

DRAFTING STYLE AND USAGE MANUAL



Prepared by House Legislative Services

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DEDICATION

This edition of the Drafting and Usage Manual is dedicated to our friend and colleague, E. Anne Dunn, who set the ultimate standard in legislative staffing and drafting. For nearly fifty years, Anne was the embodiment of all ideals for which drafters strive: a deep appreciation for the principle of representative democracy, an unwavering commitment to quality in research and writing, and dedication to the highest standards of objectivity and excellence.

INTRODUCTION

INTRODUCTION TO THE DRAFTING MANUAL

This Drafting Manual is the product of decades of drafting by a host of highly skilled legislative staffers who have served the House of Representatives over the years. The latest advice and the most recent changes in drafting practice are included, along with tried and true methods that have evolved over the history of HLS and even before. Think of this manual as a storehouse of practical advice and examples of best practices that can guide you in almost anything you are asked to do. If you use it wisely and delve deeply into its pages, you will find that a drafting assignment that seems like a new idea or approach probably has a precedent in some guise or another that will be useful to you, at least in part, and may give you a real shortcut in discovering how to organize your draft.

So, don't put this manual on the shelf thinking that someday you may need to look up something. Make this manual your own, a tool you keep handy and use frequently. Mark the pages that you need to consult time and time again, such sections as use of hyphens, capitalization, style of internal citations, and other style rules. Insert in this manual (in a place where you can find them) examples of language you run across or compose yourself that you know you will need in the future.

Drafting is the foremost HLS responsibility because lawmaking is the legislature's foremost responsibility. In this context, drafting means not only the actual crafting of proposed changes in the law, but also the research and thought that goes into a thorough understanding of the policy the proposal will establish or modify and how to address the particular issue or problem. Drafting may even include the research and discussion that result in the author's deciding to do something different or not to do anything at all. This manual will guide you in all of these activities. It will give you examples of approaches you can propose to the author, as well as the technical specifics. It will discuss the steps you need to go through in working with the author, developing ideas, and putting them on paper.

A few words of advice or how to avoid some painful mistakes:

- ❖ Our main objective as drafters is to achieve what the legislative author wants to achieve. Discussions with the member are important. You want to know where the author is going with the bill in terms of results or policy changes. If he or she simply tells you the change to make in the law and you take that at face value, you may not serve the author's real purpose at all. If you know the author's intended result or the problem to be addressed, you may be able to offer a better way to accomplish the intended

purpose. Reaching that level of trust and understanding may require some development of rapport and giving the member a sense that you are trying to provide real help.

- ❖ Do thorough research. Be sure you have located all the relevant present law. Find examples of related legislative proposals from prior years. Check laws and proposed legislation from other states. Look at the drafting manual – you may find an approach to a different problem that you can apply to your assignment
- ❖ When you have a draft on paper, review it carefully. It is your bill (not the lobbyist's who gave you the draft, not the drafter's who prepared a similar bill last year). The bill should represent your best work – or the best work time permits. The quality of your drafting will be a big factor in your professional reputation.
- ❖ Use – really use – the drafter's self review check list (it's in the Drafting Manual). You really do need to pay attention to *everything* on that list.
- ❖ Prepare a useful and accurate digest. Don't be surprised if you use language in your digest that you decide should replace language in the bill. The process of preparing the digest, which should make you think analytically and logically about the bill, may make you see areas you still need to address in the bill. You may see gaps or conflicts. Use the digesting process to improve the bill.

Finally, wait a day if you can, and give the bill one more fresh review before you turn it over to the division director or senior staffer who will check it before it goes to proofing.

I ask each of you to remember that you stand in a long, proud line of legislative staff members who have served the institution of the House of Representatives well for many years. I encourage you to enter into your role in drafting legislation with that heritage in mind, recognizing the high standards and important accomplishments of those who have preceded you in a noble vocation. But also focus on the future; use this manual and your own abilities to be as creative as you need to be to solve the legislative puzzles that arrive in your Task Organizer. And going forward, share your experience, your knowledge, your tips, your shortcuts, and your inspiration with those who enter that same proud line behind you.

Yours in service to the House of Representatives and the people of Louisiana,

E. Anne Dunn

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CHAPTER 1. STEPS IN DRAFTING: FROM AN IDEA TO A BILL

1.1 OVERVIEW

The drafter's efforts begin when he is called upon by a House member to express substantive ideas in a very specific way. This Chapter details the steps involved in moving from an idea to a bill. The ability to follow the steps will vary with the time available for preparation of the bill.

The House drafting staff uses a customized drafting program that includes tools to start, track, and process every legislative bill or informational request made by a House member. To start any such request, a drafter must begin in Task Organizer, which is commonly referred to as "T.O."

1.2 TAKING THE REQUEST

A. The non-substantive side; filling out the request card

The request card is what is used by the drafter to record the details of an instrument request and to start the process of drafting an instrument. It is located in Task Organizer. Obtain as much preliminary information concerning the request as possible, and use this information to fill out the request card in as much detail as possible. Keep in mind that information entered on the request card populates sections of the bill and numerous reports, including those which are sent to the members, so care should be taken in filling out request cards. Complete all fields on the request card, including a oneliner.

1) *Basic Information*

On the Basic Info tab, enter the member's instructions with as much detail as possible since another drafter may be drafting the bill in reliance on these instructions. What may seem innocuous may prove to be an important point so err on the side of inclusion. Be sure to relate and attach any accompanying information the member may provide or cite. Consider the following example of a draft request card:

The screenshot shows the 'Instrument Request Card' application window. At the top, there are 'Request Actions' (Clear, Relate, Submit, Draft, Exit) and 'Tabs' (Basic Info, Coauthors, Flags/Ref, Contacts, Comparisons, Notices). The 'Basic Info' tab is active. Fields include: Request ID: NEW; Status: Submitted On: ; Drafter: ; *Session: 2015 Regular Session; *Request Type: House Bill; Draft Type: Amend Bill; Keyword: DISTRICTS/HOSPITAL SERVC; Author: ; *Oneliner: Provides relative to hospital service districts in Bossier Parish; Division: Governmental Affairs; *Request Taken By: ; Package: ; Date Received: Mon, Jan 12, 2015; Date Needed: [x] Wed, Jan 21, 2015; Requestor: ; [] Legislative Assistant; Request Instructions: Rep. called and said that he received a call from R. C. about the lease of sheriff office property by a hospital service district in Bossier Parish. Rep. wants us to contact Mr. C for those details. I suggested that this request sounds as if it may be a local bill and asked who should be billed for the cost of that notice. Rep. said to send it to the Bossier Parish Sheriff's office. Rep. also indicated that Mr. C talked to Sen. Adley who said that he would co-author such a bill. Note DEADLINE: the hospital district is having its next meeting in 3 weeks and Rep. wants a draft before then. Type of instruction: General; Save Instruction; Cancel.

3) *Flags/Ref*

The Flags/Ref tab is used for several purposes such as populating certain information in the bill or providing directions to others, including Administrative Services and the Clerk. For example, checking "General-Must Profile" enters the subject matter jurisdiction language in the bill; "By Request" is not often used but denotes that the author is introducing a bill that he would not otherwise file except at the request of another; "Co-authors encouraged" is an indication to the drafter that the author is amenable to HLS disclosing the existence of this request to other members who subsequently request the same bill.

The screenshot shows a software interface with several tabs: Basic Info, Coauthors, Flags/Ref (selected), Contacts, Comparisons, and Notices. The Flags/Ref tab contains a grid of checkboxes for various options:

<input checked="" type="checkbox"/> Attachments	<input type="checkbox"/> Do Not Profile	<input type="checkbox"/> Normal Transmittal
<input type="checkbox"/> Fiscal Note Needed	<input type="checkbox"/> Profile Authorized	<input type="checkbox"/> Send memo with Transmittal
<input type="checkbox"/> Actuarial Note Needed	<input type="checkbox"/> Fee	<input type="checkbox"/> Take straight to Desk
<input type="checkbox"/> FN - Member wants	<input type="checkbox"/> Tax	<input type="checkbox"/> Return to Drafter
<input type="checkbox"/> FN - Member does not want	<input type="checkbox"/> 2/3 Vote Needed	<input type="checkbox"/> Hold for Session Intro.
<input type="checkbox"/> AN - Member wants	<input type="checkbox"/> Hot topic	<input type="checkbox"/> Hold until <input type="text" value="Fri , Mar 27, 2015"/>
<input type="checkbox"/> AN - Member does not want	<input type="checkbox"/> Creates special fund	
<input type="checkbox"/> By Request	<input checked="" type="checkbox"/> Co-Authors encouraged	
<input type="checkbox"/> HLS-X	<input type="checkbox"/> General-Must Profile	
<input type="checkbox"/> Law Institute Recommends	<input type="checkbox"/> Include in Call	

At the bottom of the tab, there are two fields: "Transmittal Notes:" followed by a text input box, and "Recommended Referral:" followed by a dropdown menu.

4) *Contacts*

The Contacts tab contains names of many of the individuals who members ask staff to contact and the "New Contact" button allows staff to add new contacts to the list. This list can be accessed by all in HLS. Be sure to specify if the contact is added to answer draft questions or as the individual to whom any relevant notices should be charged. This selection will automatically populate under the Notices tab.

The screenshot shows the 'Contacts' tab in a software interface. It features two main panels: 'Available Contacts' on the left and 'Selected Contacts' on the right. The 'Available Contacts' panel contains a list of names with a scroll bar. The 'Selected Contacts' panel is a table with columns for 'Name' and 'Type'. Below the panels are two dropdown menus: 'Add as contact type:' set to 'Draft Questions' and 'Show last names beginning with:' set to 'ABC'. A 'New Contact' button is located at the bottom right.

Available Contacts	
Name	
Cordaro, Emile	
Corrales, Jan (City of Springhill)	
Cosse, Clarke (La Hospital Association)	
Cotten, Dan (Caddo Parish Fire District No. 1)	
Coulon, Christopher (Adams and Reese, LLP)	
Courson, Bud	
Courson, Bud	
Couvillon, Mike (Vermilion parish)	

Selected Contacts	
Name	Type
Cowan, Rick (Bossier Parish Sheriff's Office)	Draft Q...

This screenshot is similar to the one above, but the 'Add as contact type:' dropdown is now set to 'Notice Charge To'. In the 'Selected Contacts' table, the contact 'Cowan, Rick (Bossier Parish Sheriff's Office)' is highlighted in blue, and its 'Type' is 'Notice ...'. The 'New Contact' button remains at the bottom right.

Available Contacts	
Name	
Cordaro, Emile	
Corrales, Jan (City of Springhill)	
Cosse, Clarke (La Hospital Association)	
Cotten, Dan (Caddo Parish Fire District No. 1)	
Coulon, Christopher (Adams and Reese, LLP)	
Courson, Bud	
Courson, Bud	
Couvillon, Mike (Vermilion parish)	

Selected Contacts	
Name	Type
Cowan, Rick (Bossier Parish Sheriff's Office)	Draft Q...
Cowan, Rick (Bossier Parish Sheriff's Office)	Notice ...

5) Comparisons

The Comparisons tab allows the drafter to indicate whether the request is a redraft, substitute, rerun, or companion of other bills or other drafts. When drafting substitute bills, it is important to fill in the "Substitute" box with the House Bill number of the bill being substituted.

Basic Info	Coauthors	Flags/Ref	Contacts	Comparisons	Notices
Redraft Of:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) was/will be voided and redrafted as this (current request card) HLS.			
Redrafted As:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) replaces this (current request card) HLS.			
Substitute:	<input type="text"/>	This (current request card) HLS is a potential substitute for the specified HB (ex: HB123)			
Identical/Similar: (Current Session)	<input type="text"/>	The specified HLS or SLS (ex: HLS 05RS-123) is the basis for this (current request card) HLS. Always use HLS or SLS. Indicate changes in "Request Instructions".			
Rerun: (Prior Session)	<input type="text"/>	<input type="text"/>	The specified instrument (ex: HB321) or HLS (ex: HLS 05RS-123) or SLS is the basis for this (current request card) HLS. Indicate changes in "Request Instructions"		
Companion:	<input type="text"/>	This HLS has a provision that makes its effectiveness depend on the enactment of the specified HLS or SLS or HB or SB.			

Basic Info	Coauthors	Flags/Ref	Contacts	Comparisons	Notices
Redraft Of:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) was/will be voided and redrafted as this (current request card) HLS.			
Redrafted As:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) replaces this (current request card) HLS.			
Substitute:	<input type="text"/>	This (current request card) HLS is a potential substitute for the specified HB (ex: HB123)			
Identical/Similar: (Current Session)	<input type="text"/>	The specified HLS or SLS (ex: HLS 05RS-123) is the basis for this (current request card) HLS. Always use HLS or SLS. Indicate changes in "Request Instructions".			
Rerun: (Prior Session)	09RS	<input type="text"/>	The specified instrument (ex: HB321) or HLS (ex: HLS 05RS-123) or SLS is the basis for this (current request card) HLS. Indicate changes in "Request Instructions"		
Companion:	<input type="text"/>	This HLS has a provision that makes its effectiveness depend on the enactment of the specified HLS or SLS or HB or SB.			

Basic Info	Coauthors	Flags/Ref	Contacts	Comparisons	Notices
Redraft Of:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) was/will be voided and redrafted as this (current request card) HLS.			
Redrafted As:	<input type="text"/>	The specified HLS (ex: HLS 05RS-123) replaces this (current request card) HLS.			
Substitute:	HB 123 <input type="text"/>	This (current request card) HLS is a potential substitute for the specified HB (ex: HB123)			
Identical/Similar: (Current Session)	<input type="text"/>	The specified HLS or SLS (ex: HLS 05RS-123) is the basis for this (current request card) HLS. Always use HLS or SLS. Indicate changes in "Request Instructions".			
Rerun: (Prior Session)	<input type="text"/> <input type="text"/>	The specified instrument (ex: HB321) or HLS (ex: HLS 05RS-123) or SLS is the basis for this (current request card) HLS. Indicate changes in "Request Instructions".			
Companion:	<input type="text"/>	This HLS has a provision that makes its effectiveness depend on the enactment of the specified HLS or SLS or HB or SB.			

6) Notices

The Notices tab is for the various official journal notices that must be run in advance of certain bills being filed.

Basic Info	Coauthors	Flags/Ref	Contacts	Comparisons	Notices												
Certificates:		Charge To: Cowan, Rick (Bossier Parish Sheriff's Office)															
Notice Clears:		Notice Publications															
Notices <input type="checkbox"/> Assessors' Expense <input type="checkbox"/> Assessors' Salary <input type="checkbox"/> Creates Crime Prevention/Security District <input checked="" type="checkbox"/> Local <input type="checkbox"/> Registrar of Voters <input type="checkbox"/> Retirement <input type="checkbox"/> School Board <input type="checkbox"/> Sheriff's Compensation		<table border="1"> <thead> <tr> <th>Notice</th> <th>Publication</th> <th>Sent</th> <th>First</th> <th>Second</th> <th>Last</th> </tr> </thead> <tbody> <tr> <td colspan="6" style="height: 40px;"></td> </tr> </tbody> </table> <div style="text-align: right;"><input type="button" value="View"/></div>				Notice	Publication	Sent	First	Second	Last						
Notice	Publication	Sent	First	Second	Last												
		Notice Comments (include journal type, journal name and cite source): <div style="border: 1px solid gray; height: 40px;"></div>															

B. The substantive side

Depending on many factors, the drafter may or may not have the ability to discuss, in detail, the nuances of the member's request but should time not be an issue, the following are some questions that can be useful. For example, if a member simply tells the drafter that he needs a bill on fishing and, for whatever reason, is unable to provide anything else, the drafter has enough information to fill out and submit a request to get the process started.

1) *The Problem*

What is the specific problem that the member is trying to solve? Could the problem be better addressed administratively or through another mechanism? Is there a problem with enforcement of an existing law?

2) *Legislative Background*

Has this request previously been discussed with another staff member? Is it the result of interim committee work? Has it been requested in the same manner or in a similar form in a prior year? Is the requested bill being prepared by Senate staff for introduction in the Senate? Has the bill been introduced or enacted in another jurisdiction?

3) *Subject Matter Limitation*

Are there any subject matter limitations that could affect the introduction of an instrument stemming from the request? Advise the member of any subject matter limitations during the session for which the bill is requested and if the request is subject to a numerical limit applicable to the session. Review Article III of the constitution for more guidance.

4) *Notice Requirement*

Does the bill require a local, retirement, or other notice? If notice is required, will the member handle it or does he wish the staff to do it? If he opts to handle it himself, remind him to send certification of publication to staff before the bill's introduction. If he wishes staff to handle the notice, which is preferable, ask who should be billed for its publication.

5) *Contact Person(s)*

Is there anyone that the member wishes the drafter to contact for further information and how can that person be reached? May the drafter discuss or share the bill draft with anyone outside HLS staff? As HLS staff members are bound by rules of confidentiality, a drafter or other staff member cannot speak to anyone other than other HLS staff members without specific authorization from the member. Always ask for express permission and always note such an authorization on the request form.

6) *Deadline*

Is there a specific time limit or deadline for a draft of or finalization of the bill?

7) *Prefiling Instructions*

Does the member give permission to prefile the bill? Discuss the need for and the member's interest in prefiling the legislation.

Submit the request to the division administrative secretary for assignment or transfer to another division by the division director.

1.3 DRAFTING THE BILL

A. Analyze the request

As a preliminary step before beginning the work directed toward producing a bill, examine the member's request in the context of the existing laws, federal or state regulations, and jurisprudence. Find out, whenever possible, the specific factual situation that initiated the request.

- ❖ Does present state or federal law address the situation? If so, there may be a problem with administration, implementation, enforcement, funding, or another matter that can be satisfactorily resolved in another way.
- ❖ Review the rules and regulations of the department that has jurisdiction over the subject matter of the request. Check any applicable state plans prepared and submitted by the state to the federal government. Perhaps, as an alternative to legislation, the problem could be remedied under existing rules, by another form of administrative relief, or by an amendment to the rules.
- ❖ Can the subject matter of the bill be considered at the session for which the bill is requested? Explore whether there is some way that the bill can be drafted to make consideration permissible.
- ❖ Review federal law, regulations, and jurisprudence to see if the area is preempted or if a federal mandate to the states exists.
- ❖ Review the state constitution to see if there is any clear constitutional conflict.

If any of these situations is found to exist, advise the requesting member and discuss alternatives with him.

B. Analyze the problem

- ❖ Find out what the member wants to accomplish and what specific problems are involved.
- ❖ Find out what he knows he wants and what he will leave to the drafter's discretion.
- ❖ Point out and resolve substantive inconsistencies, constitutional problems, and drafting problems; however, ultimately the decision making process as to the contents of the bill rests with the member.

C. Research existing law

What kind of bill will this be and what is its object? Where will it fit into existing law?

- ❖ Read all relevant laws, including uncodified law where appropriate, to determine what must be enacted, amended, or repealed in order for the proposed law to be implemented smoothly. Be sure to check the previous session's enactments if statutory sources have not been updated.
- ❖ Examine staff records for any related legislation that has been previously drafted or for records of committee hearings that might be helpful.
- ❖ Research jurisprudence to assist in determining interpretive or constitutional problems.

D. Prepare working outline

- ❖ Prepare a working outline detailing the organization and arrangement of the bill. Determine what elements must be addressed in the bill. Examine for gaps, sequential inconsistencies, and clarity lapses. Revise the outline and reexamine it continually.
- ❖ Identify statutory subdivisions; i.e., Chapter, Part, Subpart, Section, etc.
- ❖ Think through the outline from the point of view of a person who must comply with or administer the law if enacted.

E. Prepare the draft

This Section does not purport to discuss all the elements of drafting as those elements are pieces and parts of this entire drafting manual. Rather, this Section seeks to emphasize that it is only after the drafter has analyzed the problem, conducted the appropriate research and, at a minimum, prepared a mental outline, that the drafter is ready to begin actually drafting the bill. Some experienced drafters have found the following steps useful:

1) *Prepare a rough draft*

Additional substantive questions may arise when drafting actually begins. Be certain to handle any new problems as they arise. Amend all relevant statutes that are inconsistent with the proposed law. Set the draft aside for a day or two, if possible; then review again. It is sometimes helpful to have a fellow drafter review the draft.

2) *Revise*

Continue to revise substantive provisions until they are clear and as simple as possible; continually revise for consistency, organization, form, format, and style. Check placement of the provisions. Also, check to ensure that the keyword and oneliner are still relevant as the draft is revised.

3) *Draft the digest*

This step may raise additional questions about and even lead to necessary changes in the bill, particularly as to style and clarity.

4) *Prepare final draft*

With the final draft, conduct one last self-check. See Guidelines for Drafter's Self-Review in the back of the bill folder for assistance.

5) *Prepare Gold Sheet*

Also located in the back of the bill folder, the library uses the information from the gold sheet to create an index of all bills.

6) *Submit for review*

Submit to the division director the bill for review and checking along with all appropriate documentation of conversations with the requestor or other sources including an explanation of any variances from the original request.

CHAPTER 2. THE ELEMENTS OF A BILL

2.1 OVERVIEW

This Chapter covers the elements of a standard bill. For this purpose, a "standard bill" is one that modifies in some way (adding, changing, or removing) provisions of codified law, whether the Revised Statutes or one of the Codes or any combination of these. Most of the elements in a standard bill are also elements of other types of bills and other instruments. For a discussion of the use of these elements in other instruments and how they are modified for those purposes, see the following:

[Chapter 15](#), Constitutional Amendments

[Chapter 24](#), Resolutions

[Chapter 26](#), Study Requests

2.2 SKELETON OF A BILL

- A** HLS 13RS-157 **B** ORIGINAL
- C** Regular Session, 2013
- D** HOUSE BILL NO. 36
- E** BY REPRESENTATIVE DANAHAY
- F** Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.
- G** RETIREMENT/SHERIFFS FUND: Provides relative to the transfer of service credit into the Sheriffs' Pension and Relief Fund

1 AN ACT

H 2 To amend and reenact R.S. 11:2174.2, relative to the Sheriffs' Pension and Relief Fund; to

3 provide relative to the transfer of service credit into the system; and to provide for

4 related matters.

I 5 Notice of intention to introduce this Act has been published

6 as provided by Article X, Section 29(C) of the Constitution

7 of Louisiana.

J 8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 11:2174.2 is hereby amended and reenacted to read as follows:

10 §2174.2. Transfer of service credit; purchase of accrual rate

11 ~~Any Notwithstanding any provision of R.S. 11:143 to the contrary, any~~

12 ~~member who has been an active member of this system for at least one year and who~~

13 ~~has service credit in another Louisiana public retirement system may elect to transfer~~

K 14 all such service credit to this fund. Notwithstanding any other provision of law to

15 the contrary, including the provisions of R.S. 11:143(D)(4), the member may elect

16 to purchase the accrual rate of this fund applicable to the member on the date of such

17 purchase for the purpose of applying the fund's accrual rate to such other service

18 credit by paying the amount established in accordance with R.S. 11:158(C). If, after

19 such purchase, the member attains eligibility for an accrual rate higher than the rate

20 previously purchased, the member may elect to execute an additional purchase for

Page 1 of 2

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

K

1 the purpose of applying the higher rate to the transferred service credit by paying the
 2 amount established in accordance with R.S. 11:158(C).
 3 Section 2. This Act shall become effective on July 1, 2013; if vetoed by the governor
 4 and subsequently approved by the legislature, this Act shall become effective on July 1,
 5 2013, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Danahay

HB No. 36

L

Abstract: Requires at least one year of membership in the Sheriffs' Pension and Relief Fund before a member is eligible to transfer prior service into the fund.

Present law provides a mechanism by which active members of public retirement funds may transfer prior service credit from public retirement systems or funds they belonged to in the past into their current retirement system or fund. Present law requires the member wishing to transfer service from his past system(s) to his present system to have been an active member of his present system for at least six months. Proposed law retains present law for every system except the Sheriffs' Pension and Relief Fund. Proposed law changes the active membership requirement for transfers of credit to the Sheriffs' Pension and Relief Fund from six months to one year.

Present law authorizes members of the Sheriffs' Pension and Relief Fund who transfer service credit into the system to elect to upgrade the transferred service credit to the accrual rate of the Sheriffs' system. The cost of this upgrade is to be calculated pursuant to present law and is to be paid by the member. Proposed law retains present law.

Present law further provides a mechanism by which active members of public retirement funds may reverse transfer service credit earned in their current system into the system they last contributed to. Present law requires the member wishing to transfer service from his current system to the system to which he last contributed to have been an active member of his current system for at least six months before he may initiate such a transfer. Proposed law retains present law for all systems, including the Sheriffs' Pension and Relief Fund.

Effective July 1, 2013.

(Amends R.S. 11:2174.2)

2.3 ELEMENTS OF A BILL

A. House Legislative Services (HLS) number

This number is assigned to every drafting request made of House Legislative Services. It is used by staff for tracking purposes, primarily prior to prefiling or introduction of a bill at which point a bill number is assigned. This number is generated through Task Organizer.

B. Bill Version

As a bill goes through the legislative process, it changes versions. A bill, as introduced, is labeled “original”. After a bill is reported out of committee, with or without amendments, it becomes “engrossed”. Subsequent amendments adopted by the chamber of origin, House or Senate, are incorporated into the content of the bill and the bill becomes “reengrossed”. In some cases, such as when a bill has been recommitted, it can be “re-reengrossed”. Once the bill is enacted, it is “enrolled”. This version contains all changes to the bill as finally passed the legislature. In the opposite chamber of origin, the bill does NOT change versions; rather, amendments are simply attached to the bill.

C. Session Type and Year

This information designates the session (Regular or Extraordinary, which is also referred to as "Special") of the legislature and year in which the bill is introduced. This information is generated through Task Organizer.

D. Bill Type and Number

A bill type and number reflects the type of instrument, the chamber in which the instrument is introduced, and the unique number assigned to it upon introduction.

Other instruments are given similar designation and numbers, e.g., House Study Request (HSR No.), House Concurrent Resolution (HCR No.), etc. Once the instrument is filed and obtains a number, its content becomes public and appears on the joint legislative website.

E. Author and Coauthors

In order to be introduced, a House instrument must have a member of the House of Representatives as its author. House members and senators may be coauthors.

Any other member of the Louisiana legislature may be listed as a coauthor, but no nonlegislator may be a coauthor. The standard order for listing authors is: 1) the author; 2) all House

coauthors listed in alphabetical order; and 3) all Senate coauthors listed in alphabetical order. No variation of coauthor order should be used unless specifically approved by the author. The author can be changed after introduction but only by House amendment. However, in odd-numbered years, a lead author cannot be changed on a general bill.

HOUSE COMMITTEE AMENDMENTS	
Amendments proposed by House Committee on Municipal, Parochial and Cultural Affairs to Original House Bill No. 1083 by Representative Brossett	
1	<u>AMENDMENT NO. 1</u>
2	Change lead author from Representative Brossett to Representative Badon

While coauthors may be added or removed throughout the legislative process without an amendment, such changes will not appear on the bill itself until it is engrossed or enrolled but will be noted immediately on the joint legislative website.

F. Recitation of Subject Matter Authority*

In a Regular Session in an odd numbered year, the recitation that a bill is "Prefiled pursuant to [Article III, Section 2\(A\)\(4\)\(b\)\(i\)](#) of the Constitution of Louisiana" is added to each bill that is neither local nor fiscal but is instead one of the author's general bills.

There are some limitations on how such an "Article III" bill can be amended, and the recitation is added solely to indicate that such limitations apply to the bill.

****Note this is only for Class III bills in an odd-year session.***

G. Keyword and Oneliner

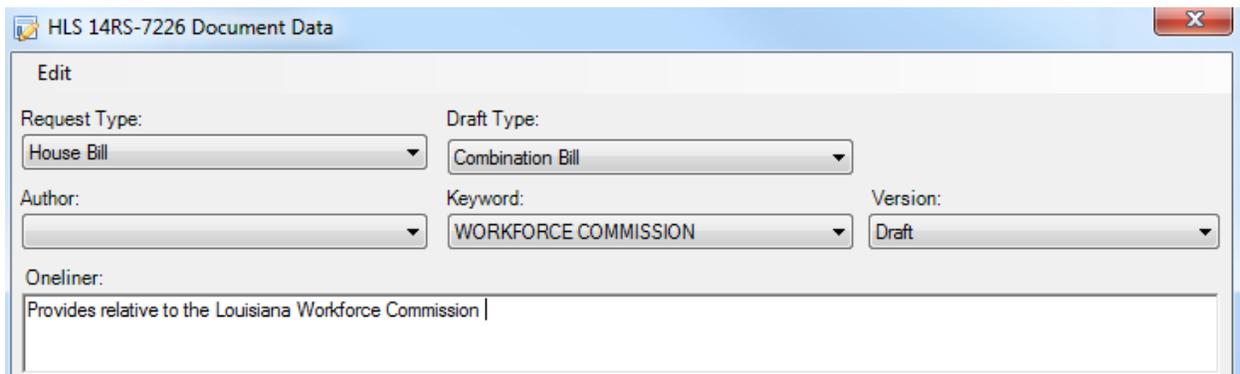
The keyword is a word or short phrase which identifies the subject of the bill and categorizes it with bills in the same broad subject area. The drafter must choose the keyword from the list of keywords found on the request card in Task Organizer. The keyword is used as an indexing method in the bill status system.

The oneliner is a short statement of the effect of the instrument that is written by the drafter. It usually begins with a present tense verb, e.g. "Adds...", "Increases...", "Creates...", or more generally, "Provides...". The oneliner is printed on the face of the bill immediately after the keyword and a colon. It should not be longer than about three and one-half lines of text. Note that a House oneliner does NOT end with a period.

In drafting a oneliner, the drafter should keep in mind:

- ❖ The purpose of the oneliner is to help identify bills, not to summarize their content.
- ❖ The oneliner, along with the keyword and bill number, are used as identifiers on the internet, the Order of the Day, meeting notices and agendas, the reader boards throughout the capitol, etc. A drafter should remember the hundreds of thousands of people outside the legislative process who encounter them and avoid specialized jargon and abbreviations when writing oneliners.
- ❖ Like the digest of an instrument, the keyword and oneliner are selected and drafted by HLS for the benefit of all legislators and the general public; they should not be modified to meet the political objectives of a member, lobbyist, or any other person. The drafter should keep the broader audience in mind anytime he receives a request from someone outside of HLS to change them. If questions arise, the director should consult his division director.

Initially, both the keyword and the oneliner are populated through the request card in Task Organizer. After a bill draft has been generated, but prior to introduction, changes to the keyword and oneliner are made in Document Data under the “LEGISuite” tab in WordPerfect.



The screenshot shows a window titled "HLS 14RS-7226 Document Data". It has an "Edit" button at the top left. Below it are several dropdown menus: "Request Type" (set to "House Bill"), "Draft Type" (set to "Combination Bill"), "Author" (empty), "Keyword" (set to "WORKFORCE COMMISSION"), and "Version" (set to "Draft"). At the bottom is a text field labeled "Oneliner:" containing the text "Provides relative to the Louisiana Workforce Commission".

The drafter must never delete or free type any changes to the keyword or oneliner in the actual bill draft.

After introduction, the keyword and oneliner are changed when amendments to the bill make such changes necessary. However, the keyword and oneliner cannot themselves be amended; changing them requires requesting Administrative Services to do so when a new version of the instrument is produced.

H. Bill Title

The constitution requires that every bill be confined to one object and contain a brief title indicative of that object of the bill ([Const. Art. III, §15\(A\)](#)). While related, the title and one-

clause", immediately precedes the body of the bill. It is automatically included in the bill through the drafting tool. The drafter should take extra care to not inadvertently delete it.

There is no such requirement for an enacting clause for a joint resolution affecting the constitution.

K. The Body of the Bill

The body of the bill contains the law as the legislature intends it to be and is considered the main part of the bill.

Details on drafting the body are discussed in [Chapter 5](#), Drafting Statutory Law.

L. Digest

A digest is a brief narrative summary of the contents of a legislative instrument intended to help readers, particularly members, understand it. A digest of a bill or joint resolution should summarize the changes made in the law by the instrument.

Details on drafting digests are discussed in [Chapter 9](#), Digests.

CHAPTER 3. CODIFICATION AND CITATIONS

3.1 OVERVIEW

This Chapter constitutes, in effect, an HLS Style Sheet. It provides guidance on properly codified law and crafted language.

Its provisions are important – consistency in these conventions increases the probability that a bill will be understood as it was intended, a central objective of all legislative drafting. Somebody will give statutory words meaning; that should be the drafter.

In the real world, amongst the real law, there will be violations of the rules and guidelines laid out here. A drafter should make every effort to fix any error found in present law provisions that is included in a bill. If something about making such fixes in a particular case causes concern, consult a division director or other experienced drafters.

These guiding principles do not solve every drafting puzzle or answer every question a drafter will face. It is highly unlikely that there is a single sentence here that can be used in a bill. So beyond following these conventions, a drafter must make every effort to develop an objective, critical eye of his own drafting and also be open to constructive criticism. In fact, the presumption "my words are clear because they are clear to me" is responsible for more bad drafting than failure to follow the rules. Quite simply, a drafter must develop an ability to see his words as someone in another place and time will see them.

