple-Meaning Words

Be careful of words that have a different meaning depending on the part of speech it is used as. If a statute says "Each operator licensed on or after October 1, 1999, shall inform the department of his telephone number," does that mean any operator who *holds a license* on or after that date, regardless of when he received it? Or does it apply only to any operator who *is granted a license* on or after that date?

Shall and May

A requirement is indicated by the use of "shall."

Permission or authority is indicated by the use of "may."

A prohibition is indicated by negating permission ("no person may ") or by putting a requirement in the negative ("no person shall").

As a rule of thumb, use “shall” only as a substitute for “must.” If, in non-statutory writing, “must” could be substituted without changing the meaning or making the wording nonsensical, “shall” is used correctly.

Examples of testing the use of “shall” by substituting “must”

“The applicant shall submit the form on or before December....” Here the “shall” means “must” and is correct.

“The commissioner shall be authorized to issue....” Here the use of shall is archaic. Reword as “The commissioner may issue a license...”

“Each member of a regional council of governments shall be entitled to one representative on the council.” Change to “*is* entitled to”

“The court shall consider the following factors in determining what conditions of release shall reasonably assure the appearance of the arrested person in court”

The first use of “shall” is correct but the second use is not. Change to “*will* reasonably assure....”

Exceptions, Provisos and “Notwithstanding” Clauses

Exceptions

An exception is used when the general application of a law does not apply. An exception should be limited in application and narrowly and precisely stated.

Example

Sec. 5. (a) Except as provided in subsections (b) and (c) of this section, a person is justified...

Do not use an exception if it would be clearer to use “but” or “if.”

Example

The members shall receive no compensation for their services, ~~except that~~ *but* the towns applying for withdrawal or dissolution shall pay members’ expenses.

Provisos

A proviso is introduced by “provided.” It should be used sparingly and *only* to mean “on the condition that”

Example

(a) A drawer negotiating a check who knows that payment of such check will be refused by the drawee bank is liable to the payee for damages, *provided* the payee has presented such check for payment, the check is dishonored and the drawer fails to pay the face amount of such check within thirty days.

Often what appears to be a proviso would be better as a separate sentence or even a separate subsection.

Example: a proviso that should be a separate subsection

Section 1. (NEW) Wherever the term “health officer” is used in any special act, the legislative body of the municipality affected may, by ordinance, substitute therefor the term “director of health”, provided the clerk of such municipality shall notify the Secretary of the State of the effect of such ordinance within ten days after its adoption.

Reword as follows:

Section 1 (NEW) (a) Wherever the term “health officer” is used in any special act, the legislative body of the municipality affected may, by ordinance, substitute the term “director of health”.

(b) The clerk of a municipality making any change authorized by subsection (a) of this section shall notify the Secretary of the State of the effect of such ordinance not later than ten days after its adoption.

“Notwithstanding” Clauses

“Notwithstanding” means “despite” or “in spite of.”

Example

(b) Notwithstanding sections 16-19 and 16-19a of the general statutes, for the period from July 1, 1998, until December 31, 1999, the base rates paid to an electric company by any customer in the state for electric services shall not exceed the base rates that have been approved by the Department of Public Utilities....

Sometimes it is necessary to “notwithstanding” all contrary or conflicting provisions of existing law wherever they may appear. Since the reader of the contrary or conflicting law may not know of the new, superceding, provision, such sweeping “notwithstanding” clauses should be used as seldom as possible.

And/Or

Never use “and/or.” Sometimes adding “or both” will convey the meaning of “and/or” but usually just “or” will do. For example: “To qualify for the exemption, a person shall be over sixty-five years of age *or* have an annual income of less than thirty thousand dollars.” Clearly, a seventy-five year old man would still qualify even if his annual income was more than \$30,000. But choose carefully, sometimes something seems clear only because the drafter is familiar with the context. For example if a law says, “The board shall meet on the first Tuesday or the second Thursday of each month,” does a meeting on a first-Tuesday preclude a meeting on a second-Thursday?

Specialized Usage

There are a number of drafting conventions and usages that, although they may be correct, are not part of conventional usage in the Connecticut General Statutes. The most common are as follows:

When the words may be singular or plural, do not use “(s).” Use either just the singular or just the plural, depending on the context. Subsection (f) of section 1-1 of the general statutes allows the singular to be construed as the plural and the plural as singular when appropriate.

Do not use parentheses in text, only in citations.

Write out all numbers except for section numbers, citations and *full* dates. E.g., “July first.” But “July 1, 1998.” Do not put a parenthetical figure next to numbers, i.e., do not write “between five (5) and twenty (20)”

Do not use words separated by slashes, e.g., he/she, and/or.

Quotation marks: Punctuation—even periods and commas—goes outside the quotation marks unless part of the quoted material itself.

The statutes do not use a final comma in a series, e.g., write “apples, pears and oranges” not “apples, pears, and oranges.” However, if the series is enumerated, do use a final comma, e.g., “(1) apples, (2) pears, and (3) oranges.”

Gender Neutral Language

Always use the modern term for professions and programs, e.g., firefighter, police officer, workers’ compensation. Never use “he/she.” Avoid personal pronouns, e.g., rather than write “A person may operate a forklift on a public highway if he is certified as an advanced forklift operator.” try “A person may operated a forklift on a public highway if certified as an advanced forklift operator.” But be careful not to create ambiguity. For example, changing “A nurse may administer a controlled substance if she is registered with the department....” to “A nurse may administer a controlled substance if registered with the department....” raises the question as to whether it is the nurse or the controlled substance that must be registered. In this case, either substitute “the nurse” for “she” or rewrite: “A nurse may administer a controlled substance if the nurse is registered with the department....” or “A nurse, if registered with the department, may administer a controlled substance....”

Codification

A bill becomes a public act when it passes both houses of the General Assembly. The public act is then assigned a public act number, with the first number indicating the year of enactment, e.g., PA 98-250 was enacted in 1998. The public acts are published, usually in three volumes, and are available in most, if not all, public libraries.

Most public acts passed over the years have been codified. This means they have been compiled, incorporated into the existing statutes and published. They are divided into titles, chapters and sections. The official version is published by the state in blue paperback volumes and is available in most public libraries.

The statutes are updated once every two years to incorporate the changes made by the public acts. On the binder of each volume it states “REVISED TO __” with the date they were revised up to (but *not* including). Thus, “REVISED TO 1999” means the statutes contain all the legislative changes made up to the end of 1998 but do not contain changes made during the 1999 legislative session. For those changes, one has to go to the 1999 public acts. Note that the public acts have both a subject index and statutory reference tables. The reference tables will tell whether a particular statute has been

affected by a public act passed in the sessions covered by those volumes. The Appendix contains a sample of a page from a reference table.

Appendix

The reference table in the back of the Connecticut Public and Special Acts, which has to be consulted in even-numbered years to see if the currently published statute is up to date, will look something like this:

REFERENCE TABLES (January 1995, regular session)

| Statute Section No. | Affected by Public Act No. |
|---------------------|----------------------------|
| 21a-115(a) | 95-44, S.1 |
| 21a-115(e) | 95-264, S.56 |
| 21a-190a(2) | 95-79, S.77, 189 |
| 21a-190i | 95-220, S.4--6 |
| 21a-196 | 95-220, S.4--6 |
| 21a-226(b) | 95-219 |

Prepared, December 13, 1999