3.2 CODIFICATION

A. Structure of Louisiana bodies of law

State law consists of the constitution, the Revised Statutes, and each of the codes. Each body of state law is built on a particular skeleton of units and subunits. These arrangements of units and subunits provide a drafter with a great deal of power to efficiently express relationships between provisions of law.

In order to arrange or reference the law properly, the drafter must be aware of and precisely apply the skeleton that pertains to the body of law the drafter is drafting in or referring to. Knowledge of two aspects of each skeleton is essential: 1) What the various units and subunits are called. "This **Paragraph** does not apply to ..." will usually mean something very different from "This **Section** does not apply to..." 2) How the units at a particular level are designated; an upper case roman numeral indicates one thing, a lower case roman numeral indicates something else.

B. Designation of bodies of law

Here are the skeletons for the various state law bodies indicating the name of each unit and how it is designated:

1) State Constitution

ARTICLE VII.
PART I.

§1. Section

- (A) (Paragraph)
- (1) (Subparagraph)
- (2) (Subparagraph)
- (a) (Subsubparagraph)
- (b) (Subsubparagraph)
- (i) (Item)
- (ii) (Item)
- (B) (Paragraph)

2) Civil Code and Code of Civil Procedure

BOOK II.
TITLE IV.
CHAPTER 3.
SECTION 2.
SUBSECTION C.

Art. 456

- A. (Paragraph)
- (1) (Subparagraph)
- (2) (Subparagraph)
- B. (Paragraph)

3) Code of Criminal Procedure and Children's Code

TITLE II

CHAPTER 4

Art. 278. (Article)

A. (Paragraph)

(1) (Subparagraph)

(2) (Subparagraph)

B. (Paragraph)

4) Code of Evidence

CHAPTER 1

Art. 31. (Article)

A. (Paragraph)

(1) (Subparagraph)

(2) (Subparagraph)

B. (Paragraph)

5) Revised Statutes

TITLE 12

CHAPTER 15.†

PART III.

SUBPART D.

§3587. (Section)

B. (Subsection)

(5) (Paragraph)‡

(n) (Subparagraph)

(i) (Item)

(ii) (Item)

(aa) (Subitem)

(bb) (Subitem)

(b) (Subparagraph)

(2) (Paragraph)

B. (Subsection)

* Exceptions: Titles 9 and 10 have their own structures; follow the conventions of those Titles when drafting in them.

† A few Titles are divided into Subtitles numbered with uppercase Roman numerals. Note that in some Titles, Chapter numbering starts over with "1" in each Subtitle, but this is not always true.

‡ A Section that comprises a list of fairly equally weighted elements may be divided directly into Paragraphs rather than Subsections; definition Sections are by far the most common but not the only case in which this scheme is used. Such Sections begin with an unnumbered Introductory Paragraph followed by the Paragraphs numbered with arabic numerals in parentheses.

In the Revised Statutes, every Chapter, Part, or other portion that comprises multiple Sections should begin with a Section number that ends with a "1". This convention is also used in some of the codes that were compiled relatively recently, such as the Code of Criminal Procedure. A drafter should incorporate this numbering convention whenever it is consistent with the code the drafter is drafting in.

3.3 CITING BODIES OF STATE LAW

When citing a provision of state law, use the following formats. **Never** use "herein", "hereinabove", "hereafter", or any similar vague reference to a portion of law. It is inevitably unclear whether "here" refers to the entire code, the Item, or something in between.

A. *The State Constitution*

- ❖ Generally, within the instrument itself, refer to the constitution as "the Constitution of Louisiana".
- ❖ Cite a particular provision like this; note that the citation always says "Section" even if it refers to a subunit of a Section:

Article X, Section 3 of the Constitution of Louisiana

Article III, Section 2(A)(4)(b) of the Constitution of Louisiana

- ❖ In the citations line in the digest, abbreviate "Constitution of Louisiana" (Const.) and "Article" (Art.) and use the § symbol for Section:

(Amends Const. Art. III, §2(A)(4)(b))

B. Codes

- ❖ Cite a particular provision like this; note that the citation always says "Article" even if it refers to a subunit of an Article:

Civil Code Article 916(A)

Code of Civil Procedure Article 1450(A)(3) and (4)

Art. 261. Illegitimate child.

The father or mother who is entitled to the tutorship of the illegitimate child, according to the provisions of Article 256, can choose a tutor for him, whose appointment, to be valid, must be approved by the judge.

- ❖ A reference to another Article within the same code does not identify the Code:
- ❖ Chapters, Sections, etc. are cited as follows:

Section 1 of Chapter 2 of Title V of Book I of the Civil Code

- ❖ In the citations line in the digest, abbreviate the name of the code as follows: C.C., C.C.P., C.Cr.P., C.E., or Ch.C. and "Article" as Art.

(Amends C.C. Art. 916(A); Adds C.C.P. Art. 1450(A)(3) and (4)).

C. Revised Statutes

- ❖ The Revised Statutes are cited using the abbreviation "R.S." followed by the title number, a colon, and the Section number and full citation.

R.S. 30:1245 through 1249

Note in a full citation like in the following example, the Subsection designation is also in parentheses.

R.S. 40:1140(C)(5)(c) and (D)

- ❖ Entire Chapters, Parts, etc. are cited as follows:

Subpart D of Part II of Chapter 23 of Title 15 of the Louisiana Revised Statutes of 1950

- ❖ In the citations line in the digest, no indication of Chapters, Parts, etc. is included:

(Amends R.S. 30:1245-1249; Adds R.S. 15:3211-3215; Repeals R.S. 40:1140(C)(5)(c) and (D))

3.4 INTERNAL CITATIONS

A. Generally

When referring **to** the provision of law that the reference is **in**, do not use the citation forms outlined in the previous section. For example, do not refer to R.S. 30:1245 as such if the reference is in R.S. 30:1245. Instead, refer to "this Section" (or "this Chapter" or "this Paragraph" as appropriate).

Also, do not use the citation forms of the previous section when referring **to** another part of the Section or Article **in** which the reference is being placed, for example, if placing a reference **to** Subsection C of a Section **in** Subsection A of the same Section. In such cases the House uses we use an abbreviated form of the full citation, which is a little tricky. The proper form of such a citation incorporates identification of the level and partial citation of the provision the drafter is referring **to**, followed by "of this", followed by identification of the lowest level of text which the two provisions have in common. Here are some examples:

Subsection A of this Section

Note in the preceding example there are no parentheses in an internal reference to another Subsection.

Paragraph (C)(5) of this Section

Subparagraph (d) of this Paragraph

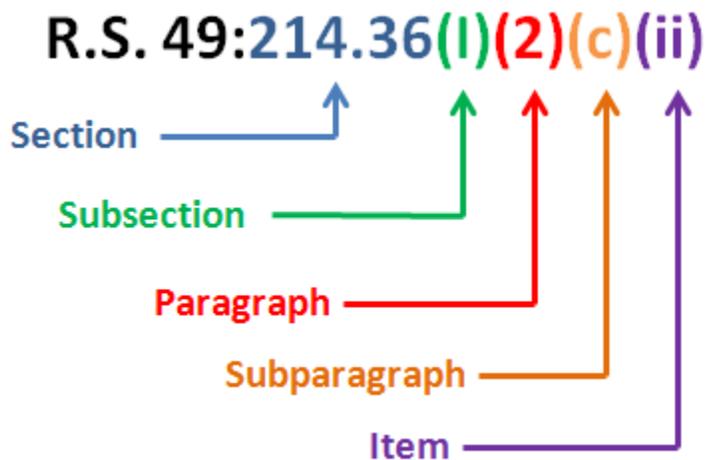
Item (2)(c)(ii) of this Subsection

B. Determining the proper internal citation

If the proper form of an internal citation is not obvious in a particular case, try these steps to derive it:

- 1) The drafter should identify the **level** of the provision that is being referred to. Is it a Subsection? a Subparagraph? etc.
- 2) Begin with the full citation to which the drafter is referring but eliminate portions of it that are shared with the provision **in** which the drafter is placing the reference.
- 3) Identify the lowest level of text that the two provisions (the referring and the referred to) share; are the two provisions in the same Section? the same Subsection? the same Paragraph?
- 4) Write the citation as follows: level referred to (step 1); portion of citation (step 2); the words "of this"; lowest shared level (step 3).

For example, to place a reference **to** R.S. 49:214.36(I)(2)(c)(ii) **in** R.S. 49:214.36(I)(3)(a):



- 1) Identify the level of the provision referred **to**: Item
- 2) Remove shared portion of the full citation: ~~R.S. 49:214.36(I)(2)(c)(ii)~~
- 3) Identify the lowest common level: Subsection
- 4) Write the proper citation: "Item (2)(c)(ii) of this Subsection"

Similarly, to place a reference **to** the same Item, **in** R.S. 49:214.36(l)(2)(c)(iv):

- 1) The level of the provision referred **to**: Item
- 2) Remove shared portion of the full citation: ~~R.S. 49:214.36(l)(2)(c)(ii)~~
- 3) Lowest common level: Subparagraph
- 4) Proper citation: "Item(ii) of this Subparagraph"

3.5 CITING OTHER LEGAL DOCUMENTS

A. Legislative Acts and Resolutions

Legislative Acts and Resolutions should be cited using the Act number, with number abbreviated as "No.", and the year and type of session of the legislature.

Act No. 2 of the 1972 Regular Session of the Legislature

House Resolution No. 16 of the 1975 Regular Session of the Legislature

Act No. 6 of the 1975 Second Extraordinary Session of the Legislature

B. Rules

Joint Rule No. 5 of the Joint Rules of the Senate and House of Representatives

Note in the preceding example it is not **the** House of Representatives.

House Rule 7.19 of the Rules of Order of the House of Representatives

Note in the preceding example the absence of "No." before the rule number.

C. Louisiana Administrative Code

LAC 42:l.1725(D)(1)

Louisiana Administrative Code 1:l.103 states that "...the **Louisiana Administrative Code** may be cited by Title, Part and Section number. The preferred short form of citation of the **Louisiana Administrative Code** is "LAC." Thus, in the preceding example, LAC 42:l.1725(D)(1), "42" refers to the Title, "l" refers to the Part, and "1725" refers to the Section.

Louisiana Administrative Code 1:l.105 provides additional details regarding citing and the arrangement of the administrative code.

D. Court cases

Opinions and actions issued by the Louisiana Supreme Court and Courts of Appeal following December 31, 1993, shall be cited according to a uniform public domain citation form with a parallel citation to West's Southern Reporter:

Smith v. Jones, 93-2345 (La. 7/15/94), 650 So.2d 500

Smith v. Jones, 93-2345 (La.App. 1 Cir. 7/15/94), 660 So.2d 400

E. Court rules

S Ct. Rule 28 Rule 905.9.1

S Ct. Gen. Admin.R. Part G 8

F. Federal provisions

❖ Cite the U.S. Constitution as:

Article VI, Section 4, Constitution of the United States of America

❖ Cite the United States Code as:

26 U.S.C. 2401

Note the use of periods in "U.S.C."

- ❖ Cite the Code of Federal Regulations as:

49 CFR Part 172, Subpart F

Note the absence of periods in “CFR”.

- ❖ Cite the Federal Rules of Civil Procedure as:

Fed.Civ.R. 11

- ❖ Cite the Federal Rules of Criminal Procedure as:

Fed.Crim.R. 12(d)

- ❖ Cite public laws that are not codified by the Congress and Act number as:

P.L. 95-782

3.6 INTRODUCTORY PARAGRAPHS

Any unit of codified law at or below the Section or Article level may be subdivided into lower level subunits. Such a division may be handled with or without an Introductory Paragraph.

Here is an example of a Subsection divided into Paragraphs **without** an Introductory Paragraph; notice that the first Paragraph in the Subsection is numbered (1):

B.(1) The Clerks' Supplemental Compensation Fund Board is hereby created.
(2) The board is composed of five members appointed by the board of directors of the Louisiana Clerks of Court Association.
(3) The chairman of the board shall distribute proceeds of the fund.

Subsection C below is subdivided and contains an Introductory Paragraph. Notice that the Introductory Paragraph is not uniquely numbered; the "C." designates the entire Subsection including the Introductory Paragraph and all Paragraphs in it and their subdivisions:

Caution, there are two aspects of Introductory Paragraphs that make them worthy of a drafter's careful attention:

First, an Introductory Paragraph must be included in a bill any time the subdivision it introduces is being amended or added to, **even if** the Introductory Paragraph itself is not being changed.

C. Any indemnification under Subsection A of this Section, unless ordered by the court, shall be made by the corporation only as authorized in a specific case upon a determination that the applicable standard of conduct has been met. Such determination shall be made by one of the following:

(1) The board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding.

(2) Independent legal counsel if such a quorum is not obtainable and the board of directors so directs.

(3) The shareholders.

See full discussion regarding inclusion of Introductory Paragraphs in bills in [Chapter 5, Drafting Statutory Law](#).

Because an Introductory Paragraph is not uniquely numbered, it is terribly easy to make a mistake in citing it if it is being amended, and such mistakes can have major consequences. Consider a bill that proposes to amend the Introductory Paragraph of Subsection C in the preceding example. If the drafter does not recognize the Introductory Paragraph and reference it correctly, he might draft the following:

Section 1. R.S. 12:83(C) and (E) are hereby amended and reenacted to read as follows:

§83. Indemnification of officers, directors, employees, and agents; insurance

* * *

C. Any indemnification under ~~Subsection A~~ of this Section, unless ordered by the court, shall be made by the corporation only as authorized in a specific case upon a determination that the applicable standard of conduct has been met. Such determination shall be made by one of the following:

* * *

E. The indemnification and advancement of expenses provided by or granted pursuant to ~~the other Subsections~~ of this Section shall not be deemed exclusive of any other rights to which the person indemnified or obtaining advancement of expenses is entitled under any bylaw, agreement, authorization of shareholders or directors, regardless of whether directors authorizing such indemnification are beneficiaries thereof.

The introductory language to the enacting section indicates that all of Subsection C is in the bill; thus Paragraphs (1), (2), and (3) will be **removed from the law** if this bill passes. The use of asterisks will not save a drafter in this instance.

The introductory language to the enacting section should read:

Section 1. R.S. 12:83(C)(introductory paragraph) and (E) are hereby amended and reenacted to read as follows:

CHAPTER 4. WORDSMITHING

4.1 OVERVIEW

Although there may be various acceptable grammar and punctuation usage guidelines, HLS has chosen those outlined in this Chapter as standard practice for drafting. Drafting is an art composed of the masterful wordsmithing of carefully composed bills. As this Chapter will show, an ill-placed comma or hyphen can completely change the interpretation of a law.

A bill should be drafted using a consistent arrangement and form of expression; the same words or phrases should be used when referring to the same thing, and different words or phrases should be used when referring to different things. Consistency within the bill and consistency with the parts of the law in which the provisions are to be inserted are both extremely important. The drafter should craft carefully.

4.2 SENTENCE STRUCTURE AND GRAMMAR

A. Passive and active voice

When constructing sentences, consider which voice is the most appropriate for the particular bill.

- ❖ Passive voice is when the verb is being acted upon by the subject.

The members of the board shall be appointed by the governor.

- ❖ Active voice is when the subject does the action designated by the verb.

The governor shall appoint members to the board.

Active voice is generally more direct and succinct and therefore more suitable than passive voice for most statutory drafting. However, passive voice has its place. As a rule of thumb, use active voice verbs **unless** the performer of the action is clear for other reasons and is either unimportant in the sentence or identifying the performer of the action would be unnecessarily cumbersome.

Here are some examples of effective use of passive voice:

The test shall be administered at no cost to the property owner.

The point of the sentence is the cost; not the identification of the tester; presumably that identification is clear in context.

Whoever commits the crime of gambling shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

Identifying who is doing the fining would add unnecessary complexity to the sentence.

No other proposals, reports, or conditions shall be required of the councils on aging or the Louisiana Association of Councils on Aging as a condition of eligibility for receipt of funds under the provisions of this Section.

This prohibits anyone, whoever that might be, from requiring other proposals, reports, or conditions. However, be very careful. Passive voice may hide the fact, even from the drafter, that it is not clear who is responsible for performing some action; this is a fatal flaw.

There shall be conducted annually the silver-haired legislature for the elderly. This shall include an educational program as to the democratic process.

If the performer of the action is explicitly identified in the sentence, passive voice is probably pointless. The drafter should consider the following alternatives:

Avoid:

All fees shall be deposited by the secretary into the state treasury.

Preferable:

The secretary shall deposit all fees into the state treasury.

Avoid:

One member shall be appointed by the governor from among three persons nominated by the Louisiana Association of Business and Industry.

Preferable:

The governor shall appoint one member from among three persons nominated by the Louisiana Association of Business and Industry.

B. Present tense

Present tense is a grammatical tense the principal function of which is to locate a situation or event in present time. The law is regarded as always speaking, so use present tense when drafting. In most drafting situations this is easy and natural.

A significant change in employment status constitutes an adverse employment action under Title VII.

There are two other verb tenses a drafter might be tempted to use but should avoid:

The first is the conditional future, as in "If the petition **shall have been filed** prior to...". While we do see this verb tense in some older statutes, it sounds so antiquated that contemporary drafters are not likely to use it.

The second is the use of "shall" as a helping verb, which changes the tense of the verb to future. In his comments "Legislative Bill Drafting", which accompany the Louisiana Revised Statutes of 1950, Carlos Lazarus says "It is always preferable to say: 'This Section **does not apply** to minors or interdicts' than it is to say: 'This Section **shall not apply** to minors or interdicts.' 'Shall' should only be used to denote requirements or prohibitions."

C. Singular and plural

[R.S. 1:7](#) provides that words used in the singular include words used in the plural and the plural the singular. The singular should be used whenever possible, as sentences written in the plural can become even more convoluted when amended. Some words to consider using when drafting in the singular are each, every, any, and a person.

The following example is written in the plural. Note how confusing it can become:

A. All employees who in good faith believe that their employer is in violation of this Chapter shall submit written notice of the alleged violation to their employers. Employers who receive such written notice from their employees shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter.

Alternatively, see the original sentence written in the singular:

A. An employee who in good faith believes that his employer is in violation of this Chapter shall submit written notice of the alleged violation to the employer. An employer who receives such written notice from an employee shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter.

While the singular is much preferred and usually makes sentences simpler, consistency is required. Do not flip-flop back and forth in the same sentence as is done in this example:

A. **An employee** who in good faith believes that **their** employer is in violation of this Chapter shall submit written notice of the alleged violation to **the employer**. **Employers** who receive such written notice from **their employees** shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter.

D. Conjunctive-disjunctive dysfunction

- 1) *Conjunctions*. Conjunctions are connectors between words, phrases, clauses, or sentences such as: and, because, for, nor, so, or, but, or however.
- 2) *Disjunctive phrases*. Disjunctive writing is syntactically setting two or more expressions in opposition to each other. Examples of this: poor but happy, or expressing an alternative, as in this or that.
- 3) *Conjunctive-disjunctive combinations*. Refrain from using conjunctive-disjunctive combination words that are confusing as to their meaning such as: any and all, each and every, and/or, each and all, from and after, or unless and until.

The phrase "and/or" has been accurately described as the "condemned conjunctive-disjunctive crutch of sloppy thinkers". It is unclear and very confusing as to what the drafter means. The use of "and" or "or" independently of each other is rarely confusing: "and" is conjunctive; "or" is disjunctive.

- 4) *Or both*. The question drafters sometimes face is whether an expression such as "or both" or "or any combination of these" is needed with a disjunctive list.

Here are some common scenarios with indications of whether "or both" is needed. However, take care to consider the context for any use of "or". If the provision is a prohibition, a combination cannot be used to get around the prohibition, so "or both" is not necessary. In this example, note that the wording prohibits both discriminating against and taking adverse action.

An employer may not discriminate in employment against or take adverse employment action against a person because the person has exercised a right provided for in this Part.

In the following example, the statute prohibits surveys of any combination of minerals from being taken and further down, prohibits any combination of methods to be used to take surveys.

No person shall conduct geological surveys for oil, gas, or other minerals by means of a torsion balance, seismograph explosions, mechanical device, or any other method whatsoever on any land, unless he has obtained the consent of the owner as provided in the Louisiana Mineral Code.

Generally if the statute authorizes an action, "A person may x or y..." the "or" is in fact disjunctive, so if x and y is also permitted, that needs to be specified by the drafter.

The commission may undertake the physical control, containment, pit cleanup, or closure of the abandoned waste site or any combination of these.

Alternate penalties is a common variation of such a grant of authority. If a crime is punishable by a fine or prison sentence, those are the options presented to the judge. Though the verb "shall" usually indicates that some punishment is mandatory, the "or" permits the court to choose the punishment. In this permissive context, the "or" is disjunctive, so "or both" must be added if the statute is to permit both.

The use of "and" in a statute granting authority implies that the actor is not authorized to take only one of the authorized actions.

If a licensee is found to be in violation of this Section, the secretary shall suspend the licensee's license and impose a five hundred dollar fine.

The preceding example denies the secretary the option of taking only one of these actions. If that is not the intent, the sentence should be written like this:

If a licensee is found to be in violation of this Section, the secretary shall suspend the licensee's license or impose a fine of five hundred dollars , or both.

If the statute sets conditions, meeting both or multiple conditions does not negate the fact that one of them has been met, so an expression like "or both" is not needed. In the following example, a person who is eighteen and has completed high school is not excluded from enrolling.

A person who is eighteen years of age or has completed high school may enroll in the program.

The following example applies to both a party that fails to obtain state and federal permits.

If property is expropriated for pipeline construction and the party acquiring the property fails to construct the pipeline due to inability to obtain the required state or federal permits, the party shall have no right to the return of the funds paid to the landowner for the rights acquired.

E. Conditions

Part of the drafter's job is to set conditions on the directive written in the law.

- 1) *If, when, and where.* Use "if" to establish a condition. Do not use phrasal substitutes for "if" such as "in the event that" or "if it is the case that" or "in a situation where". Use "when" only to establish a condition related to time and "where" only to establish a condition related to geographic place. Do not use either "where" or "when" as a substitute for "if".
- 2) *Provided that.* "Provided that" is almost certainly the most misused and abused single phrase in all of the statutes. As Bryan Garner observes, "Writers on drafting have long cautioned drafters not to use provisos. In fact, the words 'provided that' are a reliable signal that the draft is not going well." Since it is so often misused and never necessary, it is advisable to avoid the expression.

The "provided that" condition could be written more simply as another "if" phrase:

The commission may resume making loans **if** a student regains the cumulative grade point average required by this Chapter for continuing eligibility and is no longer on academic probation and if the period of ineligibility did not persist for more than two years.

"Provided that" is also not a synonym for "however":

The maximum fee for late renewal shall be established by the board, provided that the late renewal fee shall not exceed three times the normal renewal fee.

Rewrite a sentence like this using "however".

The maximum fee for late renewal shall be established by the board; however, the late renewal fee shall not exceed three times the normal renewal fee.

In the following example, "provided that" is used for no other reason than to glue together two distinct requirements:

School board members shall not be paid for more than one hundred forty-four days in any one year; provided that no member shall be compensated for more than twelve meetings per month.

If the preceding example is read literally and the "provided that" establishes a proviso, this sentence means that if a member is paid for more than twelve meetings in a month, then he may be paid for more than one hundred forty-four meetings in a year. Using a semicolon alone will suffice.

School board members shall not be paid for more than one hundred forty-four days in any one year; no member shall be compensated for more than twelve meetings per month.

4.3 SIMPLIFY, SIMPLIFY, SIMPLIFY

A. Buried verbs

One way to make writing unnecessarily complex is to use a weak verb in combination with the noun form of a verb rather than using the intended verb itself. Because drafters should endeavor not to make drafting unnecessarily complex, use the intended verb. For example:

- | | |
|---|--|
| ❖ "decide" rather than "make a decision" | ❖ "resolve" rather than "reach a resolution" |
| ❖ "rebut" rather than "offer a rebuttal" | ❖ "apply" rather than "submit an application" |
| ❖ "indemnify" rather than "provide an indemnification to" | ❖ "determine" rather than "make a determination" |

B. Unacceptable substitutes for "shall" or "may"

Do not use "must" as a substitute for "shall".

Do not use legalese substitutes, such as the following, for "shall" or "may":

- | | | |
|---------------------------|---------------------------|-------------------|
| ❖ is directed to | ❖ is required to | ❖ is lawful to |
| ❖ must | ❖ shall have the power to | ❖ is empowered to |
| ❖ has the duty to | ❖ is entitled to | |
| ❖ is hereby authorized to | | |

C. Said and such

The drafter should not use "said" as an article; it should only be used as the past tense of "say".

"Such" means "of this type". It should also not be used as a substitute for an article but may be used if a category has been clearly established.

If appropriations are insufficient to fund awards for all students who are eligible for awards pursuant to this Chapter, a reduction shall be made in the awards for such students by application of the procedures provided in R.S. 17:3048.1(N).

In the previous example, "such students" are those who are eligible for an award. In the following example, "such participation" refers to participation by officials and employees other than officials and employees of state agencies.

The in-service training and educational programs may be made available, on a fee basis, to other public officials and employees if **such** participation does not deny any employee or official of a state agency access to the program.

D. Unnecessary prepositional phrases

Unnecessary prepositional phrases make reading difficult because they add to the relational components within sentences. And to understand the sentences, readers must sort out these components.

Avoid:
Upon the refusal **of** the department to grant a registration or license or **upon** the revocation **of** a registration or licensure, the person...

Preferable:
If the department revokes or refuses to grant a registration or license, the person...

Avoid:
...a fee **for** processing the payments **in** an amount that is equal to the expense incurred **by** the sheriff **in** processing the payment

Preferable:
...a payment processing fee equal to the sheriff's processing expense

E. Multiple subordinate clauses

A subordinate, or dependent clause, is a group of words that has both a subject and a verb but, unlike an independent clause, cannot stand alone as a sentence. It is acceptable and common

in English usage to omit a subordinating conjunction and often a verb from a subordinate clause if the meaning is clear without these elements. In the following example, "that is" has been omitted at * though "that is enforceable under this Section" is the complete subordinate clause modifying "liability":

In the absence of notice to the collector under R.S. 47:283(B) of the existence of a fiduciary relationship, notice of a liability * enforceable under this Section shall be sufficient for the purpose of this Chapter even if the person is deceased.

However, in sentences with multiple subordinate clauses that modify the same word(s), using the optional conjunction often improves the clarity regarding what the subordinate clauses modify. In the following example "that is" is omitted at *.

No common carrier * engaged in intrastate transportation of property that is subject to the regulatory authority of the Public Service Commission shall knowingly disclose to any person other than the shipper or consignee any information concerning the nature, kind, quality, destination, consignee, or routing of any property tendered or delivered to the common carrier for intrastate transportation.

Though the omission is ordinarily acceptable, the reader will probably have to read the sentence two or three times to figure out that the clause "that is subject to the regulatory authority of the Public Service Commission" is not intended to modify "property" but instead modifies "carrier". Such confusion is avoided if the optional "that is" is included and an "and" is inserted before the second modifying clause.

No common carrier that is engaged in intrastate transportation of property and that is subject to the regulatory authority of the Public Service Commission shall knowingly disclose to any person other than the shipper or consignee any information concerning the nature, kind, quality, destination, consignee, or routing of any property tendered or delivered to the common carrier for intrastate transportation.

4.4 DATES AND TIME

A. Time-related words

Time-related words create a unique set of challenges for statutory drafters. Among the most insidious of these challenges is the temptation to refer to the time period in which the drafting is taking place as "now", "present", "current", or some similar term. The law is understood to be always speaking; thus, "now" is always now, that is, whenever it is read. Drafters must be aware of this and consider what sense a provision will make if it is read in five, ten, or fifty years. In almost every case, the drafter should identify the "present" by some specific delineation of it, for example, "at the time this Act becomes effective".

The description of a time period can also be challenging because idiomatic expressions are often not sufficiently precise for legal purposes. When describing a period of time, make clear which is the first and which is the last day. Rather than "between June tenth and July first" use something like "on or after June tenth but on or before July first". Rather than "within thirty days after" use "not later than the thirtieth day after".

Remember that "of" in an expression such as "within thirty days of" means thirty days before or after.

B. Dates and time

Dates which include a year should be written as "January 1, 2016,". If the year is not included, the day should be spelled out, i.e. "January first". The year is followed by a comma unless it is at the end of a sentence or not in a sentence.

Hours of the day should be written as "5:00 p.m."; use "midnight" or "noon" when 12:00 a.m. or p.m. is intended.

4.5 NUMERALS

In a bill draft, all numerals should be spelled out except dates that include the year, amounts of money in appropriation bills, expressions that are nearly always written as numerals such as "3.0 GPA", and time of day. Amounts of money in appropriation bills should be spelled out with numerals included in parentheses; in any other bills do not use numerals in parentheses.

In digests, spell out numerals below 10 and use figures for 10 and above. Figures may also be used in a digest if a single digit numeral is combined with a symbol as in "5%".

4.6 PUNCTUATION

This Section covers the correct usage of commas and semicolons and how they should be used in a series of words or phrases and in each type of sentence structure and grammatical arrangement.

A. Commas and semicolons

1) Lists. Use commas to separate the items in a list of three or more items, including a comma between the penultimate item and the "and" or "or". This is known as the serial or Oxford comma.

The judgment of possession rendered in a succession proceeding shall be prima facie evidence of the relationship to the deceased of the parties recognized therein as heir, legatee, surviving spouse in community, or usufructuary and of their right to the possession of the estate of the deceased.

An indictment shall not be invalid or insufficient for the reason that it fails to negate an exception, excuse, or proviso contained in the statute creating or defining the offense.

Do not use a comma in a list of two items even if the items are phrases or clauses. In the following examples, a comma is not needed at *.

The chief engineer* or his duly authorized representative may enter into joint use agreements affecting any highway right-of-way that consists of an elevated section and any other highway right-of-way that is deemed suitable and available by the chief engineer.

Upon the application of any party in interest* and upon due notice to all parties, the court may order that the money deposited or any part thereof be paid to the person entitled thereto for the just and adequate compensation to be awarded in the proceedings.

Use semicolons to separate the items in a list if the items contain internal commas. In the following example, the semicolon is bold.

The commissioner shall have power to compel the attendance of any person by subpoena; administer oaths and examine any person under oath concerning the business, conduct, or affairs of any company or person subject to the provisions of this Code; and require the production of any books, records, or papers relative to the inquiry.

2) *Coordinate adjectives.* Use commas to separate two or more coordinate adjectives modifying the same noun, but do not use a comma if the adjectives are not coordinate. For instance, in the phrase "insured financial institution" the adjective "financial" indicates the type of institution and "insured" indicates the type of "financial institution", so the adjectives are not coordinate. The same is true of the phrase "licensed wholesale dealer". However, in a phrase such as "licensed, insured driver" both adjectives apply equally to the noun, meaning their order could be reversed, so a comma is required.

3) *"Including but not limited to..."*. Do not set off "but not limited to" with commas when using this expression. However, a comma before "including" and after the entire phrase might be required. In the following example, "including but not limited to a criminal background check" is a nonrestrictive phrase in the middle of an independent clause, so the whole phrase is set off with commas.

A prospective employer who reasonably relies on information that pertains to an employee's job performance or reasons for separation and that is disclosed by a former employer is immune from civil liability and other causes of action related to the hiring of the employee unless further investigation, including but not limited to a criminal background check, is required by law.

4) *Introductory phrases and clauses.* Use a comma to separate a phrase or dependent clause at the beginning of a sentence from the main clause.

Within ten days after termination of a registrant's employment or representation of any person, the registrant shall file a supplemental registration with the ethics board acknowledging the termination of his employment or representation.

If the contract includes dance studio lessons that are sold at different hourly rates, the contract shall state the hourly rate for each type of lesson sold.

Use a comma after a phrase or clause that introduces a second independent clause. In this example, see the comma between "time" and "he".

If the surveyor of either parish fails to attend at the time and place fixed, the other surveyor shall wait two days, and if the first does not arrive within that time, he shall proceed with the running and marking of the boundary line.

Use a comma after words such as "therefore" and "however" when used at the beginning of a sentence or independent clause to establish continuity.

In any litigation or business necessitating the attention or assistance of the district attorney outside of his judicial district, the district attorney shall be paid his expenses; **however**, this Section does not apply to fees that are recovered as penalties in a civil suit if attorneys fees are made a part of the penalties by statute.

Exception: The comma is not required in an introductory prepositional phrase if it contains fewer than five words unless the comma prevents possible confusion. In this example, no comma is required after the phrase "in such cases".

In such cases the court may recognize the surviving spouse in community of the testator as entitled to the possession of the community property as provided in Article 3001.

5) *Phrases and dependent clauses in the middle of a sentence or independent clause.* In order to know whether a phrase or clause in the middle of a sentence should be set off with commas, the drafter must determine whether it is restrictive or nonrestrictive.

- ❖ A restrictive clause or phrase is one that qualifies or "restricts" the meaning of the noun preceding it and so is essential to the meaning of the sentence; a comma is not used.

A resident who is totally and permanently disabled may purchase a basic recreational fishing license for a fee of two dollars and fifty cents.

- ❖ A nonrestrictive clause or phrase is one that provides parenthetical or additional information, perhaps about the noun preceding it, but does not alter the meaning of another word; a comma is used to set off nonrestrictive phrases or clauses.

Every person, regardless of sex, shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.

In the following example, the clause "who holds a certificate issued pursuant to this Chapter" qualifies the meaning of "person" by indicating what persons the sentence is about and so is a restrictive clause.

A person who holds a certificate issued pursuant to this Chapter may supervise the application or sale of a restricted pesticide.

Do not use commas to set off restrictive elements which occur in the middle of the sentence. In the following examples, no comma is required at *.

Any state or national criminal history record information* that is not otherwise a public record* is deemed nonpublic and confidential information.

No person shall take or possess large bullfrogs (*Rana catesbeiana*)* that are less than five inches in length* nor take or possess lagoon frogs or grunTERS (*Rana grylio*)* that are less than three inches in length* without a special permit.

In the next example, the phrase "which shall be attached to the rule" is nonrestrictive because it is simply additional information. Though such a phrase may be substantively important from a legal perspective, it does not grammatically alter the meaning of the rest of the sentence. In this case, it does not specify which affidavits the sentence applies to.

The applicant is entitled to a presumption that the facts as stated in the affidavit, which shall be attached to the rule, are true.

Use commas to set off nonrestrictive phrases or clauses that occur in the middle of the sentence or independent clause.

Any interested person, including a representative of the department, may file a petition seeking to have a person with a developmental disability remanded to the custody of the department.

If a usufruct of land is that of a surviving spouse, whether legal or conventional, the usufructuary is entitled to the landowner's rights in minerals.

Failure to distinguish a restrictive clause from a nonrestrictive clause and the resulting comma mistake can substantially alter the meaning of a sentence. Compare these two examples:

The tax on milk that was initially levied in 1946 is hereby suspended.

AND

The tax on milk, which was initially levied in 1946, is hereby suspended.

In the first example, the phrase "that was initially levied in 1946" is restrictive, so the provision does not suspend any tax on milk that was initially levied at another time. In the second example, all taxes on milk would be suspended, and the commas indicate that "which was initially levied in 1946" simply provides nonessential information.

Note: "That" is used to introduce a restrictive subordinate clause and "which" to introduce a nonrestrictive subordinate clause.

6) *Phrases and subordinate clauses at the end of a sentence or independent clause.* A determination of whether a comma is needed before a phrase or subordinate clause at the end of a sentence or independent clause requires a two-part analysis:

- a) Can the phrase or clause be read as restrictive?
- b) Is it intended to be restrictive?

If the answers to these questions are "yes" and "no" respectively, a comma is required. Consider the comma before "as" in this example:

The Joint Legislative Committee on the Budget shall conduct a review of the special funds and dedications, as specified in each plan and schedule.

It could be that the phrase "as specified..." indicates which funds and dedications are subject to review, i.e., it can be read as restrictive, so the answer to the first question is "yes". If, however,

the phrase is intended to indicate the manner in which the review is to be conducted rather than which funds or dedications are subject to review, the comma is required.

7) *Two independent clauses.* An independent clause is a phrase that contains a subject and a verb and can stand alone as a sentence. Use a comma between two independent clauses joined by a coordinating conjunction. Examples of coordinating conjunctions are: and, but, or, nor, for, so, yet.

Unexpended amounts remaining in the corporation's fund at the end of a fiscal year shall not lapse into the state general fund, and any interest earned or investment earnings on amounts in the corporation's fund shall be deposited into such fund to the credit of the appropriate account.

Use a semicolon between two independent clauses not joined by a coordinating conjunction.

Note: "However" is not a coordinating conjunction.

Monies in the fund shall be invested as provided by law; interest earned on the investment of such monies shall be credited to the state general fund.

One hundred percent of the monies collected for violations relating to a use of local concern occurring within geographic boundaries of a local government shall be credited to that local government's mitigation bank; **however**, if a violation occurs within the geographic boundaries of two or more local governments, the monies shall be divided on a pro rata basis and credited accordingly in the local government's mitigation banks.

Do not use a comma to separate a compound predicate in a single independent clause. In the following examples, no comma is required at *.

The executive director may employ such other agents, employees, and professional employees as he may require* and shall determine their qualifications, duties, and compensation.

Do not use a comma that would serve solely to separate a long, complex subject from the predicate. No comma is required at *.

Any teacher who is otherwise eligible for the program as provided by this Section and who is denied enrollment into the continuing education tuition exemption program as provided by the State Board of Elementary and Secondary Education due to insufficient funding for the program for the semester or quarter in which the teacher applies* shall be eligible to participate in the program as provided by this Section.

The tax shall be imposed by the district without the need of an election* and shall be levied upon the sale at retail, the use, the lease or rental, the distribution, the consumption, and the storage for use or consumption of tangible personal property.

B. Colons

Use a colon to introduce a series in tabular form or other listings or to introduce a long quotation.

The right of expropriation granted by this Part shall be exercised in the following manner:

(1) A petition shall be filed by the governing authority in the district court of the parish in which the property to be expropriated is situated.

(2) The petition shall contain a statement of the purpose for which the property is to be expropriated, a description of the improvements thereon, and the name of the owner if known.

Note: Periods, not semicolons, are used at the end of each enumerated element in a list such as the one above even if the items are single words or short phrases.

C. Quotation marks

A drafter may use quotation marks within the text of a draft to indicate quoted material, to indicate a term being defined, or in a provision entitling a Chapter, Part, etc.

1) *Quoted material.* Do not place other punctuation inside the quotation marks unless it is part of the quoted material. Notice that in the following example, the semicolon is outside of the quotation marks.

WHEREAS, President Jefferson recognized the ramifications of the purchase of Louisiana and pointed out to Congress that having control of the Mississippi River and the fertile lands to its west will "promise in due season important aids to our treasury, an ample provision for our posterity, and a wide-spread field for the blessings of freedom and equal laws"; and

2) *Terms or phrases being defined*

(3) "Certificate" means the document issued as written evidence of the benefit contract.

Do not use quotation marks when the defined term is used elsewhere. In the following example, no quotation marks are needed at *.

A copy of the *certificate* shall be included with any correspondence regarding the contract.

3) *Establishing a title for a division of law*

This Part may be referred to as the "Housing Authorities Law".

Do not put such a title in quotation marks when referring to it. In the following example, no quotation marks are needed at *.

For the purpose of aiding in the construction of housing development projects, a state agency may accept, as security for its deposits, bonds or other obligations of a housing authority created under the *Housing Authorities Law*.

4.7 **ABBREVIATIONS, ACRONYMS, AND CONTRACTIONS**

A. Abbreviations

The drafter should always avoid abbreviations and acronyms. Even a very common acronym, such as BESE, might not be familiar to everyone looking at a bill on the internet, so it is best to avoid them, even in the oneliner.

The exceptions to this rule are:

- 1) Always abbreviate the names of bodies of codified law in citations (R.S., C.C., etc.)
- 2) United States may be abbreviated as U.S. unless part of the formal name of an agency.

B. Acronyms

In a digest, the drafter may identify what an acronym stands for the first time it is used and use the acronym for subsequent references in the digest. As a rule, however, in digests use "Dept." for Department, "Bd." for Board, and "Assoc." for Association in the formal names of entities; use "FY" for fiscal year; abbreviate names of months except in the effective date provision; and use "La." for Louisiana.

C. Contractions

The drafter should never use contractions.

4.8 CAPITALIZATION

The capitalization of governmental entities and officeholders is very often confusing and inconsistent, even within official sources. To avoid confusion, the drafter should refer to the following guidelines often to ensure correct capitalization for legislative bill drafting within HLS:

A. The legislature

- 1) Capitalize the "Louisiana Legislature" and "Legislature of Louisiana" but not "legislature" unless part of a citation.
- 2) Capitalize "Senate" and "House of Representatives".

Note: Do not refer to the House of Representatives as "the house" or "the House", unless referring to House Bill No. 249 of 1982 R.S. or to the House Committee on Education, the clerk of the House, or House rules.

- 3) Capitalize only the official names of committees: "the House Committee on Retirement", but the "House and Senate committees on retirement", or "the House and Senate retirement committees".

4) Capitalize official names of legislative agencies:

- ❖ Legislative Fiscal Office
- ❖ Legislative Auditor's Office

B. State departments and agencies

1) Capitalize the official names of state departments and agencies but not offices or other subdivisions of departments:

- ❖ Department of Natural Resources, office of conservation
- ❖ Department of Public Safety and Corrections, division of probation and parole

2) Note that there are agencies known as "offices" that are not subdivisions of a department. The official names of such agencies are capitalized:

- ❖ Louisiana Office of Student Financial Assistance
- ❖ Governor's Office of Indian Affairs

Note: Consult the appropriate Chapter of Title 36 to determine whether an entity is a subdivision of a department or an agency placed within the department.

C. Other governmental entities

Capitalize the official names of governmental boards and commissions, courts, and political subdivisions and their governing authorities:

- ❖ State Mineral and Energy Board
- ❖ Louisiana Wildlife and Fisheries Commission, but wildlife and fisheries commission
- ❖ Federal Communications Commission
- ❖ State Bond Commission
- ❖ Supreme Court of Louisiana or the Louisiana Supreme Court
- ❖ Court of Appeal, First Circuit, or the First Circuit Court of Appeal
- ❖ Twenty-First Judicial District Court
- ❖ Orleans Parish, but parish of Orleans
- ❖ Allen Parish Police Jury, but the police jury of Allen Parish

D. Titles of officeholders

Capitalize the governmental title of a public official when the title is used together with the officeholder's proper name:

- ❖ the president; the president of the United States; President Washington; George Washington, President of the United States
- ❖ the governor; the governor of Louisiana; Governor Claiborne; William C.C. Claiborne, Governor of Louisiana
- ❖ the speaker; the speaker of the House of Representatives; Speaker Wilson; Charles Wilson, Speaker of the House of Representatives
- ❖ judge; justice; Judge Harlan; Mr. Justice Marshall

E. Documents

1) Capitalize official names of documents, including popular names:

- ❖ Act No. 37 of the 1942 Regular Session of the Legislature
- ❖ House Bill No. 497
- ❖ Constitution of Louisiana
- ❖ General Appropriation Bill and Capital Outlay Bill
- ❖ House Concurrent Resolution No. 6 or "this Concurrent Resolution" when the resolution includes a reference to itself

2) Capitalize the following references to laws and parts of laws:

- ❖ The names of codes and their abbreviations; for example: Revised Statutes; R.S.; Code of Criminal Procedure; C.Cr.P
- ❖ Designated portions of codified law, for example: Title, Article, Part, Subsection, Item

3) Capitalize the names of bodies of law, for example:

- ❖ Administrative Procedure Act
- ❖ Code of Governmental Ethics
- ❖ Election Code
- ❖ Uniform Controlled Dangerous Substances Law

Note: A body of law should only be referred to by name if the name is established by statute.

4) Special cases

The following instances are not necessarily consistent with other capitalization rules so as a result, the drafter must learn these specific exceptions:

- ❖ General Fund of the state of Louisiana, but state general fund or general fund.
- ❖ 2015-2016 Fiscal Year, but fiscal year
- ❖ Congress of the United States of America, but congress

5) Capitalize the word Act any time it means an Act of the legislature.

6) Do not capitalize:

- ❖ the division of administration
- ❖ "state" in the expression state of Louisiana
- ❖ internet
- ❖ the seasons

4.9 HYPHENATED AND COMPOUND WORD

A. Generally speaking, do not use hyphens between a prefix and a root word unless required by the dictionary. If an alternative form is permitted in the dictionary, use the nonhyphenated form.

For example, write the following as single words:

- | | |
|--------------|---------------|
| ❖ bimonthly | ❖ nonexempt |
| ❖ bylaws | ❖ pretrial |
| ❖ copayment | ❖ readvertise |
| ❖ extralegal | ❖ semiweekly |

There are two exceptions to this general rule:

- 1) If the combined word is already a word meaning something else, for example re-create as opposed to recreate and re-sign as opposed to resign.
- 2) If the root word is a proper noun or adjective (i.e. it begins with a capital letter); for example: pro-Israeli, post-Edwardian, and anti-Long.

B. "Quasi" is treated more like a word than a prefix; see the following list for some common terms involving quasi.

- C. "Self" when combined with another word, as in self-employed, always takes a hyphen. When "self" is combined with a suffix, as in selfless, there is not a hyphen.
- D. Latin expressions are not hyphenated or compounded but are written as independent Latin words, for example: ad hoc, bona fide, et al., ex officio, fieri facias, in camera, ipso facto, per diem, pro forma, pro rata, res judicata, voir dire.
- E. Use a hyphen between individual words that are being combined to form a single adjective, for example proof-of-insurance card and child-support payments, but do not use a hyphen after an adverb ending in "ly", as in "newly created district".
- F. The challenge with hyphenated compound words is that the ones that are used frequently evolve over time, either into a single word or two words without a hyphen. The following forms will be used despite any contrary form found in any dictionary or source:

- | | | |
|--------------------------|----------------------------|---------------------------|
| ❖ accident free | ❖ database | ❖ full time (noun) |
| ❖ accident-free (adj.) | ❖ day-by-day (adj.) | ❖ fundraiser |
| ❖ accident prone | ❖ day by day (adv.) | ❖ fur-bearing (adj.) |
| ❖ accident-prone (adj.) | ❖ day-to-day (adj.) | ❖ government-owned (adj.) |
| ❖ at large | ❖ day to day (adv.) | ❖ grants in aid |
| ❖ at-large (adj.) | ❖ daycare (adj.) | ❖ groundwater |
| ❖ attorney at law | ❖ day care (noun) | ❖ half-holidays |
| ❖ attorney fees | ❖ daytime | ❖ healthcare (adj.) |
| ❖ attorney general | ❖ decisionmaking | ❖ health care (noun) |
| ❖ campground | ❖ diamondback | ❖ home rule |
| ❖ city-parish | ❖ employee-related (adj.) | ❖ in-depth (adj.) |
| ❖ cleanup (noun) | ❖ experience-rating (adj.) | ❖ in globo |
| ❖ cleanup (adj.) | ❖ federal matching funds | ❖ landowner |
| ❖ clean up (trans. verb) | ❖ federal-state | ❖ layoff (noun) |
| ❖ commissioner-in-charge | ❖ fellow servant rule | ❖ lienholder |
| ❖ community-wide | ❖ fingerprint | ❖ lieutenant governor |
| ❖ cost of living (noun) | ❖ firefighter | ❖ long-range plan |
| ❖ cost-of-living index | ❖ firehouse | ❖ long-term loan |
| ❖ court-martial | ❖ five-day week | ❖ low-rent housing |
| ❖ courthouse | ❖ four-year term | ❖ man-made |
| ❖ courtroom | ❖ fresh water (noun) | ❖ man-hours |
| ❖ cross examination | ❖ freshwater fish (adj.) | ❖ marshland |
| ❖ cross reference | ❖ full-time (adj.) | ❖ mayor-president |
| | | ❖ oceangoing |
| | | ❖ offtrack |

- ❖ one-half
- ❖ onsite (adj.)
- ❖ out-of-pocket
- ❖ outpatient
- ❖ overcharge
- ❖ override
- ❖ paid-in
- ❖ pari-mutuel
- ❖ parishwide
- ❖ part-time (adj.)
- ❖ part time (noun)
- ❖ payout (noun)
- ❖ payroll
- ❖ piecework
- ❖ pipeline
- ❖ policymaking
- ❖ P.O.S.T.-certified
- ❖ proces verbal
 - ❖ profit-making (adj.)
 - ❖ prorate
 - ❖ quasi contract
- ❖ quasi judicial (adj.)
- ❖ quasi offense
- ❖ racetrack
- ❖ re-reengrossed
- ❖ right-of-way
- ❖ riverfront
- ❖ rulemaking
- ❖ safekeeping
- ❖ salt water (noun)
- ❖ saltwater fish (adj.)
- ❖ secretary-treasurer
- ❖ sergeant at arms
- ❖ set aside program
- ❖ shareholders
- ❖ single-member
- ❖ district (adj.)
 - statewide
- ❖ subject matter
- ❖ time-consuming
 - adj.)
- ❖ time-honored (adj.)
- ❖ timesaving
- ❖ tortfeasor
- ❖ two-thirds
- ❖ vice chairman
- ❖ vice president
- ❖ vice versa
- ❖ waste water
- ❖ water bottom
- ❖ well-being
- ❖ wetland
- ❖ wildlife
- ❖ workday
- ❖ write-in
- ❖ year-round

CHAPTER 5. DRAFTING STATUTORY LAW

5.1 OVERVIEW

The entire bill drafting process is predicated on drafting legislation that is clear, concise, and technically sound. To produce useable, workable legislation, a drafter must have a clear understanding of the author's intention and purpose of the legislation. Steps to achieving this goal were first introduced in [Chapter 1, Steps in Drafting](#). This Chapter will discuss how a drafter will practically use research and the information gathered from the author to create a bill draft that meets the author's needs.

5.2 THE BILL TITLE; IN GREATER DETAIL

A. Overview

As stated previously, the constitution requires that each bill have a brief title indicative of its object ([Const. Art. III, §15\(A\)](#)). The practice of the House of Representatives is to include a title on all legislative instruments. Generally they give a little more detail than simply a brief indication of the object; most titles indicate the general subject matter of the legislation and its major provisions.

The title of each instrument formally begins on the first numbered line, which identifies the type of instrument; a statement of what the instrument sets out to do begins on the second numbered line. Thus, the title formally reads. "AN ACT To amend..." or "AN ACT To repeal..." or "A CONCURRENT RESOLUTION To urge and request..." or "A JOINT RESOLUTION Proposing to add...".

Examples of titles:

AN ACT To enact R.S. 24:12, relative to legislative privilege; to provide for the procedures to assert the privilege; and to provide for related matters.
--

AN ACT To amend and reenact R.S. 23:152, 182, 183, 184(2)(f) and (g), 187, 191, 192, 213, 214, 215(B), 233, and 251(A) and to repeal R.S. 23:253 and 254, relative to the employment of minors; to provide for hours during which minors may work; to provide for limitations in employment; to provide technical changes; and to provide for related matters.

A CONCURRENT RESOLUTION

To create the Comite River Diversion Canal Project Task Force to study and make recommendations on actions necessary to complete the construction of the Comite River Diversion Project.

B. What does the bill do-change, enact, or repeal laws?

The title of a bill affecting codified law, either by adding, modifying, or removing provisions, begins with a statement specifying the codified provisions that will be affected and how. The bold portion, added for illustration purposes, of these titles indicates the bill's affect on codified provisions:

To enact R.S. 14:110.3, relative to offenses affecting law enforcement;...

To amend and reenact R.S. 47:337.10(N) and to repeal R.S. 47:337.9(D)(30), relative to sales and use taxes imposed...

The "citations" portion of the title can be of critical importance because the body of the bill by itself may leave unanswered questions about whether existing provisions of law are to be left alone or removed. Consider this example:

A bill proposes to make changes in Sections 123 and 125 of Title 5 of the Revised Statutes. The existing Section 123 is divided into three Subsections (A, B, and C). The body of the bill looks like this:

§123.

- A. Amended text of Subsection A.
- B. Amended text of Subsection B.

* * *

§125.

Amended text of Section 125

The asterisks indicate the missing Section 124 (see discussion of asterisks in Section 5.4 of this Chapter). But do they also indicate that Subsection C remains unchanged or is Subsection C to be removed from Section 123?

The citations portion of the title would answer this question. If the title says, "To amend and reenact R.S. 5:123 and 125," then the bill contains what Section 123 will look like as amended; in other words, Subsection C is to be removed. If the title of the bill says, "To amend and reenact R.S. 5:123(A) and (B) and 125..." , then the title indicates that Subsection C is unaffected by the bill.

A citation in a title indicates that the **entire** cited text appears in the bill. This rule applies to any cited text regardless of size; from a Chapter comprised of many Sections or Articles to the smallest subdivision of a Section or Article and everything in between. **The need to perfectly coordinate the citations portion of the title and the text in the bill cannot be overemphasized.** In 1994, failure to coordinate resulted in the inadvertent deletion of the penalties for cocaine possession (see also the discussion of introductory paragraphs in [Section 5.4](#) of this Chapter). Fortunately, in that case a court decided that the legislature had not **intended** to delete the penalty provisions, but do not draft titles hoping a court will make a good guess at legislative intent.

C. Formatting of citations

Due to the critical but technical function of the citations portion of a title and the number of titles drafted each year, a strict formatting protocol is used.

A bill may amend and reenact existing codified provisions, enact new codified provisions, repeal existing codified provisions, or any combination of the three. Any deviation from these should be attempted only after a great deal of forethought and consultation with senior drafters. The citations portion of the title must reference all provisions in the bill and indicate whether they are being amended and reenacted, enacted, or repealed.

The order in which citations are listed in a title is as follows:

- 1) All of the provisions being amended and reenacted are listed first.**
- 2) All of the enacted provisions are listed after any amended and reenacted provisions.**
- 3) All repealed provisions are listed after any amended and reenacted and enacted provisions.**

Note that this order differs from the order in which provisions appear in the bill.

The following example includes amended, enacted, and repealed provisions. Notice that all provisions subject to one action are listed together.

AN ACT

To amend and reenact R.S. 17:6 and 8(A)(introductory paragraph) and (A)(1) and Civil Code Article 890, to enact R.S. 17:6.1, 6.2, and 6.3 and R.S. 39:200, and to repeal R.S. 17:7 and Civil Code Article 2130, relative to the State Board of Elementary and Secondary Education; to prohibit the board from buying certain movable property without advertising; to provide for exemptions from the advertising requirement; to eliminate certain authorities, rights, and requirements with regard to buying movable property; and to provide for related matters.

1) *Chapters, Parts, etc.*

In a bill that will amend, enact, or repeal an entire subdivision of the law that consists of multiple Sections or Articles, such as a Chapter, Part, or Subpart, a reference to the entire subdivision is included in the citations portion of the title. This reference is made using the format in this example [**emphasis added**]:

AN ACT

To amend and reenact R.S. 17:10.1(B) and (C), **Subpart A of Part II of Chapter 39 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3881 through 3886**, Subpart C of Part II of Chapter 39 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3901 through 3905, and R.S. 17:3997(D), to enact R.S. 17:10.1(D), and to repeal Subpart B of Part II of Chapter 39 of Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3891 through 3895, relative to ...

Note the use of "**to be comprised of**" in the highlighted portion of the preceding citation; this indicates that the Sections listed, "R.S. 17:3881 through 3886", are the Sections that **will** comprise the Subpart as proposed by the bill; the current Subpart may not be comprised of these exact Sections. "To be comprised of" is also used when enacting any subdivision comprised of multiple Sections or Articles. For repeals, "comprised of" is used and the Sections or Articles listed are those that comprise the present law (see repeal in the preceding example).

2) *Commas in citations*

The proper placement of commas in the citations portion of a title can be tricky. The applicable rule is the same as with all drafting: use commas to separate items in a list including the serial comma, also referred to as the Oxford comma. See [Chapter 4, Wordsmithing](#), for more discussion. However, the citations in bill titles often contain lists within lists within lists, etc, which can make proper use of commas challenging. Consider the highlighted citations:

AN ACT

To amend and reenact R.S. 11:42(B)(1), (2), (3), (6), (7), (8)(a), and (9), **102(B)(3)(d)(v), (vi), (vii), and (viii), 103(B)(1) and (3)(d) and (e)(i)(bb) and (C)(introductory paragraph), 105(C)(1), 106(C)(1), 247(A)(2) and (3)(b) and (C), and 1481(1)(a)(iii)(aa)**...

The highlighted citations deal with two Sections of Title 11:102 and 103.

From Section 102, there are four Items being amended within the same Subparagraph, so this is punctuated as a list of four, with commas between each Item:

102(B)(3)(d)(v), (vi), (vii), and (viii)

In Section 103, by contrast, there are actually several lists of two; there are two Subsections from Section 103: (B) and (C); from Subsection B there are two Paragraphs: (1) and (3); and from Paragraph (3), there are two Subparagraphs, (d) and (e). So there are no commas:

103(B)(1) and (3)(d) and (e)(i) (bb)and (C)(introductory paragraph)

D. The substantive portion of the bill title

1) In general

Though the substantive portion of the title is constitutionally required and is always present, there is very little in the way of rules with respect to how this is done. The general practice is to follow the citations portion of the bill with: 1) a clause that begins with "relative to" and contains a general statement of the subject matter of the instrument; 2) one or more clauses, each beginning with "to", indicating the major substantive elements of the bill; and 3) the phrase "and to provide for related matters" that is used at the end to indicate that the bill is not strictly limited to the items mentioned in the title.

Standard punctuation of these elements is as follows:

- a) A comma between the citations and the "relative to" clause.**
- b) A semicolon after the "relative to" clause and after each substantive "to..." clause.**
- c) A period at the end of the title after "and to provide for related matters".**

AN ACT

To amend and reenact R.S. 56:325.3(A)(1), relative to commercial taking of spotted sea trout; to provide that the open season for such taking shall close each year when the annual quota is reached; to prohibit the commercial taking of spotted sea trout in certain waters; and to provide for related matters.

Do not make the "relative to" clause overly broad or overly narrow. There is no clear definition of "overly" in this context, but generally an overly broad "relative to" clause is one that fails to give an indication of the object of the bill, e.g. "relative to local government" or "relative to taxes". An overly narrow "relative to" clause is one that would have to be amended as a result of any slight change to the bill itself.

The "relative to" clause must encompass all that the bill does. Be wary of late drafting additions that may not be covered by the original title and modify the title as needed.

2) *Special considerations*

a) Repealers

It is the practice of the House to omit the "and to provide for related matters" clause in a bill that is limited to repealing existing law. However, if the bill contains a special effective date, a condition on effectiveness, or any other "related matter", the drafter should consider including the "related matters" clause.

AN ACT

To repeal R.S. 40:1005(A)(5), relative to the Prescription Monitoring Program Advisory Council; to remove the president of the Louisiana State Board of Examiners of Psychologists from the council.

b) The title and amendments

The constitution, in [Article III, Section 15\(C\)](#), requires that amendments be germane to the bill as introduced. In a strict sense, the title is not itself the object of the bill so it is not directly relevant to whether an amendment is germane. However, case law and statutory interpretation authorities indicate that one should look to the title of the instrument for guidance as to its object. One test of germaneness that has been used in some cases is to determine whether the amendment could have been incorporated under the title of the original bill.

In drafting the "relative to" clause, drafters often use a broader or a narrower statement of the bill's subject matter in order to allow for or limit possible amendments, depending on the author's strategic intentions. Take care, however, not to make the title so broad that it is not indicative of the object or so narrow that it precludes even closely related amendments that may be necessary.

c) Special sessions

Another factor to keep in mind in drafting the substantive portion of the title is the call for an Extraordinary Session. The constitution provides that the power to legislate in an extraordinary session is limited, under penalty of nullity, to the objects enumerated in the proclamation calling the session ([Art. III, §2\(B\)](#)). The language of a title should be such that it is clear where the bill fits under the call.

A. Ironing out the substance of the bill

As discussed in [Chapter 1, Steps in Drafting](#), a drafter must analyze a member's request to determine the issue or problem that needs to be addressed. In doing so, the drafter must think through the issue from beginning to end to ensure proper drafting and placement in the laws. To achieve this, the drafter may want to give consideration to the following:

- ❖ What is the bill's purpose? Will the bill create a duty or an obligation?

Statutory sentences are written to do one or more of the following:

- 1) Require, authorize, or prohibit.
- 2) Set conditions, procedures, or consequences relative to No. 1.
- 3) Create and otherwise provide for the purpose and structure of a public entity.

- ❖ Who are the actors involved? Who will be affected by what the bill does?
- ❖ Are there any procedures needed to implement the purpose of the bill? How will those procedures be implemented? Who will implement those procedures?
- ❖ How will the bill's purpose be enforced? Who will be responsible for enforcement?
- ❖ What will be the consequences for failure to follow the bill's purpose? Will there be any penalties?
- ❖ Are there any special conditions? Will there be any exemptions or exceptions in the application of the new law?

Once the drafter has considered the previous questions in relation to a member's request, the drafter should use those answers to ensure that all provisions necessary to accomplish the member's goal are included in the bill draft. It may be helpful for the drafter to review similar provisions of law for guidance and example.

B. Using shall and may

In considering the aforementioned guidelines, a drafter will need to determine the appropriate use of "shall" or "may".

According to [R.S. 1:3](#), the word "shall" is mandatory and the word "may" is permissive. This seems straightforward, but there are many complicating factors.

1) *Shall*. "Shall" indicates that a person or entity has a **duty or obligation** to perform an action. Some things to consider when creating a duty or obligation:

- ❖ Make it clear **who** has the duty or obligation. One of the best ways to make this clear is to use simple, active voice sentences.
- ❖ The consequences of failure to perform the duty or obligation should be clear; if there are no consequences, "shall" may have no effect. Be aware what existing consequences may be applicable simply as result of placement in the law.
- ❖ Consider possible circumstances under which compliance would not be possible or practical.
- ❖ Be careful with "shall" when the intent is to grant discretion, e.g. "**the committee shall approve the nomination**" indicates that the committee has no discretion; it is simply required to take the action. Consider whether a statement such as "the nomination is subject to committee approval" expresses the desired meaning.
- ❖ The use of "shall" as a helping verb may result in an unintended shift to passive voice. If a statute says an action "shall be prohibited", it implies that some person or entity has a responsibility to prohibit the action (raising the question "shall be prohibited by whom?"). If the intent is to draft a statute that prohibits the action, "is prohibited" or "is hereby prohibited" states this intent clearly.

2) *May*. If authorizing an action but requiring that procedures be followed when the authority is exercised, be sure to make it clear that the requirements apply **only if** the authority is exercised.

When authorizing an action subject to certain conditions, be sure to make it clear whether the authority is limited by the conditions. "The board may reject bids for just cause" is open to an argument that the board could reject bids for other reasons. "The board may reject bids but only for just cause" is not open to such an argument.

5.4 THE BODY OF THE BILL; THE TECHNICAL SIDE

A. Overview

The body of the bill contains the law as the legislature intends it to be and as stated previously, is considered the main part of the bill. It is comprised of sequentially numbered bill sections. Any section of the body of a bill may be subdivided into subsections; subsections of a bill

section are indicated by capital letters in parentheses. For more details regarding the subdivisions of bodies of law, see [Chapter 3, Codification and Citations](#).

For purposes of this discussion, two broad types of bill sections are identified and discussed: 1) "Enacting sections" contain the substance of the law as the legislature has decided that it should be. Note that enacting sections include sections that repeal existing law. 2) "Act sections" provide in some way with respect to the Act itself and how the enacting sections are to be executed; these include effectiveness provisions, implementation provisions, and other instructions regarding the Act. These sections are discussed in greater detail in [Chapter 7, Special Provisions](#) and [Chapter 8, Effective Dates and Special Effectiveness Provisions](#).

B. Enacting Sections

There are two general types of enacting sections: 1) Those that amend or enact or both and 2) those that repeal. Precision in the construction of enacting sections is essential in order to avoid ambiguity in how the provisions of the bill are to be incorporated into the provisions of existing law.

The general rules regarding the layout of substantive provisions of law in enacting sections of the bill are these: House drafting staff use an amend/enact bill section for each Code or for each Title of the Revised Statutes that is included in the bill; all repealers are included in a single bill section even if multiple Codes or Titles are included; the repealer section follows all amend/enact bill sections.

Though this standard layout provides that an amend/enact section is limited to provisions from a single Code or Title, it may be necessary to separate provisions from a single Code or Title into multiple amend/enact sections. Repeal provisions can also be divided into multiple bill sections if there is a reason for doing so. The most common justification for splitting provisions in this manner is to give the various provisions different effective dates. See discussion of [effective dates in Chapter 8](#).

1) Amend/enact sections; Headings

Each amend/enact bill section begins with a heading that indicates which provisions of codified law are being amended or enacted in that bill section. Here are some examples of headings of standard amend/enact sections:

Section 1. R.S. 6:315.1(A) is hereby amended and reenacted to read as follows:

Section 1. Part XI of Chapter 16 of Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S. 3:2358.21 through 2358.26, is hereby enacted to read as follows:

Section 3. R.S. 51:2361(B)(2) and 2365(D) are hereby amended and reenacted and R.S. 51:2361(B)(3) and (4) are hereby enacted to read as follows:

These examples demonstrate the standard form of the heading: a list of citations, with those to be amended and those to be enacted listed separately, and the language "is/are hereby amended and reenacted/enacted to read as follows:".

The rules that apply to handling citations in an enacting bill section are the same as those that apply to the citations in a Title. Specifically see discussion of commas in [Section 5.2](#) of this Chapter and the requirement that the cited portion must be limited to what actually appears in the bill, also in [Section 5.2](#) of this Chapter.

The rules that apply to handling citations in an enacting bill section are the same as those that apply to the citations in a Title.

The one exception to this rule is that "comprised of" is always used rather than "to be comprised of" when handling a Chapter, Part, or Subpart. This difference from the bill title is the result of the difference in the grammatical structure.

This heading language is followed by the text of the modified and new provisions. The House uses several fairly simple but powerful drafting tools in constructing the content of such sections. These tools have been developed to make it clear to the reader what changes the bill would make without including large amounts of material that is not being changed.

2) Coding

The House uses underscoring and overstriking to indicate changes to existing law; new law is underscored and existing law that the bill proposes to delete is overstruck. Language in an enacting section which is neither underscored or overstruck should be existing language that the bill retains.

However, always keep in mind that coding is for convenience of the reader and is **not** controlling of what changes are made to provisions of law. That is, if new language is in the bill, it will be in the law whether it was underscored or not. If existing language that should be in the bill is missing, it will be removed from the law even though it was not shown as overstruck. However, a drafter should never rely on this as a means to avoid careful effort to code a bill properly.

NEVER type in present law nor rely upon present law provided by outside parties even if provided as a part of a draft bill. ALWAYS insert present law from the House database (LEGISuite Search System or LSS); this helps prevent accidental changes to the law. Usual checking procedures will often miss mistakes that occur due to violation of this **cardinal** rule.

NEVER type in present law.
ALWAYS insert it from LSS.

When language is to be changed from one thing to another, the practice is to overstrike the existing language first, then insert the underscored new language immediately after.

A ~~member of this system~~ retired teacher who retires based on a disability may not return to service pursuant to the provisions of this Section.

However, readability should also be considered when deciding how to arrange overstriking and underscoring. In some cases, readability is improved by overstriking some existing law and reinserting it as new language so as to show one extended change rather than numerous small changes interspersed with existing law. Notice that the second example below is easier to read than the first and is probably the preferred way to indicate these changes:

B.(1) The Board of Regents and the State Board of Elementary and Secondary Education, in cooperation with the Board of Supervisors of Community and Technical Colleges and ~~local school boards~~ governing authorities, shall ~~implement~~ enter articulation ~~agreements~~ contracts that ~~provide~~ require opportunities for secondary school students to take vocational-technical courses.

VERSUS

B.(1) The Board of Regents and the State Board of Elementary and Secondary Education, in cooperation with the Board of Supervisors of Community and Technical Colleges and ~~local school boards~~, shall ~~implement articulation agreements that provide~~ school governing authorities, shall enter articulation contracts that require opportunities for secondary school students to take vocational-technical courses.

Here is a longer example showing use of intricate overstriking and underscoring to rewrite most of a Section of law:

~~B.(1)~~ C.(1) During the period of his return to active service, the ~~retiree~~ retired teacher and his employer shall make contributions to the retirement system as provided by this Chapter, but ~~the retiree~~ such teacher shall receive no additional service credit nor accrue any additional retirement benefits in the retirement system. Upon termination of such active service, the ~~member~~ retired teacher shall, upon application, be refunded the employee contributions paid since reemployment. The refund shall be without interest. The retirement system shall retain the employer contributions.

(2) Any retired member not considered a retired teacher as defined in Subsection A of this Section shall have his benefit suspended for the duration of his period of reemployment in such position. Such member and his employer shall not make contributions to the system during such time, and he shall receive no additional service credit nor accrue any additional retirement benefits.

~~(2)~~(3) The provisions of this Subsection shall not apply to any retiree reemployed in a part-time position with the Louisiana High School Athletic Association on June 27, 2003.

€ D. When any retiree returns to active service with an employer covered by the provisions of this Chapter, the employing agency shall, within ~~ten~~ thirty days thereafter, notify the board of trustees in writing of such employment, ~~and~~ the date on which it employment commenced, and a determination by the employer as to whether such person is a "retired teacher" pursuant to Subsection A of this Section. Upon termination, the agency shall provide the same notice. In addition, ~~to the above notice,~~ the employing agency shall also report to the retirement system within forty-five days after June thirtieth of each year, the name of all persons being paid by the employing agency, their social security numbers, and the amount of their earnings during the previous fiscal year ending on June thirtieth of the reporting year. Should failure to give notice of return to active service result in any payment being made in violation of this Section, the employing agency shall be liable to the system for the repayment of such amounts.

~~D.(1)~~ E. No "retired teacher" as defined in Paragraph (A)(1) of this Section shall receive a benefit during the period of his reemployment as provided in this Section unless and until the superintendent and personnel director of his employing school have certified to the Board of Elementary and Secondary Education and the board of trustees of this system that a shortage of teachers exists in the critical shortage area in which the retired teacher was hired to teach....

Do not overstrike and underscore pieces of words. If a word needs to be capitalized or made plural, for example, the drafter should overstrike the entire word and insert the correct word with underscoring.

Do not overstrike and underscore pieces of words.

3) Asterisks

The drafter should use a set of three asterisks centered on the page to indicate that existing law not included in the bill draft is not to be affected by the enacting section:

* * *

There are two uses of asterisks; a drafter should use them for: a) omitted Sections or Articles and b) omitted designated portions of a Section or Article.

a) Omitted Sections or articles. The omitted Sections or Articles asterisks are used in the place of Sections or Articles that exist between two other Sections or Articles that are in the bill section. Asterisks are used in this example to indicate that Article 414 of this Code exists and is unaffected by the bill:

Section 1. Code of Criminal Procedure Articles 413 and 415 are hereby amended and reenacted to read as follows:

Art. 413. Method of impaneling of grand jury; selection of foreman

A. The grand jury shall consist of twelve persons plus ~~a first and second alternate for a total of fourteen persons~~ no fewer than two nor more than four alternates qualified to serve as jurors, selected or drawn from the grand jury venire.

B. The sheriff or his designee, or the clerk or a deputy clerk of court, or in Orleans Parish the jury commissioner shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling vacancies as provided in Article 415. The court shall cause a random selection to be made of one person from the impaneled grand jury to serve as foreman of the grand jury.

* * *

Art. 415. Method of filling vacancies on grand jury

A. When a vacancy occurs on a grand jury, the court shall fill the vacancy ~~as follows:~~

~~(1) In parishes other than Orleans,~~ by administering the oath to and seating the first alternate if he is still legally qualified and available, or if he is not, by administering the oath to and seating the second, third, or fourth alternate, if still legally qualified and available, in the order in which the alternates were selected, until the vacancy is filled. If a vacancy occurs ~~after the second alternate has been seated on the grand jury to fill a~~ and there is no alternate legally qualified and available to fill the vacancy ~~or if the second alternate cannot be seated,~~ the vacancy shall be filled by ordering the sheriff or his designee, the clerk or deputy clerk of court, or, in Orleans Parish the jury commissioner, to draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury....

Note that if Article 414 did not exist or was repealed by this bill, a drafter would not use the asterisks between these two Sections of law.

Asterisks are only used when existing law is omitted from the enacting section. Do not use a set of asterisks just because numbering is not sequential, and do not use asterisks in lieu of text that is being repealed by the bill being drafted.

Asterisks are only used when existing law is omitted from the enacting section. They may only be used to represent entire designated portions of law.

Asterisks may only be used to represent **entire** designated portions of law; do not use asterisks in lieu of undesignated paragraphs or any other portion not uniquely designated.

b) Omitted designated portions of a Section or Article. The omitted portions of Sections or Articles asterisks are different from the former type in that they are used for any excluded piece of an included Section or Article, whether between **or after** included portions of the Section or Article. One consequence of this difference is that asterisks appear at the end of an enacting section every time there are omitted pieces from the end of the final Section or Article in that enacting section. **The asterisks at the end of an enacting section are the easiest ones to forget.** Note the asterisks before **and after** Paragraph A(3) in this example even though there is nothing else in the bill section:

Section 1. Code of Criminal Procedure Article 875(A)(3) is hereby amended and reenacted to read as follows:

Art. 875. Presentence investigation; juvenile records; drug screening

A.

* * *

(3) Local and state law enforcement agencies and mental and correctional institutions shall furnish to the probation officer criminal records and such other information and data as the probation officer requests. The defendant's pretrial and post-conviction disciplinary records shall be furnished to the probation officer and included in the presentence investigation. The court may order a physical and mental examination of the defendant.

* * *

In the following example, the first set of asterisks represents both the omitted Paragraph(s) at the end of Article 411 and all of Article 412. The second set represents the omitted Paragraph(s) of Article 413:

Section 1. Code of Criminal Procedure Articles 411(A) and 413(A) are hereby amended and reenacted to read as follows:

Art. 411. Drawing of grand jury venire; disposition of slips; jury box; subpoena of persons on grand jury venire

A. Upon order of the court, the jury commission shall select by drawing indiscriminately and by lot from the general venire box the names of ~~at least twenty but not more than one hundred persons~~ a sufficient number of not less than fifty persons from which to empanel a grand jury, with the number to be specified by the court in its order, who shall constitute the grand jury venire. Alternatively, the grand jury venire may be drawn with the use of a properly programmed electronic device ~~commonly known as a computer.~~ A grand jury venire shall not be drawn from a general venire containing fewer than three hundred names.

* * *

Art. 413. Method of impaneling of grand jury; selection of foreman

The grand jury shall consist of twelve persons plus ~~a first and second alternate for a total of fourteen persons,~~ no fewer than two nor more than four alternates

One set of asterisks is used to represent multiple omissions at the same point in the enacting section.

Because careful citation and use of asterisks allow drafters to manipulate very small elements of the statutes, staff uses a system of guiding subdivision designations to indicate where a piece of a Section or Article being amended or enacted fits within the Section or Article.

These examples illustrate this arrangement:

Section 1. R.S. 17:183.3(B)(2)(d) is hereby amended and reenacted to read as follows:

§183.3. Career major; description; curriculum and graduation requirements

* * *

B.

* * *

(2)

* * *

(d) At least three social studies credits, including one unit of American History and one additional course selected from a list of social studies courses approved by the State Board of Elementary and Secondary Education. Each student shall successfully complete ~~a course~~ coursework in Civics and Free Enterprise, as provided in R.S. 17:274, and Civics, as provided in R.S. 17:274.1.

* * *

Section 1. R.S. 38:301(C)(1)(b)(iii) and (2)(h) are hereby enacted to read as follows:

§301. Construction and maintenance of levees and drainage; care and inspection of levees; measure of compensation; right of entry; bicycle paths and walkways

* * *

C.(1)

* * *

(b)

* * *

(iii) The South Lafourche Levee District shall provide the notice required by this Subparagraph by certified mail sent to the last record property owner as reflected in the parish assessment rolls at the address recorded in the assessment rolls. This notice shall be complete upon mailing. Notice of adoption of the appropriation resolution shall also be published in the official journal of the South Lafourche Levee District within ten days after its adoption.

* * *

(2)

* * *

(h) Payment by the South Lafourche Levee District of its estimated compensation, if any, as required by this Section shall be made by certified mail to the last record property owner as reflected in the parish assessment rolls at the address recorded therein.

These examples are illustrative of two important rules regarding such arrangements:

The asterisks are inserted on the lines between the guiding subdivision designations. They are not free typed into the bill draft but instead are inserted by using the "Asterisks" macro in WordPerfect.

Combine guiding subdivision designations if they are combined in present law. In the second example above, the "C." and the "(1)" are combined into "C.(1)" because that is the arrangement of the present law; it is not necessary to put a set of asterisks between the "C." and the "(1)". Note, however, that even though the present law provision would be designated "C.(1)(a)", the "(a)" is excluded because it is the "(b)" that is needed to indicate how the new law fits into the present law.

4) *Introductory paragraphs*

Do not replace an introductory paragraph with asterisks if it introduces a portion of law that is being amended or enacted. In the following two examples, the introductory paragraphs are included only because they introduce pieces being amended or enacted. Notice that the citations in the headings of the enacting sections do **not** reference the introductory paragraph.

Section 1. Children's Code Article 1243.2(A)(1) is hereby amended and reenacted to read as follows:

Art. 1243.2. Institution of records check

A. Upon the filing of a petition, the court shall immediately issue both of the following orders:

(1) That the local sheriff or the office of state police, Louisiana Bureau of Criminal Identification and Information, conduct a records check for all federal arrests and convictions and all state arrests and convictions for each of the prospective adoptive parents. Prospective adoptive parents shall submit a set of fingerprints to the sheriff or the office of state police.

* * *

Section 2. R.S. 23:1(B)(6) is hereby enacted to read as follows:

§1. Louisiana Workforce Commission established; purpose; definitions

* * *

B. The commission shall meet the needs of all of the following:

* * *

(6) Individuals of this state with disabilities for vocational rehabilitation, independent living services, and blind services under the Rehabilitation Act and the Randolph-Sheppard Act.

Introductory paragraphs, as in the two preceding examples, represent the only case in which a provision of present law is included in the bill but is not covered by a citation in the enacting section heading nor in the citations portion of the bill title. If the introductory paragraph is amended, a reference to it must be amended into those citations. This can be easy to forget because ordinarily a provision that is already in the bill is already covered by the citations.

If an introductory paragraph is to be amended, that change must be indicated in the citations in the heading of the enacting section and the citations portion of the title:

Section 1. Children's Code Article 1243.2(A)(introductory paragraph) and (1) are hereby amended and reenacted to read as follows:

Art. 1243.2. Institution of records check

A. Upon the filing of a petition, the court shall ~~immediately~~ issue both of the following orders within three days after such filing:

(1) That the local sheriff or the office of state police, Louisiana Bureau of Criminal Identification and Information, conduct a records check for all federal arrests and convictions and all state arrests and convictions for each of the prospective adoptive parents. Prospective adoptive parents shall submit a set of fingerprints to the sheriff or the office of state police.

* * *

5) Repeal sections

Repealers are handled in a separate enacting section from amends and enacts. In a repealer section, the statement that a provision is repealed stands on its own with no other content in the section.

Section 2. R.S. 5:2498(A)(3) is hereby repealed in its entirety.

Section 22. R.S. 11:701(33)(c), R.S. 36:4(B)(10), 259(E)(18), (F)(6), (7), (11), (13), (14), and (17), 409(C)(6) and (I), 651(S) and (T), and 802.11 and R.S. 42:1141(B)(3) are hereby repealed in their entirety.

Never combine a repealer with an amend/enact bill section heading. As indicated, repealed provisions from multiple titles may be included in a single bill section, and this is standard practice. Repealers may also be split into multiple bill sections or subsections if necessary to give them different effective dates or for some other purpose.

Never combine a repealer with an amend/enact bill section heading.

C. Act Sections

It is not uncommon that in addition to the substance of the law contained in a bill, a bill includes provisions applicable to the Act itself. For example, the bill may specify when the Act becomes effective or may spell out in some detail a process of transition from the prior law to the new law. Or there may be some circumstance or condition of unique initial implementation of the Act that needs to be explained.

1) Special Provisions.

In many instances a drafter may have to include "special provisions" in a bill draft. These special provisions may include implementation language, application language, and directions or authorizations to the Law Institute among other types of provisions.

A more detailed discussion regarding special provisions can be found in [Chapter 7, Special Provisions](#).

2) Effectiveness date provisions.

[Constitution Article III, Section 19](#) provides that Acts passed during a regular session become effective on August 1st of that year and Acts passed during an extraordinary session become effective on the sixtieth day after adjournment of the session. If the Act does not provide otherwise, these effective dates apply. However, the same constitutional provision provides that any bill may specify another effective date.

Whether or not a bill should specify a different effective date generally turns on practical considerations such as administration or implementation. There may be reasons to provide for effectiveness as early as possible; or perhaps the bill should become effective at the start of a month, a tax year, or a fiscal year.

A more detailed discussion regarding effective date provisions can be found in [Chapter 8, Effective Dates and Special Effectiveness Provisions](#).

5.5 THE BODY OF THE BILL; ADDITIONAL DRAFTING CONSIDERATIONS

A. Definitions

Use definitions carefully and only when there is some justification for doing so. The legal writing experts agree that they often create more problems than they solve.

Definitions are important if a term or expression is vague in some way. The term "family" as commonly used probably lacks enough specificity for most legal purposes, and a term like "public official" may or may not include public employees.

Definitions can be used effectively to give a term a specialized meaning, one narrowly tailored to the subject matter of the law being drafted. Such a definition can be used to help avoid fully specifying the narrow meaning every time the term is used (for example, "department" means the Department of Natural Resources; "contract" means a procurement contract for motor vehicles).

The standard practice in Louisiana legislative drafting is to place definitions at the beginning of the Section, Part, or Chapter for which the terms are being defined. The applicability of the definitions, to the Section, Part, Chapter, etc., must be clearly stated. Before drafting new definitions, the drafter should confirm that there are not existing definitions applicable to the Title or Chapter in which he is working.

Definitions are arranged in alphabetical order and are usually reordered when new definitions are added. Because of this frequent reordering, references to the location of a definition, for example, "contract as defined in...", should refer to the entire definitions Section and not to the particular Paragraph containing the specific definition.

Observe these guidelines when considering or drafting definitions:

- ❖ Do not define a commonly understood term to give it a commonly understood definition. Simply use the word as it is commonly understood.
- ❖ Do not define a commonly understood term to give it a definition that is radically different from its commonly understood definition. The first victim of such a definition is likely to be the drafter. The rule of thumb is to use a definition to articulate a specialized usage, not a contradictory usage.
- ❖ Be careful about using the term being defined in the definition; it is acceptable to do so if the general meaning of the term is clear but the drafter is providing a more specific meaning, for example: "department" means the Department of Natural Resources or "contract" means a procurement contract for motor vehicles.

- ❖ Express a definition as the same part of speech as the term being defined. If the definition cannot be inserted in a sentence in place of the term, it is not a good definition.
- ❖ Do not define a term that is not used in the law for which the drafter is providing definitions. In fact, do not define a term that is used only once in the law for which the drafter is providing definitions. If the term is used only once, simply articulate the meaning of the term in the provision where it is used.
- ❖ R.S. 1:10 defines "person" for purposes of the Revised Statutes.
- ❖ Coordinate the drafting of the definitions and the substantive law so that definitions are free of substantive law.

B. Enumerations

It is not necessary to paragraph all enumerations, but when an enumerated list of elements follows an Introductory Paragraph, capitalize the first letter of the first word of each item and end each with a period even if the item is a single word or short phrase. Also, it may be necessary to phrase the Introductory Paragraph to indicate whether all of the items are required or only one of them or some combination. **Do not** use "and" or "or" at the end of the penultimate item to indicate whether the list is conjunctive or disjunctive.

Incorrect:

- (2) The notice shall contain the following:
- (a) **the** name and last known address of the owner of the property;
 - (b) **a** description of the property; **and**
 - (c) **a** statement that if proof of claim is not presented within sixty-five days after the date of the second published notice, the property will be deemed to be abandoned.

Correct:

- (2) The notice shall contain **all of** the following:
- (a) **The** name and last known address of the owner of the property.
 - (b) **A** description of the property.
 - (c) **A** statement that if proof of claim is not presented within sixty-five days after the date of the second published notice, the property will be deemed to be abandoned.

C. Effective dates in the law; caution

Do not use a "Beginning on..." or "On and after..." type of provision in codified law to indicate the date implementation or effectiveness is to begin.

What not to do:

Beginning January 1, 2016, the office of motor vehicles shall...

On and after the effective date of this Section, no licensed contractor shall...

A codified provision of law does not necessarily have an effective date. Any particular codified provision may be comprised of changes made by numerous Acts, each of which has a different effective date. Putting an effective or implementation date on the face of the provision of law makes it more difficult to amend.

Consider this simple provision:

D. The office of motor vehicles shall charge a fee of one hundred fifteen dollars for each permit.

To amend this provision to increase the fee, the drafter has simply to change the amount:

D. The office of motor vehicles shall charge a fee of one hundred ~~fifteen~~ twenty-five dollars for each permit.

However, if the provision reads:

D. Beginning on January 1, 2012, the office of motor vehicles shall charge a fee of one hundred fifteen dollars for each permit.

To make the same change, the drafter could follow the pattern:

D.(1) Beginning on January 1, 2012, the office of motor vehicles shall charge a fee of one hundred fifteen dollars for each permit.
(2) Beginning on January 1, 2016, the office of motor vehicles shall charge a fee of one hundred twenty-five dollars for each such permit.

However, since an advantage of codifying law is to provide a source of what the law is, this recordation of everything the law has been undermines this advantage.

Or the drafter could remove the original date from the provision:

D. ~~Beginning on January 1, 2012, the~~ The office of motor vehicles shall charge a fee of one hundred ~~fifteen~~ twenty-five dollars for each permit.

This approach is acceptable but illustrates that the date was not needed in the original.

The change-the-date approach, which seems like a simple solution, is **NOT** valid:

D. Beginning on January 1, ~~2012~~ 2016, the office of motor vehicles shall charge a fee of one hundred ~~fifteen~~ twenty-five dollars for each permit.

If the Act making the above change becomes effective on August 1, 2015, the result is that no fee is authorized between August 1 and January 1. This approach also raises a question about whether the legislature is suggesting that collection of the fee was not authorized prior to the new date and whether there is authority to collect unpaid fees.

The practice of placing effective dates in the statutes creates even more problems if the provision is more complicated. Effective dates and implementation dates should be handled in provisions of the Act.

5.6 DIGESTS

The digest is a brief narrative summary of the contents of a legislative instrument. The purpose of the digest is to assist the reader in understanding the effects of the instrument, which requires a subjective determination by the drafter as to the most important provisions of the instrument.

A more detailed discussion regarding digests can be found in [Chapter 9, Digests](#).

5.7 EXAMPLES OF STATUTORY LAW

A. Code of Criminal Procedure

1. Amends—[House Bill No. 741](#) [2014 Regular Session]
2. Enacts—[House Bill No. 105](#) [2013 Regular Session]
3. Repeals [House Bill No. 71](#) [2014 Regular Session]

B. Code of Evidence

Amends - -[House Bill No. 293](#) [2013 Regular Session]

C. Code of Civil Procedure

1. Amends - - [House Bill No. 597](#) [2014 Regular Session]
2. Enacts - - [House Bill No. 309](#) [2015 Regular Session]

D. Civil Code

1. Amends – [House Bill No. 573](#) [2014 Regular Session]
2. Enacts and Repeals– [House Bill No. 114](#)[2014 Regular Session]

E. Children's Code

Amends and enacts [House Bill No. 278](#) [2013 Regular Session]

F. Revised Statutes

1. Introductory paragraph
Amends – [House Bill No. 24](#) [2012 Regular Session]
2. Chapter
 - a. Amends – [House Bill No. 337](#) [2015 Regular Session]
 - b. Enacts – [House Bill No. 80](#) [2015 Regular Session]
[House Bill No. 730](#) [2015 Regular Session]
 - c. Repeals - - [House Bill No. 641](#) [2012 Regular Session]
[House Bill No. 99](#) [2013 Regular Session]
3. Part
 - a. Amends - - [House Bill No. 110](#) [2012 Regular Session](amends Part heading)
 - b. Enacts - - [House Bill No. 5](#) [2013 Regular Session]
[House Bill No. 802](#) [2014 Regular Session]
 - c. Repeals – [House Bill No. 109](#) [2012 Regular Session]
[House Bill No. 315](#) [2014 Regular Session]

4. Subpart
 - a. Amends - - [House Bill No. 572](#) [2013 Regular Session]
 - b. Enacts - - [House Bill No. 300](#) [2012 Regular Session]
[House Bill No. 1191](#) [2012 Regular Session]
 - c. Repeals – [House Bill No. 400](#) [2014 Regular Session]
[House Bill No. 652](#) [2014 Regular Session]

5. Section
 - a. Amends - - [House Bill No. 391](#) [2013 Regular Session]
 - b. Enacts - - [House Bill No. 4](#) [2013 Regular]
[House Bill No. 11](#) [2014 Regular Session]
 - c. Repeals - - [House Bill No. 19](#) [2013 Regular Session]
[House Bill No. 18](#) [2014 Regular Session]

6. Subsection
 - a. Amends – [House Bill No. 5](#) [2014 Regular Session]
[House Bill No. 72](#) [2014 Regular Session]
 - b. Enacts – [House Bill No. 642](#) [2012 Regular Session]
[House Bill No. 11](#) [2015 Regular Session]
 - c. Repeals – [House Bill No. 826](#) [2014 Regular Session]
[House Bill No. 1192](#) [2014 Regular Session]

7. Paragraphs
Amends and repeals – [House Bill No. 510](#) [2015 Regular Session]

8. Item
Enacts – [House Bill No. 9](#) [2015 Regular Session]

9. Subitem
Amends – [House Bill No. 24](#)[2014 Regular Session]

G. Combination bills

1. [House Bill No. 57](#)[2013 Regular Session] (all three actions)
2. [House Bill No. 22](#) [2014 Regular Session] (amends and repeals)

CHAPTER 6. UNCODIFIED LAWS

6.1 OVERVIEW

Laws enacted by the legislature that are general, public, and permanent in nature are codified or compiled in a specific body of law, namely the Revised Statutes or Codes. The majority of bills introduced in the legislature seek to amend or enact provisions of those bodies of law. The primary reason for codification is to provide a centralized place of notice for statutes of general, public, and permanent nature to make them easily accessible to the general public.

Uncodified laws, such as a transfer of state property, are usually Acts of a special nature that are not part of a specific body of law and that may be of a limited duration and effect. Uncodified law is not published in the same manner as codified law, making it less accessible. It is not given a Revised Statute or Code section number and is instead designated and referenced by Act number, along with the year and session in which it was enacted. Generally, the only available reference for uncodified law is in the Session Laws for the year it was enacted. With this in mind, a drafter should know that uncodified law is legally binding.

In contrast to entire uncodified Acts, a bill enacting statutory law may also contain an uncodified provision of law, such as an effective date or retroactivity clause. Although those provisions do not possess a Revised Statute or Code designation, they are also legally binding. A benefit of drafting an uncodified provision of law is that it avoids permanent statutory references to laws that will later become obsolete.

A drafter should understand that because of the way uncodified provisions are designated and uncodified Acts only appear as Session Laws, they can be extremely difficult to locate. Additionally, because of the difficulty in locating such laws, they are susceptible to conflict with codified laws and other uncodified laws.

The focus of this Chapter is to provide contrast to statutory law which is discussed at length in this manual. Also, this Chapter's focus is on uncodified provisions of law that operate upon and affect only a specific instance or a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others.

Uncodified law can be used to achieve many goals and used in a variety of ways. An overview of those ways will be discussed in this Chapter.

USES OF UNCODIFIED LAW

- ❖ Acts affecting public property, buildings, or grounds
- ❖ Fiscal bills
- ❖ Administrative provisions
- ❖ Acts amending an uncodified Act or provision
- ❖ Resolutions with the effect of law

6.2 ACTS AFFECTING PUBLIC PROPERTY, BUILDINGS, OR GROUNDS

A. Granting Authority to Transfer Property

The transfer, conveyance, assignment, lease, or delivery of any interest in state property may be accomplished by an uncodified legislative Act.

Example of a property transfer:

To authorize and provide for the transfer of certain state property; to authorize the transfer of certain state property in Terrebonne Parish; to provide for the property description; to provide for reservation of mineral rights; to provide terms and conditions; to provide an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The commissioner of the division of administration, notwithstanding any other provision of law to the contrary, is hereby authorized and empowered to convey, transfer, assign, lease, or deliver any interest, excluding mineral rights, the state may have to all or any portion of the following described parcel of property, including any improvements thereon, to Terrebonne Parish:

[Insert property description]

Section 2. The commissioner of the division of administration is hereby authorized to enter into such agreements, covenants, conditions, and stipulations and to execute such documents as necessary to properly effectuate any conveyance, transfer, assignment, lease, or delivery of title, excluding mineral rights, to the property described in Section 1, and as more specifically described in any such agreements entered into and documents executed by and between the commissioner and Terrebonne Parish, in exchange of consideration proportionate to the appraised value of the property. Such agreement shall provide that the cost to remove any improvements on the parcel of property described in Section 1 shall be paid by the state.

Example of a property lease:

To authorize and provide for the lease of certain state property; to authorize the lease of certain state property in Iberville Parish; to provide for the property description; to provide for reservation of mineral rights; to provide terms and conditions; to provide an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The secretary of the Department of Public Safety and Corrections and the commissioner of administration, notwithstanding any other provision of law to the contrary, are hereby authorized and empowered to lease any interest, excluding mineral rights, the state may have to all or any portion of the following described parcel of property to Barry Smiley:

[Insert property description]

Section 2. The secretary of the Department of Public Safety and Corrections and the commissioner of administration are hereby authorized to enter into such agreements, covenants, conditions, and stipulations and to execute such documents as necessary to properly effectuate any lease, excluding mineral rights, to the property described in Section 1 of this Act, and as more specifically described in any such agreements entered into and documents executed by and between the secretary and the commissioner and Barry Smiley, in exchange of consideration proportionate to the appraised value of the property.

B. Authorizing the Naming of a Building

An uncodified Act may be used to authorize a governmental entity to name a building or other property.

Example of an authorization to name a building:

To authorize the Caddo Parish School Board to name a building at Shreve Island Elementary School in honor of Kerry Laster, Ph.D.; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The Caddo Parish School Board may name a building at Shreve Island Elementary School in Shreveport, Louisiana in honor of Kerry Laster, Ph.D.

6.3 ACTS AMENDING AN UNCODIFIED ACT OR PROVISION

Amendments to uncodified laws are amendments to Session Laws, not to the Louisiana Revised Statutes. An uncodified Act from a prior year may be amended by treating the prior enactment in much the same way as a codified provision of the Revised Statutes. The Act or provision which is being amended is cited in the bill. However, amendments to uncodified Acts can accumulate as a result of being amended several times over the years (e.g. 1985, 1986, 1988, etc). In these cases it is important to make sure that the drafter is amending the correct Act. If an uncodified Act or provision has been amended previously, the bill should cite each applicable Act number chronologically from the earliest year of enactment to the latest. If the bill is amending more than one prior Act, the amendments to one Act should appear in one section of the bill and the amendments to the other Act should be in the next section of the bill. There is no simple or computerized method of tracking amendments to Session Laws. The only way to accomplish this task is to check the Table of Sections Affected at the back of the Session Laws volume for each year subsequent to the date of initial enactment.

Example of Act amending uncodified Act or provision:

To amend and reenact Section 1 of Act No. 130 of the 1896 Regular Session of the Legislature, and Sections 1 through 8 of Act No. 569 of the 1989 Regular Session of the Legislature, as amended by Act No. 13 of the 1998 First Extraordinary Session of the Legislature, and R.S. 36:209(O) and to enact R.S. 36:802.21, relative to New Orleans City Park; to provide for the powers, duties, functions, and responsibilities of the New Orleans City Park Improvement Association and its board of commissioners and the powers, duties, functions, and responsibilities of the Department of Culture, Recreation and Tourism and its officers and offices with respect to the park and the association and its board of commissioners; to provide that the association and its board shall be policymaking agencies; to provide for certain other powers of the board; to provide relative to employees, their appointing authority, civil service status, and certain benefits; to provide relative to contracts with a nonprofit or not-for-profit firm, corporation, or entity and the authority therefor; to provide relative to funds and funding and related procedures; to provide that the secretary of the Department of Culture, Recreation and Tourism shall be a member of the board; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1 of Act No. 130 of the 1896 Regular Session of the Legislature is hereby amended and reenacted to read as follows:

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That:

(A) ~~the~~ The park in the City of New Orleans known as the "New Orleans City Park" be and is hereby placed under control and management of the "New Orleans City Park Improvement Association" incorporated under the laws of the State, by an act before Felix J. Dreyfous, Notary Public, on the 13th day of August, 1891.

(B) The secretary of the Department of Culture, Recreation and Tourism shall be a member of the board of commissioners of the New Orleans City Park Improvement Association.

* * *

6.4 FISCAL BILLS

The state's operating budget bills, including the Appropriation Bill and Supplemental Appropriation Bill, Capital Outlay, and Omnibus Bond Authorizations, are not codified, permanent provisions of law. Except as otherwise provided by the constitution, no money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year ([Const. Art. III, §16\(A\)](#)). For more discussion on such bills, see [Chapter 22, Appropriation Bills](#).

A. Appropriation and Supplemental Appropriation bills

The General Appropriation Bill, House Bill No. 1, is the legislative instrument used to appropriate the amounts specified in the executive budget excluding capital outlay and ancillary appropriations. Appropriations must be made in uncodified law because an appropriation cannot be made for a period longer than one year, and therefore, codification is not appropriate. Generally, unless otherwise indicated in the bill, uncodified law in the operating budget expires annually. If a language item should remain in effect indefinitely, codification of the item may be appropriate. The following is an example of the standard form for a lump sum general fund appropriation clause:

Example of an Appropriation bill:

Section 1. The appropriations in this Act from state revenue shall be payable out of the sources specified and shall be limited by the provisions of Article VII, Section 10(D) of the Louisiana Constitution.

Example of a Supplemental Appropriation bill:

Section 1. The following sums are hereby appropriated from the sources specified for the purpose of making supplemental appropriations for Fiscal Year 2013-2014.

B. Capital Outlay bill

[Article IV, Section 5\(D\) of the Louisiana Constitution](#) requires the governor to submit to the legislature an operating budget and a capital budget, as provided by [Article VII, Section 11](#). In accordance with [R.S. 39:104](#), the capital outlay budget must include a list of projects requested to be undertaken within the time period, projects recommended by the division of administration to be undertaken within the time period, the projected expenditures for each project, and the reasons for rejections of any requested project. It is considered an uncodified bill.

Example of a Capital Outlay bill:

Section 1. The following sums or so much thereof as may be necessary are hereby appropriated out of any monies in the state treasury from the sources specified, from federal funds and self-generated revenues belonging to the state of Louisiana and/or collected by boards, commissions, departments, and agencies thereof, all for making capital outlay and for the purposes and in the amounts specified herein for the Fiscal Year commencing July 1, 2013, and ending June 30, 2014, subject to the conditions thereafter provided:

C. Omnibus Bond authorizations

Omnibus bond authorizations allow the governor to present a five-year Capital Outlay Program, and request the implementation of its first year ([Const. Art. VII, §11\(C\)](#)). The capital outlay projects approved by legislature in an uncodified Act are to be made part of the comprehensive state capital budget, then to be adopted by the legislature.

Example of an *Omnibus Bond authorization*:

Section 1. The legislature hereby recognizes that the Constitution of Louisiana provides in Article VII, Section 11, that the governor shall present to the legislature a five year Capital Outlay Program and request implementation of the first year of such program, and that the capital outlay projects approved by the legislature are to be made part of the comprehensive state capital budget which shall, in turn, be adopted by the legislature.

D. Judgments

Legislation appropriating funds for the payment of a final judgment, consent order, or settlement is accomplished by an uncodified act.

Example of a Judgment:

To appropriate funds out of the General Fund of the state of Louisiana for Fiscal Year 2012-2013 to be used to pay the consent judgment in the suit entitled "Shane Chad Mayo v. Department of Transportation and Development"; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The sum of Thirty Thousand and No/100 (\$30,000.00) Dollars is hereby appropriated out of the General Fund of the state of Louisiana for Fiscal Year 2012-2013 to be used to pay the consent judgment in the suit entitled "Shane Chad Mayo v. Department of Transportation and Development", bearing Number 2008-12682, Division "J", on the docket of the Twenty-Second Judicial District Court, parish of St. Tammany, state of Louisiana.

6.5 RESOLUTIONS WITH THE EFFECT OF LAW

Concurrent resolutions are uncodified law when they do either of the following: suspend, amend, or repeal any rule or body of rules, or any fee or any increase, decrease, or repeal of any fee adopted by a state department, agency, board, or commission. For more discussion regarding resolutions with the effect of law, see [Chapter 25, Resolutions with the Effect of Law](#).

6.6 ADMINISTRATIVE SECTIONS

Administrative sections are uncodified provisions of a bill that proscribe certain action to be taken with respect to a law. Many bills raise issues relating to the application of the bill. These issues may involve deciding the purpose of the bill, to whom the bill applies, the circumstances under which the bill applies, and the time period in which the bill applies. The following Section provides a highlighted discussion of the most common types of uncodified provisions. For a more detailed discussion, see [Chapter 7, Special Provisions](#) and [Chapter 8, Effective Dates and Special Effectiveness Provisions](#).

A. Legislative intent statement

An uncodified legislative intent statement indicates the intended purpose or aim of the legislation, or it may indicate the state of mind of the legislature at the time it is enacting the measure.

B. Legislative declaration statement

An uncodified legislative declaration statement may provide information or value statements about the subject addressed in the bill, findings made by the legislature, the history of a particular issue, the manner for accomplishing a desired result, or the name of the bill.

C. Repeal clause

A repeal clause is the section of a bill that lists which provisions of law are revoked and abrogated by the proposed legislation.

D. Sunset clause

A sunset clause typically states that a law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law. Such a clause can be an uncodified provision although a drafter should carefully consider whether or not to include a sunset clause in the codified section of law.

E. Prospective/Retroactive clause

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.

Remember there are numerous constitutional implications in declaring an Act retroactive.

F. Severability clause

Unless otherwise specifically provided therein, the provisions of each Act of the legislature are severable, whether or not a provision to that effect is included in the Act. If any provision or item of an Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the Act which can be given effect without the invalid provision, item, or application ([R.S. 24:175](#)). An uncodified severability clause specifically instructs the courts that the balance of the law that is not invalidated is to remain in effect.

G. Emergency effective date

In addition to a specific date, an "emergency" effective date that is not specified may be authorized by language in an Act. 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 coincide, but the concept of taking effect is not synonymous with that of becoming a law. The purpose of the effective date section of a bill is to select a date other than the default date provided by the Louisiana Constitution.

H. Contingent effective date

Effective dates of Acts made "contingent" upon the occurrence of an event, such as the adoption of a constitutional amendment, passage of another bill, action by congress or a federal state agency, or funding obtained by the Act may be uncodified.

6.7 EXAMPLES OF UNCODIFIED LAW

The following list provides various examples of uncodified laws:

A. Property transfer

[House Bill No. 1041 \[2012 Regular Session\]](#)

B. Property lease

[House Bill No. 1085 \[2014 Regular Session\]](#)

C. Authorizing the naming of a building

[House Bill No. 449 \[2012 Regular Session\]](#)

D. Act amending uncodified Act

[House Bill No. 744 \[2006 Regular Session\]](#)

E. Judgment

[House Bill No. 116 \[2012 Regular Session\]](#)

CHAPTER 7. SPECIAL PROVISIONS

7.1 OVERVIEW

It is not uncommon that in addition to the substance of the law contained in a bill, a bill includes provisions applicable to the Act itself. For example, the bill may specify when the Act becomes effective or may spell out in some detail a process of transition from the prior law to the new law. Or there may be some circumstance or condition of unique initial implementation of the Act that needs to be explained. These sections, generally known as special provisions, are not coded with underlining or overstriking except in the rare case of amending a section of a prior Act.

These special provisions may include any of the following:

- ❖ Legislative Intent Statements
- ❖ Severability and Nonseverability
- ❖ Prospective and Retroactive Application language
- ❖ Repeal and Termination language
- ❖ Instructions on Conflicting Acts
- ❖ Implementation
- ❖ Directions or Authorizations to the Law Institute
- ❖ Language providing for the disposition of monies
- ❖ Applicability or Grandfather clauses

While it is preferable such provisions be handled in separate, **uncodified** bill sections placed in the bill after the enacting sections, the provisions may be incorporated into the statutory or codal provision. In analyzing whether to include a provision in the statute or as an uncodified section of the bill, consider whether the provision is effective only once or will remain effective; if the provision is transient and will quickly become superfluous in the codified law, it probably should not be codified. Remember that statutory law is read as continuously speaking, so a one-time or limited duration provision may create problems if included in the statute.

The examples provided in the next few pages are not exclusive, as a drafter may have to be very creative in fashioning such provisions to carry out the intent and the purpose of the legislation.

7.2 LEGISLATIVE INTENT

A. Determining the need for legislative intent

Though the use of legislative intent statements is not prohibited, it is also not encouraged. Legislative intent statements are generally considered to be unnecessary as the intent and purpose of a **properly drafted** bill should be self-evident. When using an intent statement, the drafter runs the risk of having declarations of purposes, findings, and intent used to have unintended purposes. Writings on the use of legislative intent statements have listed five factors that a drafter should keep in mind when drafting a legislative intent statement or reviewing a submitted legislative intent statement. The factors are:

1) There is a difference between legislative declaration sections (statement of the reasons for a desired result) and legislative intent sections (statement of the desired result). A section should not be characterized as "legislative intent" when it is really a "legislative declaration" and vice versa.

2) If a legislative intent statement is included in a bill, it should accurately reflect the intent of the legislature and must remain accurate as the bill is amended in the legislative process.

3) A legislative intent statement should not create any kind of right, should not prohibit any action, and should not otherwise create substantive law.

4) A legislative intent statement should not be a substitute for precise and accurate legislative bill drafting.

5) A legislative intent statement should not be ambiguous.

When a draft of legislation is given to a drafter by an outside party and it includes a legislative intent statement, the drafter should review the statement in light of these five factors. If the drafter determines that the submitted language may cause problems for the author, the drafter must seek guidance from the author as to how much discretion the drafter has in revising the statement. But, keep in mind that the author has the last word as to the content of the bill draft.

Example of a legislative intent statement:

<p>Section 2. It is the intent of this legislature to require persons convicted of aggravated oral sexual battery prior to the repeal of R.S. 14:43.4 by Act 301 of 2001 R.S. to comply with all registration and notification requirements of Chapter 3-B of Title 15.</p>

Example of a legislative declaration section:

Section 2.(A) The legislature hereby finds that personal care and other services and supports provided to persons with disabilities in home- and community-based settings can be of immense value in enhancing those persons' well-being and quality of life.

(B) This Act shall be known as "Bailey's Law" in recognition of the advocacy efforts on behalf of persons with disabilities that have been inspired by Bailey Caroline Durham.

B. A note about severability

An author may ask a drafter to include language in an instrument providing that if a portion of an Act is found to be invalid, the remaining portion of the act is still valid. This language is referred to as a severability of Act clause. Many bill drafts written by parties other than HLS staff are submitted to drafters with the inclusion of such clause. However, [R.S. 24:175](#) provides that the provisions of an Act are severable whether or not such a clause is included in the Act. A drafter may want to advise an author of the existence of [R.S. 24:175](#) but be prepared to include such language if the author insists.

Section 2. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are hereby declared severable.

There may also be an instance where an author would like to provide specifically for nonseverability, also known as reverse severability.

Section 2. Notwithstanding the provisions of R.S. 24:175, the provisions of this Act are nonseverable. It is intended that if any provisions of this Act, or the application thereof to any person or circumstances is held invalid under the Constitution of Louisiana or of the United States by a final and nonappealable judgment, then such provision's ineffectiveness or invalidity will invalidate this Act.

7.3 PROSPECTIVE AND RETROACTIVE APPLICATION OF LEGISLATION

A. Statutory and constitutional overview

The Louisiana Civil Code, the Louisiana Revised Statutes of 1950, and the Louisiana Constitution each have specific language addressing the issue of prospective and retroactive application of

legislation. Those provisions state the following:

[La. Civil Code Article 6](#) provides that in the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretive laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.

No Section of the Revised Statutes is retroactive unless it is expressly so stated ([La. R.S. 1:2](#)).

No person shall be deprived of life, liberty, or property, except by due process of law ([La. Const. Art. I, §2](#)).

Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power ([La. Const. Art. I, §4](#)).

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted ([La. Const. Art. I, §23](#)).

The police power of the state shall never be abridged ([La. Const. Art. VI, §9\(B\)](#)).

“Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution” ([La. Const. Art. XIV, §26](#)).

B. Application to substantive and procedural law

Law that establishes new rules, rights, and duties or change existing ones, or creates, confers, or destroys rights, causes of actions, or legal duties is considered substantive law (*Rousselle v. Plaquemines Parish School Board*, 633 So.2d 1235 (La. 1994)). Substantive law is given prospective application only, unless a contrary legislative intention is expressed for both retroactive and prospective application.

Procedural law is defined as law that describes the method of enforcing, processing, administering, or determining rights, liabilities, or status (*Prejean v. Dixie Lloyds Insurance Company*, 655 So.2d 303 (La. 1995)). Procedural law is given both prospective and retroactive application, unless a contrary legislative intention is expressed or retroactive application would unconstitutionally disturb vested rights.

1) Determining the proper application

When drafting legislative language for retroactive or prospective application or when reviewing a bill draft to determine retroactive or prospective application, the following questions should be asked:

- a) Does the draft have an expression of legislative intent for prospective or retroactive application in either a separate section of the draft or in the body of the draft? If so, is there also language in the title for such retroactive/prospective application?
- b) If there is no expression of legislative intent in the draft, is the proposed legislation substantive, procedural, or interpretative?
- c) Would retroactive application impair contractual obligations or disturb vested rights? If so, would the retroactive application be authorized as an exception under the inherent police powers of the state?
- d) If the legislation is a proposed constitutional amendment, is there a need for specific language concerning ratification and validation of pre-existing statutes?
- e) Is a "grace period" necessary?

2) Avoid "remedial law" language in drafting of clauses

"Remedial" laws can be substantive, procedural, or interpretative and the use of this term alone in legislative drafting to imply a separate category of laws to be given retroactive application should be avoided.

3) Retroactivity and effective date are not the same

The question of prospective/retroactive application of an item of legislation concerns the legislative intent and constitutional authority to apply the legislation to events preceding the passage of the legislation or arising after its passage. The question of effective date is the specific time period that the legislation becomes law. These are conceptually different and should be treated in different sections in the legislation.

C. Retroactivity

An Act can be given retroactive effect by declaring such effect:

Section 2. The provisions of this Act shall be given prospective and retroactive application.

Note the inclusion of "prospective and" so as not to imply that the Act has retroactive effect only.

However, there are a number of factors the drafter needs to be aware of in analyzing questions of retroactivity.

- ❖ A provision should not be made retroactive if that would violate the constitution. Provisions of the constitution that might be violated by retroactivity of a law include property and other rights, the prohibition on abrogating a contract, and the prohibition on ex post facto laws.
- ❖ There are two statutory provisions that give courts guidance on retroactivity if the legislature has not clearly stated its intent: [C.C. Art. 6](#) and [R.S. 1:2](#). Though these provisions appear to conflict with each other and terms like "substantive" law and "procedural" law are not clearly defined anywhere, drafters need to be aware that a court might find that an Act is procedural or interpretive and so give a law retroactive effect without a provision in the Act to that effect.

Consequently, there may be circumstances in which the drafter needs to declare that an Act will be given "prospective effect only" in order to avoid retroactive application. A provision more specific than "prospective only" may be needed in some cases:

Section 2. The provisions of this Act shall not apply to claims arising from events that occurred prior to the effective date of this Act.

Note that there may be examples of retroactive provisions from bills in the past in which the legislature declared an Act to be procedural or interpretive. These determinations are unnecessary in an Act and should be left to the courts.

- ❖ Retroactivity itself is not a particularly clear term. Does it mean that the law shall be applied as if it has existed forever? As with all good legislative drafting, a drafter will need to give serious consideration to the use of this term and how it will be understood in the particular context. It may be that the drafter needs to provide for retroactivity only back to a particular date or to cover a particular circumstance; if so, the drafter should provide for such in the retroactivity section. In all cases, give some thought to how retroactivity might be construed and draft language to avoid any possible confusion.

Section 2. The provisions of this Act amending R.S. 42:1123(36) are declared to be remedial and curative and shall be applied retroactively to January 1, 2006, as well as prospectively.

7.4 REPEAL AND TERMINATION OF LAW

A. Statutory overview

Louisiana law speaks specifically to the repeal and termination of laws. The Louisiana Revised Statutes of 1950 and the Civil Code both address these two issues of drafting. Specifically, they provide as follows:

[Civil Code Article 8](#) states that laws are repealed, either entirely or partially, by other laws. A repeal may be express or implied. It is express when it is literally declared by a subsequent law. It is implied when the new law contains provisions that are contrary to, or irreconcilable with, those of the former law. The repeal of a repealing law does not revive the first law.

Unless otherwise specifically provided therein, all laws or parts of laws in conflict with a provision of a law subsequently enacted by the legislature are repealed by the law subsequently enacted ([R.S. 24:176\(A\)](#)).

The repeal of a repealing law shall not revive the first law ([R.S. 1:15](#)).

The repeal of a law shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability, civil or criminal, incurred under such law unless the repealing act expressly so provides, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability ([R.S. 24:171](#)).

B. Express and implied repeal

An express repeal clearly "expresses" the intent of the legislation. For example: "Section 2. R.S. 1:4 is hereby repealed in its entirety." There is no ambiguity. When drafting, make sure to distinguish between the repeal of law and the renumbering or redesignation of law. A law that has been repealed has ceased to exist, except for the purposes of [R.S. 24:171](#).

An implied repeal is not as clear. An implied repeal can be defined as a subsequently enacted law that is irreconcilable with and does not expressly repeal prior law. Never assume when drafting that there has been an implicit repeal of conflicting law. It is well settled in jurisprudence that repeals by implication are not favored and will be found by courts only where there is an irreconcilable conflict between two statutes and where there exists no possible construction that could give both statutes effect. Under guidelines for statutory interpretation followed by courts, the legislature is presumed to intend to achieve a consistent body of law and to have passed a law with deliberation and with full knowledge of all existing laws on the same subject.

C. Statutes declared unconstitutional do not repeal law

The Louisiana Supreme Court has stated that an unconstitutional Act that purports to amend a prior constitutional statute cannot accomplish that objective. The unconstitutional Act, having no effect, can amend nothing. Instead the statute as worded prior to the unconstitutional amendment provides the applicable law.

The Louisiana Supreme court has also stated that generally, when statutes are declared unconstitutional they are void *ab initio* and all acts done under such statutes are void and of no effect. However, where it would be inequitable to follow the general rules that an unconstitutional statute was void *ab initio* and without any legal effects whatsoever, or where it was impossible for the court to undo what had transpired under an unconstitutional statute and to restore the parties to some reasonable position, the courts have recognized exceptions to the rule as a matter of public policy or necessity in such instances.

D. Expiration or Termination clause

Drafters are sometimes asked to terminate the effectiveness of an Act; this is often referred to as a "sunset" provision.

In some cases, terminating a law or Act can be accomplished fairly easily with a bill section like one of the following:

Section 2. This Act shall be null and void on and after January 1, 2016.
--

Section 2. This Act shall cease to be effective on June 30, 2014.

A more detailed discussion of termination clauses can be found in [Chapter 8, Effective Dates and Special Effectiveness Provisions](#).

7.5 INSTRUCTIONS ON CONFLICTING ACTS

A. Generally

Beware of implied exceptions, or never assume when drafting a law that it is clear how the law is to be interpreted with potential conflicting statutes. Regardless of which law was last enacted, it is an axiom of statutory construction that in the event of possible conflict, two statutes dealing with the same subject matter should first be harmonized, if possible. If there is conflict and the statutes cannot be harmonized, the statute specifically directed to the matter at issue generally prevails as an exception to the statute more general in character, unless there is legislative intent or expression regarding which statute is to control.

Notwithstanding the provisions of R.S. _____,...

B. The provisions of this Subsection shall supersede and control to the extent of any conflict with any other provision of law.

Notwithstanding any other provision of law to the contrary,...

Section 2. The provisions of this Act are intended to and shall supersede the provisions of House Bill No. 433 of the 2010 Regular Session of the Louisiana Legislature to the extent to which they conflict.

Section 5. In the case of any conflict between the provisions of this Act and the provisions of any other Act of the 2012 Regular Session of the Legislature, the provisions of this Act shall supercede and control regardless of the order of passage.

Note that the first three examples would be placed in the law, not in a separate bill section.

B. Latest expression of legislative will

In the instance that inconsistent amendments to the same statute have been adopted at the same legislative session, the court shall attempt to construe the statute so as to give effect to both amendments consistent with legislative intent. Only when it is impossible to give effect to

both amendments should the court allow the time of passage of the acts to be a controlling factor. Allowing the later act to control effectively recognizes a repeal by implication of the earlier act, and such recognition of a repeal by implication should occur only when the acts passed in the same session are so repugnant that they cannot stand together. The Louisiana State Law Institute must advise the clerk of the House and the secretary of the Senate when a conflict between two or more legislative acts affecting the same subject matter in the same provisions of law cannot be resolved for the purpose of incorporating the text into the law. The secretary and clerk shall certify which of the conflicting acts was enacted last and direct the Law Institute to incorporate into the law "the text of the provision of law last enacted".

7.6 IMPLEMENTATION

Often times a drafter may have to provide for "implementation" language. As the name indicates, implementation provisions prescribe a process of transition from the law as it was prior to the Act to the law as contained in the Act. Circumstances in which such provisions are needed are varied and the content of the provisions will be context specific. Consequently, there are no rules about when such provisions would be needed and what they should say if they are. It is incumbent on the drafter to question whether there is any potential confusion in how affected parties will transition to the new law. There are, however, some conditions for which the drafter should watch. The drafter must ensure not to confuse "implementation" with "effectiveness". A law can be "effective", but not yet "implemented".

Here are just a few examples of circumstances for which implementation provisions may be needed:

- ❖ If the bill touches on some process that occurs over time, it is likely the drafter will need to clarify how it affects those who are in the middle of the process. For example, a bill that makes a change affecting persons involved in a criminal or civil legal proceeding may need to state whether or not and how it applies to those in the middle of the proceeding on the effective date of the Act. In a criminal matter in particular, the question of whether the Act applies based on the date of the criminal action, the date the person is charged with the crime, or the date the person is convicted of a crime may be a critical distinction to spell out.
- ❖ Similarly, a bill that interrupts or might interrupt any specified period of duration, such as a term of office, or a licensing period, may need implementation provisions. If, for example, members of a board serve a specified term and a bill amends membership on the board, the drafter may need to explain whether the members serving on the effective date of the Act will complete their terms. A change in how an official is selected may raise similar questions.

- ❖ Almost any bill amending matters involving a prescription period will need to specify what happens to those who are within the prescription window when the new law goes into effect. The same would be true of any sort of application, hearing, notification, or similar process.
- ❖ Sometimes implementation provisions are used to provide for a unique event that is required as a kind of starting point for the new law. A statute might provide that the chairman of a board calls meetings of the board, but someone else may need to call the first meeting at which the first chairman will be elected. "Gear up" time may also be provided in an implementation provision; if a licensee is required to take a course or else be fined, the drafter may need to provide time for the development and implementation of the course before people start to be held liable for not taking it.
- ❖ Bills affecting government organization often need to provide for transfers of employees, property, funds, liabilities, and responsibilities and to provide for continuation of the effectiveness of legal proceedings, rules, and policies.

C. The Department of Natural Resources shall adopt rules and regulations, in accordance with the Administrative Procedure Act, to implement the provisions of this Section.

Section 5. The provisions of this Act shall be implemented to the extent that funds have been appropriated by the legislature or made available through grants or federal funds.

Section 3. By not later than the beginning of the 2011-2012 school year, the State Board of Elementary and Secondary Education shall adopt rules and regulations in accordance with the Administrative Procedure Act to provide for the implementation of the provisions of this Act.

Section 4. In order to implement the provision of R.S. 23:1036, each fire department to which funds are allocated and paid pursuant to R.S. 22:347(B) shall pay to the state fire marshal from funds so paid to the fire department for the 2008-2009 Fiscal Year, an amount as requested by the state fire marshal, not to exceed three percent of the funds so paid to the fire department.

Note that the language of the first example would actually be placed in the law, not in a separate bill section, as are the remaining examples.

7.7 DIRECTIONS OR AUTHORIZATIONS TO THE LOUISIANA STATE LAW INSTITUTE

The Louisiana State Law Institute is chartered, created, and organized as an official advisory law revision commission, law reform agency and legal research agency of the state of Louisiana (R.S. 24:201 et seq). [Revised Statute 24:251](#) requires the Louisiana State Law Institute to direct and supervise the continuous revision, clarification, and coordination of the Louisiana Revised Statutes.

It may be useful to include an Act section that authorizes and directs the Law Institute to perform various edits to the Act itself or to provisions of current law that are not in the Act. Most of the time such language directs the Law Institute to designate or redesignate Chapters, Parts, Subparts, or Sections. Other possibilities include directing the institute to incorporate existing provisions into a Chapter, Part, or Subpart that is enacted by the Act; replacing a reference or term with a new reference or term; or eliminating antiquated provisions. There are various reasons why a drafter might include Law Institute instructions in a bill. The following are examples of directions, authorizations, or instructions given to the Law Institute in a separate bill section.

Examples of directions to designate existing provisions:

Section 2. The Louisiana State Law Institute is hereby authorized and directed to designate R.S. 40:111 through 130 as "Part I. Residential Building Codes".

Section 2. The Louisiana State Law Institute is hereby authorized and directed to designate R.S. 40:111 through 130 as "Subpart A. Residential Building Codes".

Example of directions to incorporate existing provisions:

Section 2. The Louisiana State Law Institute is hereby authorized and directed to incorporate within Chapter 29, as enacted by this Act, R.S. 40:111 through 130.

Examples of directions to redesignate existing or new provisions:

Section 2. The Louisiana State Law Institute is hereby authorized and directed to redesignate "Chapter 2. Residential Building Codes" as "Chapter 2-A. Residential Building Codes".

Section 2. The Louisiana State Law Institute is hereby authorized and directed to redesignate R.S. 40:111 through 130 as R.S. 40:131 through 150.

**Examples of directions to change a reference or term or eliminate antiquated provisions-
broad authority:**

Section 2. The Louisiana State Law Institute is hereby authorized and directed to review all statutes which contain phrases being changed by this Act and in all locations it deems appropriate change such references.

Section 2. The Louisiana State Law Institute shall make such recommendations as it deems necessary to clarify, modify, or eliminate antiquated provisions of law consistent with the provisions of this Act and to submit its recommendations to the legislature on or before March 1, 2007.

Another approach is to specify the provisions of law in which a particular term is to be deleted or replaced with another term. This approach is particularly useful when there are many conforming changes to be made, but there are some cases in which such terms should not be changed. This method requires the drafter to thoroughly review all affected statutes but can shorten the bill because not every single conforming change is made in the bill itself. This approach was used when the legislature merged the commissioner of elections with the office of the secretary of state:

**Example of directions to change a reference or term or eliminate antiquated provisions-
specified statutes:**

(B) The Louisiana State Law Institute shall change "commissioner of elections" and references to the commissioner of elections to "secretary of state" or references to the secretary of state in the following provisions: R.S. 18:51(D), 55(A)(3)(b) and (4) and (D), 58(A), 59(B)(3)(b), (C)(3)(b), and (F), 59.1, 59.2(E), 104(A), (D), (E), and (F), 109, 114(B)(3), (D), (E), (I), and (L), 115(A)(1), (D), and (H), 116(A)(1)(a) and (2), (C)(1)(b)(v), and (G), 117, 151(B), 152(E) and (F), 154(B) and (D)(2) and (3), 171(D), 171.1(A)(1), (B), and (D), 175(C) and (D), 192(B)(2), 401.1(D)(2), 425.1(A), 431(A)(3)(a) and (B)(3), 433(A)(5) and (B)(7), 521(B), 532(B)(4)(b), 532.1(C)(3), 533(B)(1) and (E), 1286.1(A), 1313(C)(2), 1315(A)(1), 1321, 1333(G)(4)(c), 1354(A) and (B)(4), 1361, 1362(A), 1363(A)(5) and (B), 1371(A), 1373(A), 1375, 1382, 1391, 1392(A)(1), 1393, 1398(A), 1400.2, 1400.3, and 1400.4.

(C) The Louisiana State Law Institute shall remove references to the commissioner of elections in the following provisions: R.S. 18:401.1(B) and (F), 421(C) and (D), 423(B), 431(A)(1)(b), 434(E)(2), 532(C), 532.1(F) and (G)(2)(c), 551(B)(1)(c), 552(A)(3), 1285(B)(1)(a) and (2), 1300(C)(1)(a), 1303(A)(13), 1308(A)(2)(c), 1394(B), 1400.5(A), 1406(D), 1410, 1415(B), and 1483(11).

7.8 LANGUAGE PROVIDING FOR THE DISPOSITION OF MONIES

When a special treasury fund or account is abolished, the state treasurer will need direction regarding any remaining unencumbered balances of monies in the fund or account. The repeal of the section of law establishing the fund or account alone does not complete the abolishment of the fund or account. In a separate section of the bill, which may have a later effective date to allow time for encumbered and appropriated monies to be withdrawn, the drafter should provide for the abolishment of the fund or account and direct how the treasurer shall dispose of any monies remaining in the fund or account.

Section 8. R.S. 17:354(C) and (D) and 3921.2 are hereby repealed in their entirety.

* * *

Section 14. Upon the effective date of this Section, the treasurer is authorized and directed to transfer any unexpended, unencumbered monies remaining in the Teachers Supplies Fund and the Classroom-based Technology Fund, which are repealed under the provisions of Section 8 of this Act, for deposit in and credit to the Academic Improvement Fund which is established under the provisions of Section 2. of this Act.

For a more detailed discussion, see [Chapter 23, Revenue Dedication and Special Funds](#).

7.9 APPLICABILITY OR GRANDFATHER CLAUSES

There are occasions when legislation is intended to apply only to certain individuals or certain acts, or certain time periods. These occasions are generally addressed by drafting what is commonly referred to as "grandfather" clauses. A grandfather clause typically exempts certain individuals from new requirements created in the legislation. For example, individuals who have been regularly engaging in a profession or occupation may be exempt from particular licensing requirements, such as examinations, when the profession or occupation becomes regulated. More often than not, these provisions are placed within the body of the law.

A drafter will need to consider the effect a bill will have on a class of individuals, acts, or time periods. If there is a need to waive the application of any new requirements created in the bill, the drafter may want to consider crafting language to exclude the appropriate class of individuals, acts, or time periods.

For more discussion, see [Chapter 19, Regulating a Profession or Occupation](#).

A. Upon application and the payment of a fee equivalent to that required for the written examination and initial licensing fee, the board shall issue a license to any person who holds a current certificate from the American Registry of Radiologic Technologists, the American Society of Clinical Pathologists, or the Nuclear Medicine Technology Certification Board issued on the basis of an examination satisfactory to the board, provided that the standards of the issuing body are at least as stringent as those established by the board.

B. Notwithstanding the provisions of R.S. 37:3208, for a period not to exceed one year from the effective date of this Chapter, upon application and the payment of a fee equivalent to that required for the written examination and initial licensing fee, the board shall issue a license, without examination, to any person who has been employed for a minimum of two years of the immediately preceding five years as a radiographer, nuclear medicine technologist, or radiation therapy technologist.

A. The board shall waive the examination and grant a license to any person certified prior to the effective date of this Chapter as an Occupational Therapist, Registered (OTR) or a Certified Occupational Therapy Assistant (COTA) by the American Occupational Therapy Association, Inc. (AOTA), and who otherwise meets the criteria of provisions of R.S. 37:3006 and who is domiciled in the state on the date this Chapter becomes effective. In order to obtain the benefit of this waiver, an applicant shall make an application for a license no later than six months after the effective date of this Chapter.

(4) The provisions of this Subsection shall apply only to persons hired by the Webster Parish Sheriff's office on or after January 1, 2010, and who subsequently retire from the Webster Parish Sheriff's Office.

Section 2. The provisions of this Act shall have prospective application only. The Act shall apply only to convictions or pleas entered after the effective date of this Act.

Section 2. The provisions of this Act shall be applied prospectively only.

Section 2. The provisions of this Act shall apply only to persons convicted on or after August 1, 2014.

CHAPTER 8. EFFECTIVE DATES AND SPECIAL EFFECTIVENESS PROVISIONS

8.1 OVERVIEW

Along with the substantive changes to the law as proposed in a bill, a drafter must also consider when those substantive changes will need to become effective. Coordinating the effect of the substance of a bill with the appropriate time for its effectiveness is imperative. Although it may constitute an enactment of the legislature, an Act that is not yet effective is not law. Without effectiveness, an Act is unenforceable. Without appropriate effectiveness, an Act may be useless or harmful.

8.2 CONSTITUTIONAL REQUIREMENTS FOR EFFECTIVENESS

A. Bills

Laws enacted during a regular session take effect on August first of the calendar year in which the regular session is held. Laws enacted during an extraordinary session take effect on the sixtieth day after final adjournment of the session. A bill may specify an earlier or later effective date ([Const. Art. III, §19](#)).

B. Constitutional Amendments

Constitutional amendments take effect twenty days after the governor proclaims their adoption by the voters ([Const. Art. XIII, §1\(C\)](#)). Alternatively, a specific effective date may be utilized.

C. Political Subdivisions

No law requiring increased expenditures within a political subdivision shall become effective within the political subdivision until approved by ordinance or resolution adopted by the governing authority of the political subdivision, or until, and only as long as, state appropriations are available for purposes of the new law, or until local revenues become available for purposes of the new law. The constitution also provides for numerous exceptions to this requirement ([Const. Art. VI, §14](#)).

D. Resolutions

There are no constitutional requirements related to effectiveness of resolutions. Resolutions are effective upon adoption unless otherwise provided. See [Chapter 24, Resolutions](#).

8.3 PRACTICAL CONSIDERATIONS IN DRAFTING EFFECTIVE DATE PROVISIONS

A. Determining the timing of an instrument's effectiveness

If no effective date clause is provided in a bill, the provisions of the constitution apply automatically. A specific date or specific condition on effectiveness, or "special effectiveness", is only required if the intention is to have effectiveness be something other than as prescribed by the constitution.

Whether or not a drafter should specify a different effective date generally turns on practical considerations such as administration or implementation. If the necessity for special effectiveness has been determined, care should be taken in the drafting of the effective date clause to ensure that there is no ambiguity about the actual date of effectiveness. The following questions should be considered:

1) Can an actual day on which the bill would become effective logically be ascertained from the language?

2) How would the effective date clause interact with other dates, time periods, or requirements in the bill?

3) Is there a need to distinguish between the effective date of the law versus the effective date(s) of implementation of the provisions of the law? For instance, tax bills usually specify the taxable periods for which the new law will apply. See [Chapter 21, Provisions for the Raising of Revenue](#). However, the Act will usually need to be effective in advance of that so that the Department of Revenue has time to prepare for implementation of the new law. In this case, some sections of the bill may have different effective dates. The drafter must make sure all sections of the bill have effectiveness and work together as intended.

B. Effective dates versus delayed implementation

A common mistake in dealing with effective dates is adding a special effective date when that is not what is needed. For example, if delaying implementation so that an agency has time to promulgate rules that are necessary to implement the Act is what is needed, delaying the effective date of the Act does not help because the agency does not have authority to promulgate rules until the Act becomes effective. The drafter must very carefully analyze the circumstances of each particular bill to be sure that setting an effective date on the Act achieves the author's objectives. If delayed, staggered, or other special implementation is the

goal, these matters should be laid out in another Act section which explains how this is to occur.

C. Effective dates versus retroactivity

An effective date clause is not the same thing as a retroactive/prospective application clause. An effective date clause deals only with when the bill provisions become law. It does not address whether such provisions are to be given retroactive or prospective application after becoming law. See [Chapter 7, Special Provisions](#). However, the courts have looked to the timing of a bill's effectiveness, especially those with delayed effectiveness, in determining legislative intent regarding possible retroactive application of the provisions of the new law.

An effective date clause may be considered, but is not by itself dispositive of, legislative intent for retroactive or prospective application of bill provisions. To prevent potential confusion, use of the phrase "effective date" should not be included in a bill section providing for retroactivity. Also, the selection of a delayed effective date (after the constitutionally established effective date) has been interpreted by the courts as evidencing intent for only prospective applicability.

D. Placement of effective date provisions

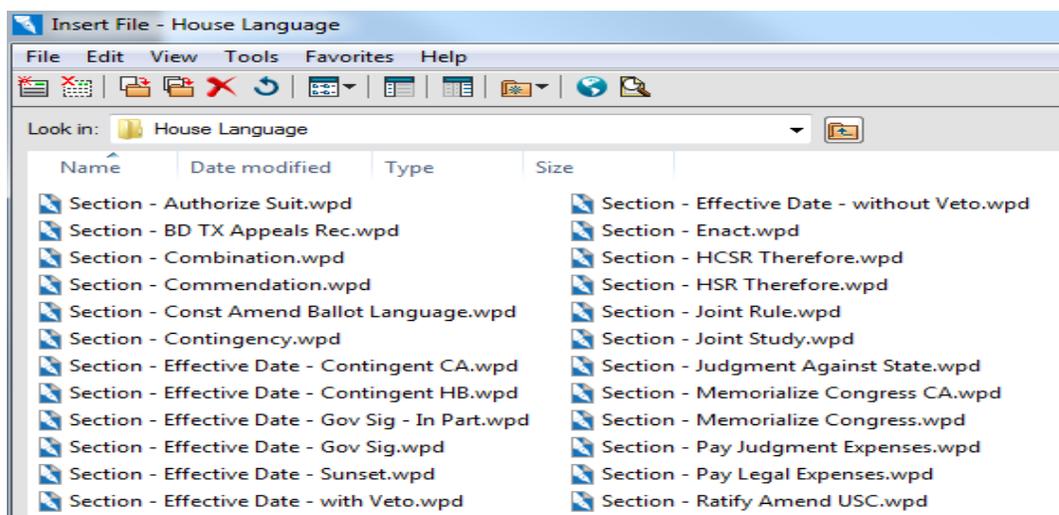
An effectiveness provision is usually placed in a section by itself, and it is customarily the last section of the bill. In *Certified Shorthand Reports Through Juge v. Neyrey*, 511 So.2d 463 (LA. App. 4 Cir. 1987), the court found that a section adding language in a bill after the effective date clause was not law but was only indicative of legislative intent, noting that "If the Legislature had wanted it to be law, it would have put the language contained therein actually into a statute." While this conclusion is open to debate, it is better to prevent this potential issue from arising by placing the section containing the special effectiveness provision as the last one before the digest.

In situations where there are multiple effectiveness provisions, traditionally each separate effectiveness provision is placed within its own section of the bill. Alternatively, within such a bill section the use of subsections (A, B...) may also be employed. See more discussion on multiple effectiveness provisions in [Section 8.5 of this Chapter](#).

8.4 TYPES OF SPECIAL EFFECTIVENESS PROVISIONS

Generally, the types of special effectiveness provisions are: emergency (upon governor's signature), a specific date, or a date contingent upon something else. The following provides discussions on and examples of these effectiveness provisions.

Most special effectiveness provisions have standard language and can be found by choosing "Insert Bill Section" under the "LEGISuite" tab in WordPerfect and then selecting the appropriate effective date clause:



A. Emergency effectiveness

For an instrument to have the soonest effectiveness possible, but without a specific date, an "emergency clause" may be utilized. This provides that the Act will be effective immediately upon signature of the governor or upon the lapse of time for gubernatorial action, which time period differs depending upon whether or not the legislature is in session. If the legislature is in session on the day of delivery of the Act to the governor, the governor has ten days after delivery to veto the bill. If the legislature has adjourned by the tenth day after delivery, this period is extended to twenty days after delivery ([Const. Art. III, §18\(A\)](#)).

Note that no actual emergency is required to use this clause, but the name of the clause comes from the 1921 Constitution, which required the governor to certify the necessity for immediate passage of an Act in order for it to become effective upon his approval.

The standard language of the emergency clause reads like this:

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

B. Specific date effectiveness

A specific date may also be used as the effective date of an instrument. Specific date effectiveness is usually employed when the instrument's effectiveness needs to coincide with a certain time period or event. For instance, most bills dealing with the state fisc need to become effective on the first or last day of the state's fiscal year.

Providing a specific date for the effectiveness of a bill is normally done by adding a Section that reads like this:

Section 2. This Act shall become effective on January 1, 2016.

However, if the selected date could be earlier than forty-five days (forty days until the veto session and five days for the veto session; see [Constitution Article III, Section 18\(C\)](#)) after the end of the session, the special effective date provision reads like this:

Section 2. This Act shall become effective on July 1, 2014; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2014, or on the day following such approval by the legislature, whichever is later.

C. Effectiveness that is contingent upon some specific event

The effectiveness of an Act may also be contingent on another event. When drafting a contingent effective date, consider these questions:

1) Will a specific effective date be determinable? For example, the effective date of another Act is a date that can be determined, but upon the appropriation of sufficient funds is probably not because of the ambiguity of "sufficient".

2) Is the actual date knowable or is the triggering action so obscure that it will be difficult to figure out whether it has occurred? Consider whether and how notice of such action should be communicated to the appropriate authorities.

3) Should the window of opportunity for a contingency event close after some specific time period or remain open indefinitely? Unless the language specifically states that the window closes, the law may remain even though the triggering event is no longer possible.

4) Is there a need to separate the "if" and the "when"? An Act might become effective only if something else happens, but it may be that the Act should not become effective until some time after the trigger event.

If separating "if" and "when", be sure to draft the provision such that effectiveness, and not the timing, is contingent. The language in the following example does not work because it makes the "when" contingent and thereby opens the Act to the question of when it becomes effective if the creature is not removed from the list:

If separating "if" and "when", be sure to draft such that effectiveness, not the timing, is contingent.

Section 2. This Act shall become effective on January 1, 2013 if the U.S. Fish and Wildlife Service removes the black bear from the endangered species list.

Instead, write such a provision so that effectiveness is contingent and the timing of effectiveness is handled separately:

Section 2. This Act shall become effective if the U.S. Fish and Wildlife Service removes the black bear from the endangered species list. If the U.S. Fish and Wildlife Service takes such action, this Act shall become effective January 1 of the year following such action.

Be very careful when delaying the implementation of an Act that amends and reenacts present law; the drafter may need to provide detail about the continued effectiveness of present law until the new law is implemented. Otherwise, the drafter may end up with no law in effect.

D. Types of contingent effectiveness provisions

The following are examples of different contingencies upon which a bill may become effective. This is by no means an exhaustive list.

1) Contingent upon passage of another bill:

The standard language for effectiveness contingent upon another bill can be found by choosing "Insert Bill Section" under the "LEGISuite" tab in WordPerfect and then selecting "Section-Effective Date-Contingent HB".

Section 2. This Act shall take effect and become operative if and when the Act which originated as House Bill No. 223 of this 2011 Regular Session of the Legislature is enacted and becomes effective. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day that House Bill No. 223 becomes effective.

Section 2. This Act shall take effect and become operative if and when the Act which originated as House Bill No. _____ of this _____ Regular Session of the Legislature is enacted and becomes effective.

Note that for both the preceding example and the example that follows, the House Bill number is normally unknown at the time of drafting, so a blank is used. Use a committee amendment to fill in the blank.

2) Contingent upon passage of a constitutional amendment:

Constitutional amendments usually, but not always, are introduced along with a statute which implements the new provisions of the constitution in more detail. These are commonly referred to as "companion legislation" or "statutory companions". It is customary for the companion statute to take effect at the same time or some time after voter approval of the new constitutional provision. The standard language for effectiveness contingent upon a constitutional amendment can be found by choosing "Insert Bill Section" under the "LEGISuite" tab in WordPerfect and then selecting "Section-Effective Date-Contingent CA".

Section 2. This Act shall take effect and become operative if and when the proposed amendment of Article ___ of the Constitution of Louisiana contained in the Act which originated as _____ Bill No. ___ of this _____ Session of the Legislature is adopted at the statewide election and becomes effective.

3) Contingent upon the appropriation of funds

The effectiveness of an Act providing for the implementation of a new program or governmental responsibility may be made contingent upon the appropriation of monies to provide for the new activity. Appropriation contingent clauses are common but can be problematic because of the open-ended and uncertain nature of the contingency because funding may be provided one year and not the next, so it might not be a one-time contingency. Clarity of process is important. For instance, who will determine whether the amount appropriated is "sufficient"? Consideration should also be given to the question of whether the funding requirement should be the mechanism for the law becoming effective. Alternatively, such provision could be placed within the new law as a requirement for implementation of its provisions.

Avoid (ambiguous):

Section 2. This Act shall become effective if and when sufficient monies are appropriated to fully fund the provisions of Section 1 of this Act.

Preferred:

Section 2. The provisions of Section 1 of this Act shall become effective upon an Act of the Louisiana Legislature containing a specific appropriation of monies for the implementation of the provisions of this Act.

Section 3. The provisions of Sections 2 and 3 of this Act shall become effective on July 1, 2011; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2011, or on the day following such approval by the legislature, whichever is later.

4) Contingent upon third party action or a specific event

On rare occasions the provisions of an Act may need to become effective upon the occurrence of some unique and specific event. This would include things like congressional action, a court decision, the receipt of a federal grant, etc. These are sometimes referred to as "triggers". Consider also whether to include a requirement that such action or event must occur by a date certain and how notice of such action or event is to be communicated to the appropriate authorities. In no case can the effectiveness of an Act be based upon the discretion of any person.

It is vital that the explanation of the triggering event be clear and susceptible to objective determination as to whether or not it has occurred. As with cases where effectiveness will be contingent upon an appropriation, if such a provision will be included in a bill, consideration should be given to placing it within the statute so that it will be much easier to be aware of in the future. See [Chapter 7, Special Provisions](#).

Section 4. The provisions of this Act shall not become effective until the Teachers' Retirement System of Louisiana is in receipt of a private letter ruling issued by the Internal Revenue Service, pursuant to a request dated March 15, 2010, concluding that the provisions of this Act will not adversely affect the status of the Teachers' Retirement System of Louisiana as a qualified governmental plan under the Internal Revenue Code.

Section 11. Sections 2 and 6 of this Act shall become effective upon certification by the United States Department of Labor of the Louisiana Workforce Commission as a human resource investment council pursuant to 29 U.S.C. 701 et seq. However, if such certification is not received by January 1, 2019, this Act shall never become effective.

Section 2. The provisions of this Act shall become effective if, as, and when the Department of Natural Resources receives a letter of award from the United States Department of Energy evidencing the obligation of funding in the amount of at least five million dollars per year, for a minimum of three years. Such obligation may be established through the United States Department of Energy, Energy Efficiency and Conservation Block Grant program, the Advanced Battery Manufacturing Grants, or any other federal program which provides funding related to support of green jobs industries. The secretary of the Department of Natural Resources shall notify the secretary of state within three days of receipt of the letter.

8.5 EFFECTIVE UNTIL (EXPIRATION OR TERMINATION CLAUSE)

An expiration or termination clause of an Act or law can have the same effect as a repeal, i.e., the applicable provisions will cease to be given effect as law. Laws can have different kinds of termination and expiration clauses. Agencies, programs, and entire provisions of laws and Acts can expire or terminate upon a certain future date or upon the occurrence of another event. This particular type of expiration or termination is often referred to as "sunset". For more discussion on the sunsetting of agencies and programs, see [Chapter 17, Termination and Re-creation of State Entities](#). Depending upon the wording of the language, termination or expiration when effective can have the same legal effect as a repeal, i.e., the applicable provisions will cease to be given effect as law.

Unless modified by the legislature in a subsequent session, the expiration or termination occurs automatically by reason of the passage of time or occurrence of some other event upon which such expiration or termination may be predicated. As opposed to repeal, no further legislative action is necessary for such expiration or termination. After such termination or expiration occurs and even though the provisions of the law may cease to be given effect, the law may remain "on the books" as a statute or code article or may be declassified by the Louisiana State Law Institute pursuant to its general revisionary authority.

When drafting a termination or expiration clause, care should be taken to specify which provisions are to be terminated. This will avoid the unintentional result of, for example, terminating the provisions of an entire Act when only one provision or part of the Act should have been given an expiration date. Also, keep in mind that if a statute is amended in an Act and a termination date is provided for the entire Act, both the present and new law contained in the Act may be deemed to have expired on the date given.

To the extent possible, termination or expiration clauses should be placed within the language of the law itself and not as a separate section of an Act. This will ensure that those persons affected or interested in the law will have as much notice as possible of its pending expiration or termination. If such language is placed in a bill section, those persons may not be aware of such language, as the provisions are published only as a note. It is also advisable to also repeal the provision from the statutes if the drafter is terminating its effectiveness. In fact there is no problem with enacting and repealing a provision in the same bill; simply make the repealer section effective on the desired termination date.

J. This council shall be null and void and terminate on June 30, 2012.

C. The provisions of Subsection B of this Section shall become null and void on January 1, 2020.

D. Unless otherwise extended by legislation, the authorization for the creation of the board shall terminate on December 31, 2019, and the board shall cease all functions and be dissolved as of that date.

§315. Termination

This Chapter shall cease to be effective on...

Section 2. The provisions of R.S. 32:387.9.1 shall become null and void and have no effect if federal highway funding is withheld due to the passage of this Act.

Section 4. The provisions of this Act shall be null and void and of no effect beginning on January 1, 2013, and thereafter; however, leases entered into under the provisions of this Act shall continue under the terms of the lease.

Be aware that if an Act terminates, everything in it terminates. This includes any statutory provision that is amended and reenacted therein. Said another way, all "present law" goes away, not just the changes made by the Act.

Terminating only the changes to "present law" can be done, but it is more involved than simply adding a termination provision to the Act. The general approach is to draft two enacting sections, the first one makes the changes and the second one unmakes them, and the second section becomes effective on the desired termination date.

This example raises the fee for a driver's license for four years:

Section 1. R.S. 32:412(A)(1) is hereby amended and reenacted to read as follows:

§412. Amount of fees; credit or refund; duration of license; disbursement of funds; renewal by mail or electronic commerce of Class "D" or "E" drivers' licenses; disposition of certain fees; exception

A.(1) Every applicant for a Class "D" driver's license, or for a renewal of a Class "D" driver's license, except those bona fide residents of the city of New Orleans, shall pay for such basic license a fee of ~~twenty-eight dollars and fifty cents~~ thirty dollars. Seven dollars and forty-three cents of the fee shall be paid to the State Police Pension and Retirement Fund. One dollar of the fee shall be forwarded by the department to the litter abatement and education account which is created within the Conservation Fund through the provisions of R.S. 56:10(B)(15).

* * *

Section 2. R.S. 32:412(A)(1) is hereby amended and reenacted to read as follows:

§412. Amount of fees; credit or refund; duration of license; disbursement of funds; renewal by mail or electronic commerce of Class "D" or "E" drivers' licenses; disposition of certain fees; exception

A.(1) Every applicant for a Class "D" driver's license, or for a renewal of a Class "D" driver's license, except those bona fide residents of the city of New Orleans, shall pay for such basic license a fee of ~~thirty dollars~~ twenty-eight dollars and fifty cents. Seven dollars and forty-three cents of the fee shall be paid to the State Police Pension and Retirement Fund. One dollar of the fee shall be forwarded by the department to the litter abatement and education account which is created within the Conservation Fund through the provisions of R.S. 56:10(B)(15).

* * *

Section 3. (A) Section 1 and this Section of this Act shall become effective on January 2014.

(B) Section 2 of this Act shall become effective on January 1, 2018.

8.6 MULTIPLE EFFECTIVENESS SECTIONS WITHIN THE SAME BILL

In some cases, circumstances require that various provisions of the Act become effective at different times. This is accomplished by assigning effective dates to specific bill sections rather than a single date to the Act as a whole. In drafting an effectiveness section in such a case, the general phrase, "This Act shall become effective...", cannot be used. As mentioned previously in this Chapter, where multiple effectiveness provisions are concerned, typically each separate

effectiveness provision is placed within its own section of the bill. Another option would be to use subsections (A, B...) within a bill section.

If the drafter needs to distinguish effective dates, the drafter must structure the bill so that provisions which need different effective dates are in different bill sections. For example, if the drafter is making two different changes in the same section of law and needs the changes to have different effective dates, the two changes should be in different enacting sections. This is an exception to the general rule that all statutory amendments and enactments within a single Code or Title should be in a single enacting section.

Section 3. The provisions of this Section and Sections 1 and 4 of this Act shall become effective upon signature of this Act by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and subsequently approved by the legislature, Section 1 of this Act and this Section shall become effective on the day following such approval.

Section 4. The provisions of Section 2 of this Act shall become effective on July 1, 2018.

Section 3.(A) The provisions of Section 1 of this Act and of this Section shall become effective upon signature of this Act by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and subsequently approved by the legislature, Section 1 of this Act and this Section shall become effective on the day following such approval.

(B) The provisions of Section 2 of this Act shall become effective on July 1, 2018.

When assigning different effective dates to the different bill sections, it is preferable to specify an effective date for all bill sections including the effective date section itself. If the Act is silent on when a particular section becomes effective, the regular effective date provided for by the constitution will probably apply to that section, but it is better to specify August 1 if that is what the drafter means for it to be.

Caution: An easy error to make in drafting a multiple effective date section is to have some sections of the Act ostensibly become effective before the effective date section.

An example of such potential confusion would be:

What not to do with special effectiveness sections:

Section 1. Provision of law

Section 2. Provision of law

Section 3. The provisions of Section 2 shall become effective on June 1, 2016.

The preceding example raises the following questions:

- 1) What is the effective date of Section 1? August 1?
- 2) Is the effective date of Section 3 also August 1 or does it not need an effective date?

While a court may give effect to the legislative intent expressed in Section 3, it is better to avoid the potential confusion and instead draft a provision as follows:

Section 4. The provisions of Sections 1 and 3, and this Section shall become effective on _____.

Example of multiple special effective dates:

Section 5. The provisions of Section 2 of this Act shall become effective on January 1, 2015.

Section 6. The provisions of Sections 1, 3, 4, 5, and 6 of this Act shall become effective on July 1, 2014.

CHAPTER 9. DIGESTS

9.1 OVERVIEW

The digest is a brief narrative summary of the contents of a legislative instrument. The purpose of the digest is to assist the reader in understanding the effects of the instrument. This requires a subjective determination by the drafter as to the most important provisions of the instrument.

To write an effective digest, several factors should be considered:

- ❖ The drafter should focus on the substantive changes being made to the law.
- ❖ The drafter should take care not to oversimplify the changes being made to the law.
- ❖ The digest should not restate every provision contained in the instrument.
- ❖ The digest should not include a summary of the technical decisions made by the drafter.

Digests have three components:

- A. Abstract
- B. Bill summary
- C. Citation line

Each of these components will be discussed in more detail.

9.2 ABSTRACT

An abstract is a very concise overview of the contents of a legislative instrument. Like the summary portion of the digest, it is written by the drafter to assist readers. Unlike the bill summary, however, its purpose is to provide the reader with the gist of the legislation in a sentence or two.

An abstract may contain colloquialisms not generally used in law or state a well-founded conclusion. The drafter may use an abstract to include relevant information that is not necessarily found in the "four corners" of the legislation, or to include any other nonconfidential information if the inclusion thereof would assist the reader in quickly understanding either the purpose of the bill or its effect. Abstracts may also contain abbreviations or acronyms to

Great effort should be taken to not simply duplicate the oneliner as the abstract.

aid in giving context to the legislation. Great effort should be taken to not simply duplicate the oneliner as the abstract.

Consider the following examples:

Example of an abstract which expounds upon the oneliner:

Oneliner: Extends the termination date of the Interagency Task Force on the Future of Family Medicine

Abstract: Changes the termination date of the Louisiana Interagency Task Force on the Future of Family Medicine to Sept. 1, 2008.

Example of an abstract which provides jurisprudential context for the oneliner and instrument:

Oneliner: Provides for civil damages

Abstract: Prohibits the loss of enjoyment of life damages and legislatively overrules *McGee v. AC&S, Inc.*, 933 So.2d 770 (La. 2006).

9.3 BILL SUMMARY

A. Generally

The bill summary is the narrative part of the digest, presented in layman's terms highlighting the relevant parts of the bill, and organized in a manner that allows the reader to readily understand the context of the bill. Though many others will read the digest, the drafter's focus should be on readability for all members of the legislature, the primary audience. Many members use the digest to gain greater understanding of the effects of the bill.

No one digest format applies to all circumstances. However, some general rules apply to all digests:

1) Amend or repeal.

When the instrument is a bill that amends or repeals one or more provisions of law, the digest should include a brief description of the "present law" followed by a brief statement of the "proposed law". These statements should be juxtaposed in a manner that makes clear the changes which will occur if the bill is enacted.

Examples of a digest of a bill amending a provision of law:

Example 1

Present law authorizes a justice of the peace to perform marriage ceremonies within the parish where the court of that justice of the peace is situated, and in any parish within the same supreme court district, which has no justice of the peace court. Proposed law retains present law and adds that a justice of the peace may perform a marriage ceremony in any parish within the same supreme court district or in a parish which has no justice of the peace court.

Present law authorizes a justice of the peace to appoint a person residing within the territorial boundaries of the court to serve as a justice of the peace ad hoc for a maximum of 30 days in each year. Proposed law requires the justice of the peace to notify the office of the attorney general within 72 hours of the appointment and provide the name, address, and telephone number of the ad hoc justice of the peace.

Present law provides that the justice of the peace ad hoc shall meet the qualifications required by law for the office of justice of the peace and be paid the same compensation from the same sources and have the powers and duties of a regular justice of the peace. Proposed law retains present law.

(Amends R.S. 9:203(A)(5) and R.S. 13:2592(A))

Example 2

Provides that the circumstances where human life is endangered shall be any situation where the operator of the fleeing vehicle commits at least two of the following acts:

- (1) Leaves the roadway or forces another vehicle to leave the roadway.
- (2) Collides with another vehicle.
- (3) Exceeds the posted speed limit by at least twenty-five miles per hour.
- (4) Travels against the flow of traffic.

Present law penalties include imprisonment at hard labor for not more than two years. Proposed law retains present law and adds the following two aggravating circumstances:

- (1) Failure to stop at a stop sign.
- (2) Failure to obey a traffic control signal.

Example of a digest of a bill repealing a provision of law:

Present law provides for the Rapides Parish Tri Fire Protection District, including a board of commissioners and its duties, functions, and powers.

Proposed law repeals present law.

2) *Enact.*

When the bill enacts a new provision of law, the digest should contain a brief description of the new "proposed law" provisions; however, if a discussion of present law is necessary to give context to the proposed law, then such explanation should also be included.

Examples of a digest of a bill enacting a new provision of law:

Example 1

Proposed law provides that the Honor and Remember flag shall be an official state emblem of military service. Authorizes the flag to be flown over the state capitol on Memorial Day and Veterans Day.

Example 2

Present law provides for classification of controlled dangerous substances in Schedules I through V.

Proposed law adds 27 hallucinogenic substances to the list of Schedule I controlled dangerous substances.

3) Resolution or Study Request.

When the instrument is anything other than a bill (resolutions, study requests, etc.), the digest should briefly describe the effect of the instrument.

Examples of a digest of a resolution or study request:

Example 1

Requests DOTD to install a traffic light at the intersection of Orange St. and La. Hwy. 529 (Millhaven Road) in Ouachita Parish.

Example 2

Requests the House Committee on Ways and Means to study the feasibility of providing for an occupational license tax exemption for certain businesses and professionals and to report its findings to the House of Representatives prior to the convening of the 2009 R.S.

Example 3

Commends the Lafayette Little League's Challenger program upon its selection to participate in an exhibition game at the 2011 Little League World Series.

B. Things to consider when drafting bill summaries

1) Definitions.

When the body of the instrument contains one or more definitions, it is not necessary to restate the definitions in the digest unless it is crucial to understanding the instrument. It is acceptable to alert the reader that there is a new or revised definition as follows:

Present law provides that the clerk of court shall make forms available and provide assistance to petitioners in filing a protective order.

Proposed law retains present law and additionally authorizes domestic abuse advocates to provide clerical assistance to petitioners in filing a protective order.

Proposed law defines "domestic abuse advocate".

2) Context.

When the body of the instrument enacts a new provision, it may require an explanation as to how it relates to present law.

Present law establishes the Artificial Reef Development Fund. Provides that monies in the fund are to be used for the operation of the artificial reef program in the Dept. of Wildlife and Fisheries, including permitting, establishing, monitoring, and maintenance of the artificial reefs.

Proposed law allows up to 10% of the annual donations and interest income from the fund to be used by the department to provide funding for inshore fisheries habitat enhancement projects, particularly in support of the Artificial Reef Program. Provides that such funding may be used for grants to nonprofit conservation organizations working in cooperation with the department.

3) Comprehensive revisions.

When drafting a lengthy, comprehensive piece of legislation, the drafter may want to summarize the major changes as follows:

Proposed law provides for a comprehensive revision to present law provisions, including the following major changes:

- (1) Amends the definition of "aggravated offense" and requires those offenders to register for life.
- (2) Adds the definition of "sexual offense against a victim who is a minor" and requires those offenders to register for a period of 25 years.
- (3) Provides that all other sex offenders shall register for a period of 15 years.
- (4) Requires juveniles over the age of 14 who have been adjudicated delinquent for certain offenses to register with local law enforcement agencies.
- (5) Requires sex offenders and child predators to register with the sheriff of the parish of residence, where the offender attends school, where the offender works, and in the parish of conviction.

(6) Requires the offenders to provide additional information to law enforcement upon registration.

(7) Decreases the time period in which an offender has to register from 10 days to three business days.

4) Special effective dates.

When drafting a bill with a special effective date, the drafter must include an effective date clause as follows:

Present law creates the West Calcasieu Parish Community Center Authority for the purpose of operating a rodeo arena, sports complex, or community center within the boundaries of Wards four, five, six, and seven of Calcasieu Parish.

Proposed law retains present law but additionally provides that the authority is a political subdivision of the state of La.

Effective upon signature of governor or lapse of time for gubernatorial action.

5) Customary digest drafting conventions.

Abbreviations may be used when drafting a digest and are often used particularly with the names of state departments, funds, or programs. Likewise, when using numerals, the general rule of thumb is to spell out numerals below 10 and use figures for 10 and above. An exception to this rule is the pairing of numerals and symbols (\$, %, etc.) in which case numerals may be used even if the figure is below 10. It is also customary to underline changes made to the amounts of certain fees or costs by using "from" and "to" as seen in the example below.

Present law provides for a \$4 cost on all civil suits in Lafayette Parish to be forwarded by the clerk of court to the Lafayette Parish Law Library Commission.

Proposed law increases this cost from \$4 to \$7.

6) Headings, charts, and other visual cues.

While the standard bill summary requires conformity with the above examples, the drafter should consider the use of headings, charts, or other visual cues when such will assist the reader in discerning the important points of a bill. Headings should be bolded and use initial caps of words as in a title, and charts must be created within the digest (i.e. the drafter cannot insert a chart created in another software program).

Abstract: Updates applicability of provisions in Title 11 as a result of the 2010 census.

Proposed law, contained in Title 11 (Consolidated Public Retirement Systems) of the Louisiana Revised Statutes of 1950, legislates with regard to classifications of parishes, municipalities, or other political subdivisions or local areas according to population by limiting applicability to one or more political subdivisions or local areas, as follows:

CITATION/ TOPIC	EXISTING LAW	AFFECTED LOCATIONS	PROPOSED LAW
R.S. 11:413(15) - Classes of employees not eligible for Louisiana State Employees' Retirement System (LASERS) membership	Certain employees of a political subdivision created for the purpose of development of an industrial air park in a parish with a population of 180,000 - 185,000	Calcasieu Parish (2000 census)	Calcasieu Parish
R.S. 11:721.1(A) - Individuals for whom membership in the Teachers' Retirement System of Louisiana (TRSL) is optional	School superintendent in a city or parish having a population of 450,000+	Orleans Parish (1990, 2000 census) and Jefferson (2000 census)	Orleans and Jefferson parishes
R.S. 11:1511 - Individuals eligible for membership in the Clerks' of Court Retirement and Relief Fund	Clerks of the city and traffic courts in cities having a population of 400,000+	City of New Orleans (1980, 1990, 2000 census)	City of New Orleans

CITATION/ TOPIC	EXISTING LAW	AFFECTED LOCATIONS	PROPOSED LAW
R.S. 11:1562(A) and (C) - Employee contributions to the Clerks' of Court Retirement and Relief Fund	Clerks of the city and traffic courts in cities having a population of 400,000+	City of New Orleans (1980, 1990, 2000 census)	City of New Orleans
R.S. 11:1752(B)(3) - Persons eligible for membership in the Municipal Employees' Retirement System (MERS)	Clerks of city courts in cities having a population of 400,000–	Every city except New Orleans (1980, 1990, 2000 census)	Except City of New Orleans
R.S. 11:1921(A)(3)(a)(ii) - Persons not eligible for membership in the Parochial Employees' Retirement System (PERS)	Certain justices of the peace in a parish with a population between 23,350 - 23,400	Assumption Parish (2000 census)	Assumption Parish

(Amends R.S. 11:413(15), 721.1(A), 1511, 1562(A) and (C), 1752(B)(3), and 1921(A)(3)(a)(ii))

9.4 CITATION LINE

Each bill and certain resolutions end with a statement of the statute, codal article, or administrative law provision affected by the legislative instrument and the type of action taken (i.e. whether the provision is amended, repealed, or enacted).

A drafter should always ensure that the citations in the citation line and the citations provided in the title of the instrument are identical. If an amendment is adopted which affects the statutory or administrative law provisions in the title, the drafter must update the citation line as well when writing the redigest.

There are very specific instructions for drafting the citation line:

A) *The citation line is always enclosed in a set of parentheses.*

Examples of citation lines of instruments amending provisions of law:

(Amends R.S. 40:2803(C)(intro. para.) and (D))

(Amends LAC 46:XXXVII.709(E)(6))

(Amends C.Cr.P. Art. 814(A)(3))

(Amends Const. Art. V, §23(B))

Examples of citation lines of instruments enacting provisions of law:

(Adds R.S. 46:2134(G))

(Adds R.S. 22:215.12 and R.S. 42:808(A)(10))

Examples of citation lines of instruments repealing provisions of law:

(Repeals R.S. 13:4751(C)(2)(d))

(Repeals R.S. 37:1361-1380)

B) *When instruments contain multiple actions, each set of action is separated by a semi-colon and each action is capitalized.*

(Adds R.S. 13:1801-1842; Repeals R.S. 13:1700-1724)

(Amends R.S. 37:793(A)(1)(d) and (2)(a), (B)(1), (2), and (3), (C), (D)(1), (2)(intro. para.) and (c), (E), (F), (G)(1), and (H); Adds R.S. 37:793(B)(4) and (5); Repeals R.S. 37:793(A)(1)(i))

C) *When an instrument contains multiple actions in various titles or codes, beginning in chronological order of the titles or codes, list all provisions that are amended, followed by those provisions that are enacted (be careful to use the word “adds” instead of “enacts”) and then those provisions that are repealed.*

Example of a citation line of an instrument amending, enacting and repealing provisions of law in various codes and titles *[emphasis added]*:

(Amends Ch. C. Art. 310, C.C.P. Art. 2593, C.Cr.P. Art. 512 and 513, R.S. 3:3501, 3502(1), (4), (11), (15), and (21), 3503(E) and (F)(intro. para.), 3504, 3506, 3507, 3508(A), (B), and (C)(2), 3509(A), (C),(D), (F), (G), and (I), 3554(C) and (D), 3555, and 3556, R.S. 11:42(B)(1), (2), (3), (6), (7), (8)(a), and (9), 102(B)(3)(d)(v), (vi), (vii), and (viii), 103(B)(1) and (3)(d) and (e)(i)(bb) and (C)(intro. para.), 783(A)(3)(e), (C), (D)(1)(b)(ii), (F), (G)(1)(b)(ii), and (I)(1)(b)(ii), 883.3(E), and 1481(1)(a)(iii)(aa), R.S. 12:202.1(D), R.S. 14:67.21(F) and 403.6 (A), R.S.22:1078(A)(1), R.S. 24:7, 31.4(B)(1), 31.5(A)(4)(a) and (b) and (5) and (C)(1)(a), 52, 55(D)(2) and (E)(2)(a), 101, 107(A), 653(K)(1) and (3), R.S. 30:10.1(B)(3), 213(A)(2), and 2117(E), R.S. 36:4(B)(1)(a), (b), (c), (d), (e), (j), (k), (l), (m), (q), and (z) and (15), 610(B)(2), 628(C)(1), 642(B) and (D)(1), 651(D)(1), (J), and (Q), 744(D), and 769(F)(2), R.S. 42:1118.1(A) and 1123(13)(a)(i)(dd), R.S. 44:4.1(B)(6) and (7), and R.S. 49:220.23(A)(1), 220.24(J), and 965.4(4); Adds R.S. 11:701(33)(a)(xiii) and R.S. 36:4(B)(1)(r), (s), and (aa), 259(K), (N), (R), and (BB)(1), 359(B) and (C), 409(K), 610(G), 629(H) and (M), 651(D)(5), (O), and (V), 706(B), 769(K) and (L), R.S. 42:4.1.1, and R.S. 44:1.1; Repeals R.S. 11:701(33)(c), R.S. 36:4(B)(10), 259(E)(18), (F)(6), (7), (11), (13), (14), and (17), 409(C)(6) and (I), 651(S) and (T), and 802.11, and R.S. 42:1141(B)(3))

CHAPTER 10. AMENDMENTS

10.1 OVERVIEW

A. Generally

Once a bill, resolution, or joint resolution has been introduced, it may be changed or modified only by means of an amendment. Amendments are prepared by the drafter and offered by a House member to make any changes or modifications to an instrument being heard in a House committee or on the House floor. Substantive amendments may add, change, or delete language in an instrument. Those amendments that simply add, change, or delete punctuation; correct grammar or typographical errors; correct citations; or make other changes that do not affect the substance of the law are considered technical amendments. A set of amendments may do any combination of these actions.

Instruments are typically amended during a House or Senate committee hearing or while being debated on the floor of either chamber. Therefore, amendments are typically identified as “committee amendments” and “floor amendments”. A drafter may also encounter substitute bills, legislative bureau amendments, committee of the whole amendments and conference committee reports. Most of these will be discussed in this Chapter. For a discussion on conference committee reports, see [Chapter 13](#).

B. Germaneness

Regardless of the type of amendment, the [Louisiana Constitution, in Article III, Section 15\(C\)](#), provides that no bill shall be amended in either house to make a change not germane to the bill as introduced. [House Rule 11.1](#) reiterates this same point. The issue of germaneness of an amendment to the bill as originally introduced is related to the constitutional requirements that each bill be confined to one object and that each bill contain a brief title indicative of its object. To determine whether an amendment is germane to the bill, it is necessary to examine the object of the bill as expressed in its title. If the amendment is in close relationship, appropriate, relative, or pertinent to the object of the bill, as stated in the original title, the amendment should be germane to the bill for the purposes of Section 15(C).

C. Confidentiality

Like all instruments prior to introduction, a drafter is required to treat any amendment as confidential until it is “offered” by the author of the amendment. The author of the amendment may permit a drafter to discuss the amendment request with others including other members or interested stakeholders. However, the drafter must be certain to have clear

and express permission before doing so. During a conversation regarding an amendment request, a drafter may find it helpful to advise and reiterate to the member that an amendment is confidential until the member waives confidentiality. This is particularly important if the drafter will need to consult individuals outside of HLS to adequately draft an amendment.

Because any member can request an amendment to any bill, although different procedures apply to accomplish this, a drafter may receive requests from different members to draft amendments that are diametrically opposed to one another. In maintaining the confidence of each member, the drafter must never reveal to either member or the author of the instrument the existence or the nature of any such opposition unless and until the amendment is made public on the internet or in committee. A drafter may also encounter instances where several members request the exact same amendment or amendments that are substantially similar. Again, without the member's waiver of confidentiality, the drafter must never indicate to any other member or the instrument's author the existence of a similar amendment request.

D. Drafting multiple amendments to the same instrument

Initially, a drafter must draft each amendment as an independent request, giving little consideration to how another member's amendment will affect it. There are no guarantees that any amendment will be adopted so each amendment must be able to stand on its own. Upon adoption of an amendment, the drafter will then need to consider the affect of that amendment before drafting any subsequent amendment request for the instrument.

10.2 COMMITTEE AMENDMENTS

A. Generally

Committee amendments may be offered by any member of the committee which hears the bill ([House Rule 14.7](#)). Other members of the legislature wanting to make changes to an instrument being heard before a committee may do so only through a committee member. Amendments adopted by a committee are reported in the name of the committee. These proposed committee amendments are included in the committee report submitted to the House. Once the House committee amendments are adopted by the full House, the changes required by the amendments are incorporated into the bill upon engrossment.

B. Committee rules and procedure

[House Rule 14.1](#) authorizes standing committees to adopt rules to govern its procedure not inconsistent with the Rules of Order of the House of Representatives. To that end, some committees elect to adopt special rules regarding the introduction of committee amendments. For example, a committee may have a rule requiring all amendments that are to be proposed

for a legislative instrument be submitted to committee staff for drafting twenty-four hours prior to the instrument being heard in committee. These types of special rules are designed to give a drafter sufficient time to draft a quality amendment and make all preparations needed to allow the amendment to be discussed during the committee hearing. If a committee has adopted such a rule, the drafter for that committee should check with the chairman to verify his intent to enforce it.

C. Starting the committee amendment

To begin drafting a committee amendment, a drafter should open a new Amendment Request in Task Organizer and select House Committee Amendment as the “Amendment Type” and “Draft Type”. The drafter will need to input the House instrument number and select the appropriate version of the instrument. Lastly to launch the draft in WordPerfect, the drafter should click "Draft". In WordPerfect, the drafter will need to answer the prompts including the appropriate committee name.

D. Publishing the committee amendment

If a member who has requested an amendment wants to waive confidentiality and make his amendment public, he may accomplish this in several ways. The member may distribute, or ask the drafter to distribute, actual or electronic copies of his amendment to the committee members and interested stakeholders. He may also request that the amendment be posted to the Internet on the joint legislative website. If such a request is made, the drafter should draft the amendment as requested by the member and coordinate with the committee secretary to have the amendment posted.

E. Substitute bills

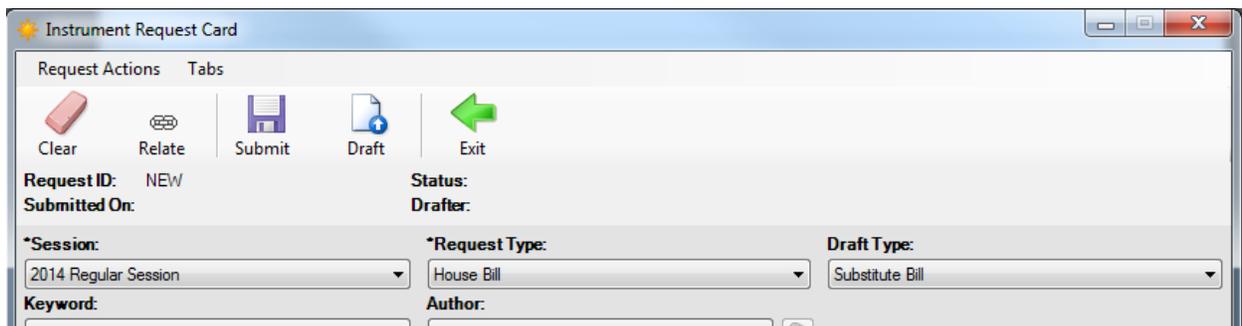
A committee in the house of origin may report a substitute for any bill or joint, concurrent, or simple resolution on the same subject or for several such measures of the same type on the same subject. A substitute instrument must be germane to the original instrument. Any report by a committee which would have the effect of striking all material following the enacting clause of a bill in the house of origin must be reported by substitute ([House Rule 6.12](#)). Substitutes are also sometimes used when an instrument is being heavily amended in committee.

Substitute bills are treated as one large amendment which rewrites the original bill. The same rules for confidentiality and germaneness apply.

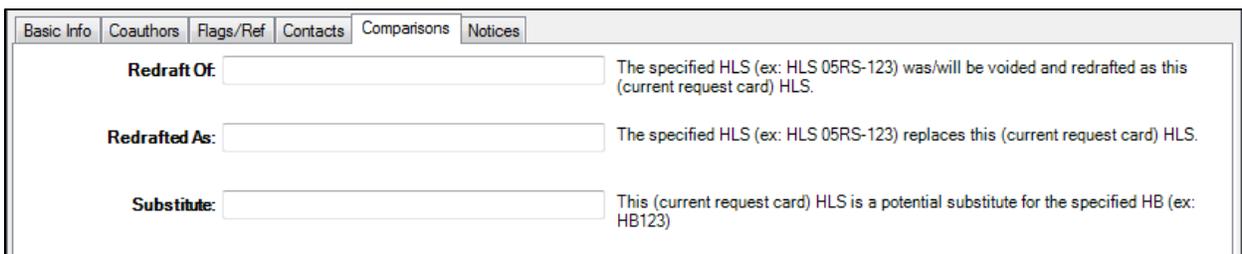
If a recommendation for a substitute bill is adopted, it is given a new bill number and must be read on three separate days.

The substitute must reflect the same authors in the same order as those of the instrument being reported by substitute, if the authors consent. If more than one instrument is reported by the same substitute, those authors present and consenting must be listed as they appear on such instruments in the order in which the instruments were introduced. Additional coauthors may be added.

In order to draft a substitute bill, the drafter must open two requests in Task Organizer. The first is a new bill request. The drafter will select House Bill as the “Request Type” and Substitute Bill as the “Draft Type”:



The drafter should also use the Comparisons tab to provide the number of the House Bill for which the substitute bill is being drafted.



The drafter will then launch the request in WordPerfect and draft the substitute bill as a normal bill. The substitute bill is styled as follows (note the bill number is included after the bill has been introduced):

HLS 14RS-1942

ORIGINAL

Regular Session, 2014

HOUSE BILL NO. 1074 (Substitute for House Bill No. 672 by Representative Whitney)

BY REPRESENTATIVE WHITNEY

Once the substitute bill has been drafted, the drafter will need to open an Amendment Request to draft the Substitute Bill Amendment. The drafter will select House Committee Amendment as the “Amendment Type” and Substitute Bill as the “Draft Type”. He will also need to input the original bill number for which the substitute bill is being drafted and select the correct version of the bill.

The screenshot shows a software window titled "Amendment Request Card". At the top, there are "Request Actions" and "Tabs". Below this is a toolbar with icons for Restore, Print, Copy, Relate, Original, Submit, and Exit. The main area displays the following information:

- Amendment ID: HLS 14RS-2060-A
- Submitted On: 3/24/2014
- Status: Filed
- Session: 2014 Regular Session (dropdown menu)
- *Bill: HB672 (text input)
- *Version: Original (dropdown menu)
- Amendment Type: House Committee Amendment (dropdown menu)
- Draft Type: Substitute Bill (dropdown menu)

The Substitute Bill Amendment contains the substance of the substitute bill without the standard formatting used for regular bills and is styled as follows:

HCAHB672 2709 2060

HOUSE COMMITTEE AMENDMENTS

Substitute for Original House Bill No. 672 by Representative Whitney as proposed by the House Committee on Health and Welfare

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

F. Considerations for committee amendments

1) Drafting amendments during committee

During a committee hearing, the debate of an instrument may require the drafting of amendments that are not prepared prior to the hearing. If permitted by the chairman, a drafter will prepare those amendments for consideration during the hearing. The drafter will open an amendment request in Task Organizer and proceed in the same manner as outlined in this Chapter. In this instance, if it is prudent to do so, the drafter may need to print copies of the amendment for distribution during the hearing. The drafter should also coordinate with the committee secretary to have the amendment posted to the Internet during the debate.

2) "Concept" amendments

There will be times during an instrument's debate that committee members may want amendments that require additional research, information, or wording not readily available during the hearing. The drafter may be asked to present the amendment to the committee members "in concept" which essentially means that there is an agreement in understanding of the amendment's goal although there is no exact wording at that moment to adopt. In the event an amendment is being offered in concept, with the committee's instructions to the drafter to "flesh" it out after the meeting, the drafter must make sure that the committee's and drafter's understanding of the amendment are the same. The drafter should feel free to either restate to the committee what he believes the amendment to be or ask for clarification. Once the "concept" amendment has been drafted, the drafter may need to make additional technical amendments that were not discussed by the committee; for example, amendments to the title of the bill to reflect the changes made to the bill by the "concept" amendment. Those technical amendments are permissible. However, substantive amendments other than what committee members agreed upon should not be added; those should be handled in floor amendments.

3) Deferral of an instrument

Committee hearings can become extremely busy when controversial instruments are being debated. Sometimes lengthy and complicated amendments are proposed on short notice during the hearing. If this happens, a drafter may need to discuss with the chairman the possibility of deferring the legislative instrument until a later time during the hearing or a later date in the session to have the amendments properly prepared for consideration. Some committees may vote to pass the legislative instrument out of committee with the agreement that the amendments will be prepared as floor amendments.

10.3 FLOOR AMENDMENTS

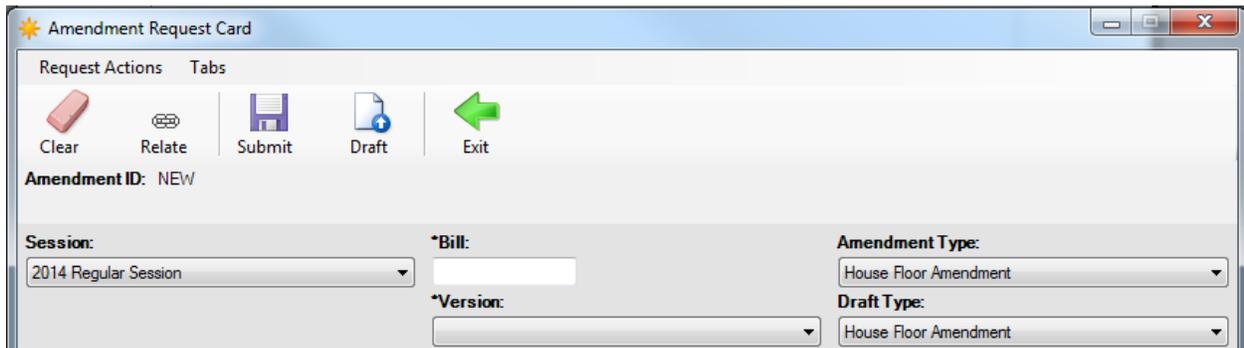
A. Generally

Floor amendments are amendments that may be proposed to any instrument being considered on third reading and final passage. Unlike committee amendments, any member of the House can propose floor amendments. Floor amendments, otherwise, are prepared similarly to committee amendments and in the name of the requesting member and are equally confidential.

A drafter should be aware and advise any member requesting a floor amendment that floor amendments become public when they are submitted to the front desk of the House ([House Rule 11.4](#)). The drafter should review any drafted floor amendment with the requesting member to be certain the member is ready to "release" the amendment before submitting it to the front desk.

B. Starting the floor amendment

To begin drafting a floor amendment, a drafter should open a new Amendment Request in Task Organizer and select House Floor Amendment as the "Amendment Type" and "Draft Type". The drafter will need to input the House instrument number and select the appropriate version of the instrument. Lastly to launch the draft in WordPerfect, the drafter should click "Draft". In WordPerfect, the drafter will need to answer the prompts including the author's name.



The screenshot shows a software window titled "Amendment Request Card". At the top, there are "Request Actions" and "Tabs". Below this is a toolbar with five icons: a red eraser labeled "Clear", a chain link labeled "Relate", a floppy disk labeled "Submit", a document with a plus sign labeled "Draft", and a green arrow pointing left labeled "Exit". Below the toolbar, it says "Amendment ID: NEW". The main area contains several fields: "Session:" with a dropdown menu showing "2014 Regular Session"; "*Bill:" with an empty text input field; "Amendment Type:" with a dropdown menu showing "House Floor Amendment"; and "*Version:" with an empty dropdown menu. Below the "*Version:" field is another dropdown menu showing "House Floor Amendment".

C. Instruments originating in the House

Like committee amendments, House floor amendments offered to a legislative instrument which originated in the House are incorporated into the instrument once the amendment has been adopted by the House.

10.4 TECHNICAL AMENDMENTS

A. Generally

Technical defects to a legislative instrument include: citation reference errors; spelling, capitalization, punctuation, and syntax errors; and format and stylistic inconsistencies. Technical amendments correct these defects without impacting the substantive effect of the instrument.

A committee usually adopts technical amendments without debate and prior to the consideration of any substantive amendments. Therefore, it is advisable that a drafter prepare technical amendments separate from substantive amendments so that the technical amendments can be adopted without regard to what may happen with the substantive amendments.

<p>HOUSE COMMITTEE AMENDMENTS</p> <p>Amendments proposed by House Committee on Transportation, Highways, and Public Works to Original House Bill No. 396 by Representative Terry Landry</p> <hr/>
1 <u>AMENDMENT NO. 1</u>
2 On page 2, line 14, after " <u>such</u> " change " <u>arow</u> " to " <u>arrow</u> "

B. Important points regarding technical amendments

- ❖ Technical amendments are sometimes needed for instruments pending in committee. A drafter should always read instruments scheduled for committee hearing prior to the hearing in order to identify and prepare any necessary technical amendments.
- ❖ A drafter should exercise care when telling a member that an amendment is technical. Technical amendments should be **solely** technical in nature. If in doubt as to whether an amendment is technical, a drafter should discuss this with his division director.
- ❖ According to [House Rule 2.10\(A\)\(14\)](#) and [R.S. 24:13](#), the clerk of the House is also authorized to make technical corrections to legislative instruments originating in the House upon enrollment. These corrections may:
 - 1) Number, designate, renumber, or rearrange, or redesignate items in a numerical or alphabetical listing to establish a numerical or alphabetical sequence.

- 2) Change reference numbers to agree with numbered Chapters and Sections.
- 3) Substitute the proper Chapter, Section, or other subdivision term or other proper citation for the terms "this Act", "the preceding Section", and the like.
- 4) Delete figures where they are merely a repetition of written words and vice versa.
- 5) Change capitalization for the purpose of uniformity.
- 6) Correct misspellings and manifest punctuation and other typographical errors.

10.5 LEGISLATIVE BUREAU AMENDMENTS

All instruments intended to have the effect of law are examined by the Legislative Bureau ([House Rule 8.19](#)). Each bill, joint resolution, or concurrent resolution proposing the suspension of a law is referred to the Legislative Bureau prior to its advancement to third reading in the house where it did not originate for examination and report as to construction and duplication. The bureau report is advisory only and may contain amendments ([Joint Rule No. 3](#)).

The Legislative Bureau, after examining legislative instruments, in a report to the front desk of the House, may submit amendments to be adopted by the legislature. Traditionally, these amendments are technical in nature and are usually adopted without debate. A drafter may be given advanced notice from the Legislative Bureau when the bureau has proposed amendments to an instrument. The drafter should also check the legislative website for the posting of any proposed bureau amendments. It is advisable that the drafter review proposed bureau amendments prior to adoption to ensure that the amendments do not make substantive changes and advise the bill's author, or the member handling the bill, of any issues associated with the bureau amendments.

A Legislative Bureau amendment is usually identified as "House Floor Legislative Bureau Amendment". Bureau amendments are usually proposed by a member on behalf of the bureau.

HOUSE FLOOR AMENDMENTS	
Amendments proposed by Representative Barrow on behalf of the Legislative Bureau to Engrossed House Bill No. 186 by Representative Henry	
1	<u>AMENDMENT NO. 1</u>
2	On page 1, line 17, following "or" and before "device" insert " <u>any</u> "

10.6 GENERAL AMENDMENT DRAFTING GUIDELINES

A. Generally

Proper drafting of an amendment is essential. Both the substantive material to be added, deleted, or changed and the amendment instructions must be clear, simple, and accurate in order to express the intent of the committee or member proposing the amendment. Accurate text and instructions are also essential to ensure proper engrossment and enrollment of a legislative instrument.

Instructions for each amendment should specify the version, page, and line number of the instrument being amended. A drafter should always ensure that the latest version of the instrument is used in preparing amendments. The drafter must draft amendments in the order each change would appear in the bill.

B. Coding

Amendments to bills must follow certain coding conventions to indicate deletions from and additions to the present law.

- ❖ Except for certain Senate bills, new law is always underscored.

AMENDMENT NO. 1

On page 1, line 12, after "year." insert "The provisions of this Subsection shall not apply to any day on which the school support employee performs work as a substitute teacher for less than a single class period."

AMENDMENT NO. 1

On page 2, between lines 3 and 4, insert the following:

"(8) The governing committee of the association shall consist of ~~not less than nine nor more than twenty five~~ seventeen members who shall be residents of this state."

- ❖ Do not underscore language which restores present law (using the preceding example).

AMENDMENT NO.

On page 2, line 3, delete "seventeen" and insert "not less than nine nor more than twenty-five"

- ❖ Deletions from the present law are only shown as overstruck if they are within the text of the amendment. In the preceding example inserting Paragraph (8), the paragraph is being added to the bill and overstriking is necessary because the deleted present law is within the text of the amendment.
- ❖ Present law to be deleted should not be overstruck.

AMENDMENT NO. 1

On page 2, line 4, after "The" delete "governing committee" and insert "board of directors"

- ❖ Ignore all overstruck language as though those portions of the bill were blank spaces. If adding or restoring language in those places, use the last underscored or uncoded word or its position on the line to identify where the language is to be placed (see preceding amendment example inserting Paragraph (8)).
- ❖ Do not include a general or specific instruction to "delete the underscored language..." or "delete the overstriking...". When restoring present law that is overstruck, do not include instructions to delete the overstruck word. Delete "~~the~~" and insert "the" is incorrect.

C. Insert/Delete

- ❖ When adding language within the existing confines of the bill, use the term "insert". When adding language after the last line of the bill, use the term "add". When removing language, use the term "delete".

AMENDMENT NO. 1

On page 1, line 3, after "(9)," insert "and"

AMENDMENT NO. 3

On page 5, between lines 6 and 7, insert a set of asterisks "* * *"

AMENDMENT NO. 4

On page 3, after line 23, add the following:

"Section 2. This Act shall become effective on January 1, 2016."

AMENDMENT NO. 2

On page 4, at the beginning of line 18, delete "by an insurer"

- ❖ Amendments may simultaneously delete and insert language. Use of the phrase "insert in lieu thereof" is optional.

AMENDMENT NO. 5

On page 4, line 19, after "on" delete "its behalf" and insert "behalf of an insurer"

AMENDMENT NO. 5

On page 4, line 19, after "on" delete "its behalf" and insert in lieu thereof "behalf of an insurer"

- ❖ If only one or two words are being deleted and added, the term "change" may be used.

AMENDMENT NO. 3

On page 1, line 16, change "shall not include" to "shall include"

AMENDMENT NO. 4

On page 1, line 17, change "such persons." to "any such person."

- ❖ When one or more lines or pages are deleted, the phrase "in its [their] entirety" may be used.

AMENDMENT NO. 3

On page 3, delete line 16 in its entirety

AMENDMENT NO. 3

On page 4, delete lines 16 through 26 in their entirety

AMENDMENT NO. 5

Delete page 6 in its entirety

AMENDMENT NO. 6

On page 7, delete lines 20 through 26 in their entirety and delete pages 8 through 10 in their entirety

D. Separate paragraphs

Amendments inserting lengthy text should use the phrase "the following:" to introduce the text and place the text in a separate paragraph. Insert spaces between paragraphs in an amendment.

AMENDMENT NO. 1

On page 2, at the end of line 11, insert the following:

"The investigating authority shall send an official copy of the certification to the insurer within three days of finalizing the certification."

AMENDMENT NO. 4

On page 2, delete lines 1 through 23 in their entirety and insert the following:

"* * *

E. The name, address, qualifications, and other identifying information of any person or entity that manufactures, compounds, prescribes, dispenses, supplies, or administers the drugs or supplies utilized in an execution shall be confidential, shall not be subject to disclosure, and shall not be admissible as evidence or discoverable in any action of any kind in any court or before any tribunal, board, agency, or person. The same confidentiality and protection shall also apply to any person who participates in an execution or performs any ancillary function related to an execution and shall not include information contained in any department records, including electronic records, that would identify such persons."

AMENDMENT NO. 2

On page 6, delete lines 5 and 6 in their entirety and insert the following:

"not apply to the following professional, personal, or consulting service contracts:

(1) Contracts of the secretary of state necessary to perform any constitutional or statutory function of the office.

(2) Contracts with providers of healthcare services under the medical assistance program administered by the state in accordance with Title XIX of the Social Security Act, also known as Medicaid."

- ❖ Amendments inserting only one or two words or a short phrase should not be placed in a separate paragraph.

AMENDMENT NO. 3

On page 2, at the end of line 11, insert "within three days"

E. Placement of text

A drafter should include language to precisely identify the page, line, and placement of the text to be inserted, deleted, or changed. It is usually not necessary to specify the word before which an amendment is to occur. However, if an amendment is to occur after a word that appears twice on a line, either use the two words after which the amendment will occur or specify the word before which the amendment will occur. Do not use the term “between” to indicate placement of words.

Incorrect:

AMENDMENT NO. 1

On page 1, line 9, between “settlement” and “made” insert “or payment”

Correct:

AMENDMENT NO. 1

On page 1, line 9, after “settlement” and before “made” insert “or payment”

AMENDMENT NO. 1

On page 1, line 11, after “judge.” and before “For” insert “Any judgment that does not contain the typewritten or printed name of the judge shall not be invalidated for that reason.”

AMENDMENT NO. 2

On page 1, at the end of line 21, add “Any judgment that does not contain the typewritten or printed name of the judge shall not be invalidated for that reason.”

Here are more examples of placement within an instrument:

AMENDMENT NO. 1

On page 2, line 12, after "application" delete "for services"

AMENDMENT NO. 2 *Option 1*

On page 3, line 2, after "of the" insert "representative of the"

AMENDMENT NO. 2 *Option 2*

On page 3, line 2, after "the" and before "patient" insert "representative of the"

AMENDMENT NO. 4

On page 4, at the end of line 16, insert "air operation area"

AMENDMENT NO. 2

On page 2, between lines 13 and 14, insert the following:

"(1) Any person adjudicated by a court of this state to be the father of ~~a named~~
the child."

AMENDMENT NO. 2

On page 1, line 13, after "on" insert "the shoulders of" and after "highways" insert "except interstates"

F. Punctuation

- ❖ The only punctuation in the amendment instruction are a comma after the page number and a comma after the line number.

AMENDMENT NO. 1

On page 1, line 11, after "health" delete "insurer" and insert "insurance issuer"

The only exception to this is an amendment with more than two instructions.

AMENDMENT NO. 4

On page 2, line 4, after "certified" delete the remainder of the line, delete lines 5 through 11 in their entirety, and insert "according to appropriate standards"

- ❖ Do not place a period at the end of an amendment unless it is part of the text being inserted.

AMENDMENT NO. 2

On page 6, line 8, after "collection." insert "However, the board may enter into an agreement with the sheriff to authorize the sheriff to retain a collection fee."

- ❖ When changing a word that is followed by punctuation, delete the word and the punctuation and replace the word and punctuation in the new language. Or in the alternative, delete the punctuation and insert the new punctuation as in Option 2.

AMENDMENT NO. 3 Option 1

On page 2, line 25, after "one" delete "vote." and insert "vote, except as otherwise provided by Paragraph (2) of this Subsection."

AMENDMENT NO. 3 Option 2

On page 2, line 25, after "vote" delete the period "." and insert a comma "," and "except as otherwise provided by Paragraph (2) of this Subsection."

- ❖ Do not begin inserted language with punctuation. Instead write out the punctuation that is to be inserted, show the punctuation in quotation marks, then the text to be inserted:

Incorrect:

AMENDMENT NO. 2

On page 1, line 16, after "drainage" insert ", utility, or fiber optic "

Correct:

AMENDMENT NO. 2

On page 1, line 16, after "drainage" insert a comma ", " and "utility, or fiber optic"

AMENDMENT NO. 2

On page 1, at the end of line 19, delete the period "." and insert "or is twenty years of age on September thirtieth of the calendar year in which the school year begins and has sufficient course credits that he will be able to graduate within one school year of admission or readmission."

G. Citations

- ❖ If the amendment affects a citation in the title of a bill, amend that citation accordingly in the applicable enacting section of the bill.

In the following example, note the original title and enacting section of the bill and the subsequent amendments made to the title and enacting section.

1	AN ACT
2	To amend and reenact Children's Code Articles 1131(E)(1) and (G), 1173(B), 1243(A)(1),
3	and 1243.2(A)(1) and (C), and to repeal Children's Code Article 1243(C), relative
4	to adoptions; to provide for court-ordered criminal background checks in an adoptive
5	placement following a surrender, in preplacement home studies, and in intrafamily
6	adoptions; to provide for who may petition for an intrafamily adoption; and to
7	provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. Children's Code Articles 1131(E)(1) and (G), 1173(B), 1243(A)(1), and
10	1243.2(A)(1) and (C) are hereby amended and reenacted to read as follows:

AMENDMENT NO. 1

On page 1, line 2, after "Code" delete the remainder of the line and insert "Article 1243(A)(1)"

AMENDMENT NO. 2

On page 1, at the beginning of line 3, delete "and 1243.2(A)(1) and (C),"

AMENDMENT NO. 3

On page 1, line 4, after "adoptions;" delete the remainder of the line

AMENDMENT NO. 4

On page 1, delete line 5 in its entirety

AMENDMENT NO. 5

On page 1, at the beginning of line 6, delete "adoptions;"

AMENDMENT NO. 6

On page 1, line 9, after "Code" delete the remainder of the line and insert "Article 1243(A)(1)"

AMENDMENT NO. 7

On page 1, at the beginning of line 10, delete "1243.2(A)(1) and (C) are" and insert "is"

❖ Do not split citations.

If a citation needs to be amended in some part, the drafter should delete the entire citation and insert the new citation. Do not delete a portion of a citation. See, as an example, a line of text that reads as follows:

To amend and reenact R.S. 22:1220(B)(5), relative to...

Incorrect:

AMENDMENT NO. 1

On page 1, line 5, after "22:" and before "1220", insert "658(B) and"

Correct:

AMENDMENT NO. 1

On page 1, line 5, after "reenact" delete "R.S. 22:1220(B)(5)" and insert "R.S. 22:658(B) and 1220(B)(5)"

Incorrect:

AMENDMENT NO. 1

On page 1, line 5, after "1220" and before "(5)" change "(B)" to "(A)"

AMENDMENT NO. 1

On page 1, line 5, after "reenact" delete "R.S. 22:1220(B)(5)" and insert "R.S. 22: 1220(A)(5)"

10.7 AMENDING INSTRUMENTS ORIGINATING IN THE SENATE

House committee or floor amendments to an instrument that originated in the Senate are not incorporated into the instrument until the Senate concurs in the adoption of the amendments. Therefore, always check the jacket of Senate instruments or the joint legislative website for amendments which have been proposed by a House committee and adopted by the House before drafting any House floor amendments. Otherwise, a proposed House floor amendment may conflict with a previously adopted House committee amendment.

A. Coding

Amendments to Senate bills should be coded according to how the Senate bill itself is coded. If the Senate bill follows the coding conventions of the House, amendments should follow those same conventions. If the provision of the law that is being amended is in **bold** type, then use **bold** type when drafting an amendment to that provision.

B. Handling previously adopted amendments

There are two considerations a drafter should keep in mind when amending Senate instruments:

- ❖ Floor amendments to Senate instruments must give necessary instructions as to how to handle any previously adopted House committee or floor amendment which amended the same language of the instrument and would affect the proposed floor amendment.

AMENDMENT NO. 1

In Amendment No. 3 by the House Committee on Judiciary (#1234), on page 1, at the end of line 17, insert "**No more than four warrant recall fees shall be imposed by each judge against any person pursuant to the provisions of this Subsection.**"

AMENDMENT NO. 2

In Amendment No. 3 by the House Committee on Judiciary (#1234), on page 2, line 35, after "**of**" and before "**dollars**" change "**fifty**" to "**twenty-five**"

AMENDMENT NO. 3

In Amendment No. 3 by the House Committee on Judiciary (#1234), on page 2, at the end of line 38, insert "**No more than four warrant recall fees shall be imposed by each judge against any person pursuant to the provisions of this Subsection.**"

AMENDMENT NO. 4

In Amendment No. 3 by the House Committee on Judiciary (#1234), on page 3, at the end of line 16, insert "**No more than four warrant recall fees shall be imposed by each judge against any person pursuant to the provisions of this Subsection.**"

AMENDMENT NO. 5

In Amendment No. 3 by the House Committee on Judiciary (#1234), on page 3, at the end of line 50, insert "**No more than four warrant recall fees shall be imposed by each judge against any person pursuant to the provisions of this Subsection.**"

Note in the preceding example, the line numbers of the previously adopted committee amendment are used to establish placement of new text within the amendment. If amending an amendment which is part of a multi-page set of amendments, the page number of that amendment must also be referenced.

- ❖ An alternative to amending a previously adopted amendment is to delete the amendment and prepare a new amendment reflecting the necessary changes.

AMENDMENT NO. 1

Delete House Committee Amendment No. 1 by the House Committee on Education (#2435).

AMENDMENT NO. 2

On page 2, line 10, after "**system**" change the comma "," to a period "." and delete the remainder of the line and delete line 11 and insert the following:

"(3) The student's enrollment is approved by a vote of a majority of the members of the local school board for the school."

Note in the preceding example, line numbers of the bill are used to establish the placement of the text.

10.8 COMMITTEE OF THE WHOLE AMENDMENTS

[House Rule 6.18](#) authorizes the House to resolve itself into the Committee of the Whole by a majority vote of the members present. The Committee of the Whole is presided over by a member serving as chairman who is chosen by the Speaker ([House Rule 6.20](#)). The debate procedure followed by the Committee of the Whole is, with few exceptions, the same as that governing House floor debate. While in Committee of the Whole, a bill is often debated *seriatim*, which means that it is read and debated by clauses in the order in which they occur in the bill. [House Rule 6.25](#) requires that the General Appropriation Bill be discussed in the Committee of the Whole.

- ❖ The Committee of the Whole procedure permits comprehensive discussion of the General Appropriation Bill, including receiving testimony from persons who are not elected members of the House, such as the commissioner of administration, department secretaries, or other persons requested to testify. For this bill, proceeding *seriatim* means debating the bill appropriation item by appropriation item in bill schedule order.
- ❖ Amendments for the Committee of the Whole are prepared in the same manner as for any other floor amendment, except that the heading of the amendment is "Committee of the Whole Amendments". Frequently, amendments need to be prepared as Committee of the Whole Amendments and as floor amendments, since the rules providing for this procedure may be suspended.

- ❖ Following consideration by the Committee of the Whole, the committee rises to report to the House any amendments which have been adopted and reports the legislative instruments to the House in the same manner bills may be reported by standing committees ([House Rule 6.23](#)). The House adopts or rejects any amendments reported by the Committee of the Whole and then proceeds to debate the bill on the floor as with any other instrument.

CHECKLIST FOR DRAFTING AMENDMENTS

- 1) Ensure that you have the correct version of the bill.
- 2) Look at the title of the bill:
 - ❖ Is the amendment germane? If not, advise the member and proceed at his direction.
 - ❖ If it is a committee amendment, will the amendment delete everything below the enacting clause? If so, the amendment should probably be in the form of a substitute bill. However, be aware of the member's time frame, since the new bill will have to go through three readings, delaying it by one day in the legislative process ([House Rule 6.12](#)).
- 3) Read through the bill, making note of all areas in the bill that need to be amended. Always check the title!
- 4) Decide where the amendment would be most appropriately placed and then draft the text of the amendment.
- 5) Amend the applicable enacting section or sections if necessary.
- 6) If time allows, check the related provisions of law. For example, if definition and penalty provisions not in the bill are affected by the amendment, those provisions may need to be included in the amendment.
- 7) Read through the amendments. Check placement in the bill, language, coding, spelling, etc.
- 8) If on floor duty and time permits, try to check the amendment with a drafter familiar with the subject matter of the bill.
- 9) When drafting a floor amendment to a Senate bill, check to see if there are previously adopted House committee or floor amendments that the amendment affects.
- 10) When drafting a floor amendment, make a copy of the amendment for the member and secure permission from him to turn a copy of the amendment in to the front desk. Once an amendment is filed at the front desk, it becomes public ([House Rule 11.4](#)).
- 11) Remember that the rules of confidentiality apply to both committee and floor amendments; therefore, it is imperative that the drafter check with the member to verify when and to whom a committee amendment can be made available to other members, lobbyists, or the public, and when a floor amendment should be filed with the front desk.

CHAPTER 11. REDIGESTS

11.1 OVERVIEW

At each stage in the legislative process in which an instrument is substantively amended, other than floor action in the opposite chamber, the digest is re-drafted to reflect the effect of the amendments. This is called the redigest. In accordance with [Joint Rule No. 6](#) of the Rules of the Senate and House of Representatives, House staff prepares:

- 1) A redigest of each House legislative instrument reported by House committee to which substantive committee amendments are proposed.
- 2) A redigest of each House legislative instrument finally passed by the House to which substantive floor amendments are adopted.
- 3) A redigest of each Senate legislative instrument reported by House committee to which substantive committee amendments are proposed.

A drafter who is unsure about whether amendments are substantive or technical should consult with his division director to determine if a redigest is necessary.

11.2 STARTING THE REDIGEST

To begin drafting a redigest, the drafter should open a new Amendment Request in Task Organizer and select either Redigest-Committee or Redigest-Floor, as appropriate, as the "Amendment Type". The drafter will need to input the House instrument number and select the appropriate version of the instrument. Lastly, to launch the draft in WordPerfect, the drafter should click "Draft".

11.3 DRAFTING THE REDIGEST

Drafting a redigest is a two-step process. The first step is to update the current version of the instrument's digest. The second is to draft the summary of amendments.

A. Updating the instrument digest

The drafter will typically need to make changes to the digest as a result of any amendments adopted in committee or on the House floor. The redraft of the instrument summary should be an accurate reflection of the effect of the instrument as amended. The drafter must review all the amendments carefully because the abstract, summary, and citation line may all need to be revised. If the keyword or oneliner needs to be revised as a result of amendments, the drafter will need to indicate the changes and notify his division director to request the change through Administrative Services.

B. Drafting the Summary of Amendments

The second step in drafting the redigest is to draft a "Summary of Amendments". The summary is printed below the updated digest. The summary is an enumerated list of statements outlining the effect of the substantive proposed committee or adopted floor amendments. The statements are written using plural verbs in present tense.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Add a provision to prohibit the invalidation of a judgment that does not contain the typewritten or printed name of the judge.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Expand the exception to include utility or fiber optic projects.

House Floor Amendments to the engrossed bill:

1. Reduce the distance from Hwy. 1 that dredging and excavating is prohibited from 500 feet to 300 feet.
2. Expand the exception to include communication and pipeline projects.
3. Require excavation associated with a pipeline project be refilled upon completion.

SB 33 Engrossed

2015 Regular Session

Walsworth

Present law places the office of telecommunications management (OTM) within the division of administration (DOA).

Proposed law merges OTM with the office of technology services (OTS) under the supervision and control of the state chief information officer.

Present law places the uniform consolidated mailroom for all state agencies under the control of DOA and the commissioner of administration.

Proposed law moves uniform consolidated mailroom operations to OTS and control to the state chief information officer.

Present law requires the executive branch purchase all requirements of printing and

engraving from a central purchasing agency with the chief procurement officer having authority.

Proposed law designates OTS as the vendor for all printing and engraving purchases made by the executive branch with the chief information officer having authority.

Effective August 1, 2015.

SB 27 Reengrossed

2015 Regular Session

Broome

Present law authorizes a person to file a motion to expunge his record of arrest and conviction of a misdemeanor offense if either of the following occur:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law.
- (2) More than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole, and the person has not been convicted of any felony offense during the five-year period, and has no felony charge pending against him.

Present law prohibits the expungement of a record if the misdemeanor conviction was for domestic abuse battery which was not dismissed pursuant to present law.

Present law authorizes a person to file a motion to expunge his record of arrest and conviction of a felony offense if either of the following occur:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law.
- (2) More than ten years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the ten-year period, and has no criminal charge pending against him.

Proposed law amends present law to prohibit the expungement of records of all misdemeanor and felony convictions of domestic abuse battery regardless of whether the conviction was set aside or dismissed.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 977(C)(2); Adds C.Cr.P. Art. 978(B)(4))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Prohibits the application of present law relative to setting aside of a conviction under certain circumstances to a conviction for domestic abuse battery.
2. Deletes provisions of proposed law that would prohibit sentence on conviction of domestic abuse battery from being suspended.

Senate Floor Amendments to engrossed bill

1. Makes Legislative Bureau technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Remove provision which prohibits a court from setting aside a misdemeanor conviction and dismissing prosecution for domestic abuse battery.
2. Add provisions which prohibit the expungement of records of misdemeanor and felony domestic abuse battery convictions.

C. Technical amendments

When a redigest is prepared, the drafter may address technical amendments by updating the digest or correcting citations, spelling, or punctuation, for example. In the Summary of Amendments, technical amendments are usually described by stating, "Make technical changes." There is no need to specifically address each change made by technical amendments.

CHAPTER 12. HOUSE SUMMARY OF SENATE AMENDMENTS

12.1 OVERVIEW

[Joint Rule No. 6](#) of the Rules of the Senate and House of Representatives requires a redigest and summary of amendments only through committee action in the second chamber; that is, prior to final passage in the second chamber. However, when a House bill is returned from the Senate with proposed amendments, House staff also prepares a redigest and a summary or synopsis of Senate amendments prior to the vote by the House to concur in or to reject the Senate amendments.

12.2 STARTING THE HOUSE SUMMARY OF SENATE AMENDMENTS

To begin drafting a House summary of Senate amendments, a drafter should open a new Amendment Request in Task Organizer and select Summary of Senate Amendments as the "Amendment Type" and "Draft Type". The drafter will need to input the House instrument number and select the appropriate version of the instrument. Lastly to launch the draft in WordPerfect, the drafter should click "Draft".

The screenshot shows the "Amendment Request Card" window. At the top, there are "Request Actions" (Clear, Relate, Submit, Draft, Exit) and "Tabs". Below this, the "Amendment ID" is set to "NEW". The form contains several fields: "Session" (2014 Regular Session), "*Bill:" (empty), "*Version:" (empty), "Amendment Type:" (Summary of Senate Amendments), and "Draft Type:" (Summary of Senate Amendments). A red arrow points to the "Amendment Type:" dropdown menu.

12.3 DRAFTING THE HOUSE SUMMARY OF SENATE AMENDMENTS

The format for the House Summary of Senate Amendments differs slightly from other House documents. The House Summary contains the following elements:

- A. Heading
- B. Synopsis of Senate amendments
- C. Digest of Bill as Finally Passed by the Senate

A. Heading

The heading of the House Summary of Senate Amendments consists of the bill number, author's name, keyword, and oneliner and is styled as follows:

<p>HOUSE SUMMARY OF SENATE AMENDMENTS</p> <p>House Bill No. 216 by Representative Shadoin</p> <p>MALPRACTICE/MEDICAL: Provides relative to the Patient's Compensation Fund</p>

B. Synopsis of Senate amendments

Like drafting the redigest of an instrument as discussed in [Chapter 11, Redigests](#), drafting the House Summary of Senate Amendments is a two-step process.

The first step in drafting the House Summary is to outline the changes made by the proposed Senate committee and floor amendments. Typically, all the Senate amendments are sent to the drafter by Administrative Services. If they are not, the drafter should start by printing a copy of all the adopted Senate amendments, committee and floor, and a copy of the latest version of the bill. The drafter will need to review all the amendments to understand the effect the changes have on the instrument. Those changes are what the drafter will use to draft the synopsis of Senate amendments. The synopsis addresses those changes in present tense.

<p>Synopsis of Senate Amendments</p> <p>1. Provides for the balance of the Patient's Compensation Fund upon dissolution of the fund and provides for retroactive application.</p>
--

Technical amendments can be noted in the House Summary but it is unnecessary to identify specific technical changes.

<p>Synopsis of Senate Amendments</p> <p>1. Makes technical changes.</p>
--

C. Digest of Bill as Finally Passed by the Senate

Again, like drafting the redigest, the drafter must update the digest to reflect the contents of the bill as passed by the Senate. The summary includes both committee and floor amendments adopted by the Senate. Otherwise, the approach to preparing the redigest and the summary of amendments is the same as that described for other redigests and summaries of amendments.

If the only Senate amendments are committee amendments, the substantive redigest and summary prepared by the Senate staff may suffice. However, this determination should not be made without careful review of the Senate's summary.

Note that the digest in the House Summary of Senate Amendments consists of only the instrument summary, any specific or emergency effective date, and the citation line. All other parts of the digest are excluded, specifically the digest header, the author, House Bill number, and abstract. If there is any specific reference or acronym contained in the abstract that the reader will need to know to understand the full context of the instrument, the drafter will need to include such reference in the instrument summary.

Digest of Bill as Finally Passed by Senate

Present law (Const. Art. XII, §16) authorizes the establishment of the Patient's Compensation Fund to hold private monies in trust for the use, benefit, and protection of medical malpractice claimants and private health care provider members.

Present law establishes the Patient's Compensation Fund Oversight Board to manage, administer, operate, and defend the Patient's Compensation Fund.

Present law authorizes the board to invest private monies making up the body of the fund if the private monies are not needed to pay one and one-half times the amount of budgeted expenditures for that fiscal year.

Proposed law changes present law by deleting the limitation that the board may only invest the private monies that exceed the amount of one and one-half times the budgeted expenditures. Proposed law authorizes the board to invest any portion of private monies making up the body of the fund as long as the board is able to maintain timely payment of claims, future medical care and related benefits, and other expenses.

Present law creates the Residual Malpractice Insurance Authority to make available medical malpractice insurance to healthcare providers who have been refused coverage by private insurers and establishes rules for administration of the authority.

Present law directs the authority to place the surplus of premiums over losses and expenses into a segregated fund and directs the risk manager, with concurrence by the Patient's Compensation Oversight Board, to invest and reinvest those funds.

Proposed law changes present law by authorizing the board to invest and reinvest those funds.

Present law provides that neither the Patient's Compensation Fund nor the Patient's Compensation Oversight Board shall be a budget unit of the state. Qualifies the fund and any income of the fund as private monies. Further provides that the funds and income earned from investing the private monies comprising the corpus of this fund shall be subject to use and disposition only as provided by present law.

Proposed law requires any remaining balance of the fund, upon dissolution of the fund and after all amounts due have been paid, to be paid to over to the state general fund or deposited into the state treasury. Further adds that proposed law shall be given retroactive application.

(Amends R.S. 40:1299.44(A)(1)(b) and 1299.46(H); Adds R.S. 40:1299.44(A)(1)(f))

12.4 EXAMPLES OF HOUSE SUMMARIES OF SENATE AMENDMENTS

The following list provides various examples of House Summaries of Senate Amendments:

A. [House Bill No. 388 \[2014 Regular Session\]](#)

B. [House Bill No. 216 \[2013 Regular Session\]](#)

C. [House Bill No. 311 \[2014 Regular Session\]](#)

CHAPTER 13. CONFERENCE COMMITTEE REPORTS

13.1 OVERVIEW

A bill is placed into conference committee when there is failure to agree between the two houses on certain amendments to the bill. After a bill is finally passed by the second house, the bill is returned to the first house, the bill's house of origin, if the second house made amendments to the bill. The house of origin must act on the amendments of the second house in order to complete the final enactment of the bill. The house of origin may concur in the amendments or reject the amendments of the second house. If the house of origin rejects the amendments of the second house, the bill is placed in conference committee.

"A conference committee irons out discrepancies in measures already passed in each house. Adoption of the committee report . . . resolves all differences resulting from amendments upon which the respective houses could not otherwise agree. Approval of the committee report places both houses in full agreement; on this form the measure becomes law." *Branton v. Parker*, 233 So.2d 278 (La. App. 1 Cir. 1970).

A conference committee is appointed to work out a version of the bill that is agreeable to both houses. The agreed upon version is reported in a conference committee report which must be approved by both houses in order for the bill to become law. If no agreement is reached or either house fails to approve the report, the bill fails.

It is essential that the drafter assigned to prepare the conference committee report accurately captures the changes the conference committee wishes to make in the bill, including the disposition of all amendments proposed by the second house.

13.2 GUIDELINES FOR CONFERENCE COMMITTEE REPORTS

The constitution and rules of order provide guidelines for conference committees and conference committee reports. Those which exist are:

[Louisiana Constitution Article III, Section 15\(F\)](#) provides that the vote required for concurrence in a conference committee report is the same as the vote required for final passage of the bill.

[House Rule 8.15\(B\)](#) requires that a vote on the report of a conference committee on the General Appropriation Bill shall not occur until no fewer than forty-eight hours have intervened after the report has been received by the House from the conference committee. However, this requirement may be waived by a majority vote of the elected members of the House.

[House Rule 8.26](#) provides that instruments reported from a conference committee may be called from the calendar no sooner than the next legislative day following a member's notifying the House of his intention to call the instrument from the calendar. No notice of intention to call from the calendar shall be required for an instrument reported from a conference committee which was returned to the calendar on the last day of a session.

[House Rule 8.27](#) provides for the consideration of conference committee reports.

[Joint Rule No. 19](#) requires, prior to the vote on a report of a conference committee on the General Appropriation Bill, that the report shall lie over for at least forty-eight hours in the house in which the vote occurs. This rule may be waived as it applies to the procedures of such house of the legislature by a majority vote of the elected members of such house.

[Joint Rule No. 20](#) provides for the limitations of conference committee reports during odd-numbered year sessions.

13.3 COMPOSITION OF THE CONFERENCE COMMITTEE

The conference committee is comprised of three members from each house. [House Rule 2.5\(13\)](#) requires the speaker to appoint the House members of each conference committee. The Senate has a similar rule making the same requirement of the president ([Senate Rule 3.3\(15\)](#)).

[House Rule 6.14](#) specifies the appointment of the three House members to the conference committee. Pursuant to the rule, the appointees are:

- 1) The member who authored or handled the bill or resolution, or in his absence, a member appointed by the Speaker.

- 2) The chairman of the committee that reported the bill or resolution, or in his absence, the vice chairman of such committee, or in the absence of the chairman and vice chairman, a member appointed by the speaker from among the members of such committee.

- 3) One member appointed by the speaker.

The drafter will need to know the House member appointments, as well as those of the Senate, to complete the conference committee report. The appointees can be found on the joint

legislative website or in the House Journal.

13.4 DRAFTING THE CONFERENCE COMMITTEE REPORT

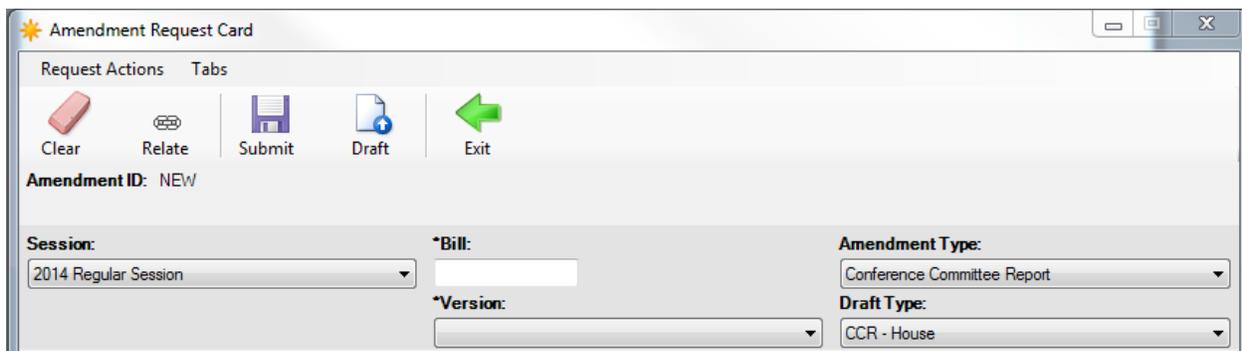
[Louisiana Constitution Article III, Section 15\(C\)](#) requires that all amendments be germane to the bill as introduced. This provision does not specifically mention conference committees, but it does apply to the adoption of conference committee reports.

[R.S. 24:177](#) provides that words and phrases not constituting the substance of an amendment or the recommendations of a conference committee report, and any other legislative staff documents which are not subject to amendment by the legislature or any committee of the legislature, shall not constitute proof or indicia of legislative intent.

As with instruments prior to introduction and amendments, the substance of a conference committee report is kept confidential.

A. Getting started

To begin drafting a conference committee report, the drafter should open a new Amendment Request in Task Organizer and select Conference Committee Report as the "Amendment Type". The drafter will need to select CCR-House as the "Draft Type" and input the House bill number and select the appropriate version of the instrument.



The screenshot shows a software window titled "Amendment Request Card". At the top, there are "Request Actions" and "Tabs". Below this is a toolbar with icons for "Clear", "Relate", "Submit", "Draft", and "Exit". The "Amendment ID" is set to "NEW". The form contains several fields: "Session" is a dropdown menu showing "2014 Regular Session"; "*Bill:" is a text input field; "*Version:" is a dropdown menu; "Amendment Type:" is a dropdown menu showing "Conference Committee Report"; and "Draft Type:" is a dropdown menu showing "CCR - House".

B. Practical guidelines for drafting the report

- 1) The drafter should start with the latest version of the bill as it left the House.
- 2) The drafter should have a copy of all amendments adopted by the Senate. This includes committee, floor, and Legislative Bureau amendments. Check with the House Desk for all amendments that are attached to the jacketed bill. The drafter can also double check the amendments through the joint legislative website and the House Journal. A drafter who prepared the House Summary of Senate Amendments may have already completed

this step. There is no need to address House Committee Amendments or House Floor Amendments. They are already incorporated into the bill.

- 3) The drafter should mark the latest version of the bill with all Senate amendments.
- 4) The drafter should discuss with the author the effect of the Senate amendments. Again, this step may have been taken when preparing the House Summary of Senate Amendments.
- 5) The drafter will need to determine the changes that the conference committee wishes to make to the bill. The drafter should be aware that many times there is no formal meeting of the conference committee. There may be informal discussions regarding changes to be made to the bill. In all likelihood, any such discussion will begin with the author of the bill.
- 6) The drafter will need to mark up a copy of the latest version of the bill with the changes proposed by the conference committee, including Senate amendments to be adopted and necessary technical amendments. Review the marked bill for title and body conformity, consistent internal references to statute designations, and technical correctness.
- 7) The drafter should then prepare the report to reflect the marked bill.

C. Disposition of Senate amendments

Each Senate amendment, including amendments proposed by the Legislative Bureau, must be either adopted or rejected. Failing to do this is the mistake a drafter most frequently makes.

The conference committee report template provides the introductory paragraph that the drafter completes in disposing of amendments. The paragraph reads as follows:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. _____ by Representative _____, recommend the following concerning the (latest version) bill:

In addressing amendments, an amendment is identified as Senate Committee, Senate Floor, or Legislative Bureau, by whom the amendment was proposed, and by the four digit number generated by Task Organizer. The amendments can be disposed of as individual amendments, as necessary or as sets, if applicable.

SENATE FLOOR AMENDMENTS

2015 Regular Session

Amendments proposed by Senator Claitor to Engrossed House Bill No. 33 by Representative Berthelot

1) Disposing of Senate Committee Amendments:

1. That Senate Committee Amendments Nos. 1 through 6 by the Committee on Judiciary A (#1234) be rejected.
2. That Senate Committee Amendment No. 7 by the Committee on Judiciary A (#1234) be adopted.

1. That Senate Committee Amendment No. 1 by the Senate Committee on Local and Municipal Affairs (#9876) be rejected.

1. That the set of Senate Committee Amendments by the Senate Committee on Senate and Governmental Affairs (#4321) be adopted.

2) Disposing of Senate Floor Amendments:

1. That the set of Senate Floor Amendments by Senator Guillory (#5678) be adopted.

1. That Senate Floor Amendments Nos. 1 and 2 by Senator Kostelka (#4455) be adopted.

3. That Senate Floor Amendments Nos. 1 through 7 by Senator Riser (#6789) be rejected.

3) Disposing of Legislative Bureau Amendments:

2. That the set of amendments by the Legislative Bureau (#2202) be rejected.

2. That Amendment No. 1 by the Legislative Bureau Amendment (#2720) be adopted.

D. Amending Senate amendments

A Senate amendment may be amended by the conference committee in one of two ways. In the more traditional manner, the Senate amendment is rejected and is rewritten in its entirety as a conference committee amendment. It is also acceptable to adopt the Senate amendment and to adopt a conference committee amendment which amends that Senate amendment in part. In either case, the Senate amendment must first be either rejected or adopted by the conference committee.

2. That the set of Senate Floor Amendments by Senator Adley (#3234) be adopted.

* * *

4. That the set of Senate Floor Amendments Senator Adley (#3265) be adopted.

* * *

6. That the following amendments be adopted:

AMENDMENT NO. 1

In Senate Floor Amendment No. 2 by Senator Adley (#3265), on page 1, at the end of line 4, change "total amount" to "total amount of"

AMENDMENT NO. 2

In Senate Floor Amendment No. 1 by Senator Adley (#3234), on page 1, line 8, after "brain injury," and before "or autism" insert "dyslexia and related disorders,"

E. Amendments proposed by the conference committee

Additional amendments to the bill may be proposed by the conference committee. Again, remember the constitutional requirement that amendments be germane to the bill as introduced.

3. That the following amendment to the Reengrossed bill be adopted:

AMENDMENT NO. 1

On page 2, line 10, after "(2)" and before "State" change "The" to "By October 1, 2013, the"

2. That the following amendment to the engrossed bill be adopted:

AMENDMENT NO. 1

On page 2, line 20, after "record," delete the remainder of the line and line 21 in its entirety and insert "either orally upon rendition or in writing sua sponte or upon request of a party within ten days of rendition."

Review the report to ensure the clarity of its contents. One method of doing this is to use the report to mark up a clean copy of the latest version of the bill. This marked bill should match the bill marked in Step 6.

13.5 PREPARING THE DIGEST

[House Rule 7.11](#) requires the preparation of a digest of each conference committee report on a legislative instrument prior to a vote by the House on such report.

In preparing the digest, the drafter should outline the changes proposed by the conference committee. Then the drafter should draft the digest of the bill as proposed by the conference committee focusing upon the changes proposed by the conference committee.

The conference committee report digest template provides headings to assist in explaining the disposition of all amendments. It may not be necessary to use all the headings and it is permissible to delete the headings that are not applicable.

The headings will appear in the template as follows:

Keyword and oneliner of the instrument as it left the House

The drafter will need to include the keyword and oneliner of the bill prior to any changes necessitated by Senate amendments.

CIVIL/ACTIONS: Provides relative to civil procedure

Report adopts Senate amendments to:

If the conference committee adopts any Senate Committee or Senate Floor amendments, those amendments should be explained under this heading.

Report adopts Senate amendments to:

1. Provide for prospective application only.

Report rejects Senate amendments which would have:

If the conference committee rejects any Senate Committee or Senate Floor amendments, those amendments should be explained under this heading.

Report rejects Senate amendments which would have:

1. Amended language relative to two or more actions requesting the certification of a class.
2. Added a 30-day time period in which a court may transfer certain class actions.
3. Added language providing for prospective application of proposed law.
4. Added provisions relative to depositions of minors who are victims of sexual abuse.

Report amends the bill to:

This heading is provided to explain any new amendment to the bill proposed by the conference committee.

Report amends the bill to:

Specify procedures for the transfer of class actions regarding a transaction or occurrence at the same location and class actions regarding transactions or occurrences in different locations.

Digest of the bill as proposed by the Conference Committee

This heading requires the drafter to rewrite the digest incorporating all changes made by the conference committee.

Present law provides that a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought in certain circumstances. Also provides that no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court.

Proposed law retains present law and provides that domicile shall be the location pursuant to the general rules of venue (Article 42) where the plaintiff would be subject to suit had he been a defendant.

Proposed law provides that when two or more actions requesting the certification of a class are filed in two or more Louisiana courts regarding the same transaction or occurrence at the same location, and such classes, if certified, would encompass one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, the defendant may have all such actions transferred to the district court where the event occurred.

Proposed law also provides that when two or more actions requesting the certification of a class are filed in two or more Louisiana courts regarding multiple related transactions or occurrences in different locations and such classes, if certified, would encompass one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, the defendant may have all such actions transferred to the district court where the first suit was brought.

Proposed law further provides that within 30 days of the certification of a class by a different Louisiana court regarding the same transaction or occurrence and encompassing one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, any court where a related putative class action is pending may, upon contradictory motion, in the interests of justice and for good cause shown, transfer the putative class action to the district where the related action has been certified.

Present law defines the domicile of a natural person as the place of his habitual residence.

Proposed law defines the domicile of a juridical person as either the state of its formation or the state of its principal place of business, whichever is most pertinent to the particular issue, unless otherwise specifically provided by law.

Provides that proposed law shall have prospective application only and shall not apply to any action pending prior to the effective date of proposed law.

(Amends C.C.P. Art. 123(A) and C.C. Art. 38; Adds C.C.P. Art. 593.1, and 593.2)

13.6 FINALIZING AND SUBMITTING THE REPORT

As with any other document drafted by staff, the drafter must be certain to review the conference committee report in its entirety, including the digest, for any grammar and spelling errors. Also, he should ensure that the correct date of the report is located at the beginning of the report. The date of the report should also be the date the signed report is submitted to the House and Senate front desks.

Conduct a final check to ensure there has been no change to the appointed conferees and that the proper names of the representatives and senators are used in the report. Using Task Organizer to populate the names is the best route to ensure proper names and format.

Before circulating the report for signature, the division director must review it one final time.

Obtain the signatures of the conferees on two originals of the conference committee report. Staff may collect signatures; however, it is sometimes necessary and prudent to allow the author of the instrument to do so.

Although a report signed by four conferees may be considered by either house, every conferee must be given an opportunity to sign the report. Any difficulty in gathering signatures because of extenuating circumstances like the unavailability of a conferee should be discussed with the division director.

Once signatures on the conference committee report have been collected, the drafter will need to “release” the report for submission to the front desk of the House. The drafter will submit an original and the requisite number of copies of the report to both the House and Senate front desks.

13.7 EXAMPLES OF CONFERENCE COMMITTEE REPORTS

The following list contains various examples of conference committee reports. Please follow the instructions for identifying amendments as outlined in the chapter.

A. House Bill No. 173 [2014 Regular Session]

Rejects Senate Committee Amendment

B. House Bill No. 940 [2014 Regular Session]

Adopts Senate Committee Amendment
Rejects Senate Committee Amendment
Adopts Conference Committee Amendments

C. House Bill No. 54 [2014 Regular Session]

Adopts Senate Floor Amendment
Rejects Senate Floor Amendment

D. House Bill No. 464 [2012 Regular Session]

Adopts Senate Committee Amendment
Rejects Senate Committee Amendment
Rejects Senate Floor Amendment
Adopts Conference Committee Amendments

E. House Bill No. 951 [2014 Regular Session]

Adopts Bureau Amendment
Rejects Bureau Amendment
Adopts Senate Floor Amendment
Adopts Conference Committee Amendments

CHAPTER 14. RÉSUMÉ DIGESTS

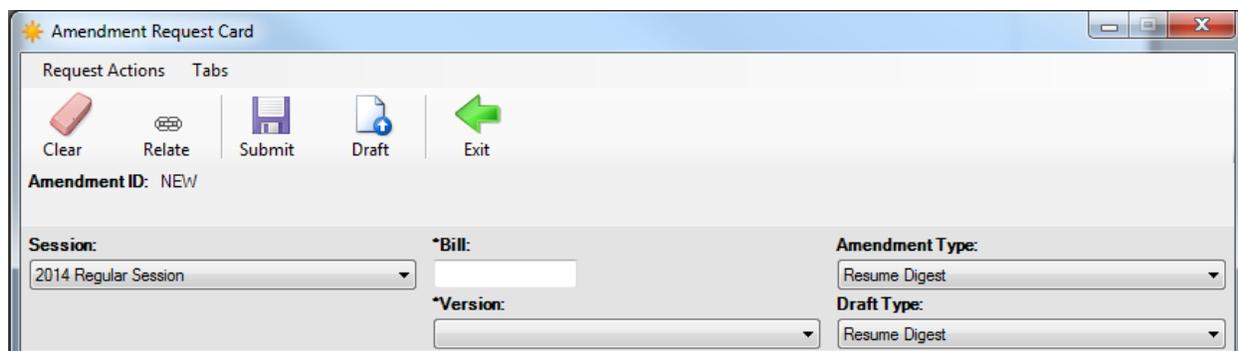
14.1 OVERVIEW

Résumé digests are the last and final summaries of instruments from a legislative session. Résumé digests are prepared for instruments finally passed and signed by the presiding officers: Acts, vetoed bills, adopted resolutions, and approved study requests. It is often necessary to rewrite résumé digests given the lack of context since the actual legislative instruments are not attached to them when the résumé digests are published.

The résumé digest is the last opportunity to provide a thorough, accurate digest so it is imperative that the drafter proofread and edit to remedy any substantive and technical errors. Citations and authors should also be reviewed for accuracy.

14.2 STARTING THE RÉSUMÉ DIGEST

To begin drafting a résumé digest, a drafter should open a new Amendment Request in Task Organizer and select Résumé Digest as the “Amendment Type” and “Draft Type”. The drafter will need to input the House instrument number and select the appropriate version of the instrument. Lastly to launch the draft in WordPerfect, the drafter should click "Draft".



The screenshot shows a software window titled "Amendment Request Card". At the top, there are "Request Actions" and "Tabs". Below this is a toolbar with five icons: a red eraser labeled "Clear", a chain link labeled "Relate", a floppy disk labeled "Submit", a document with a plus sign labeled "Draft", and a green arrow pointing left labeled "Exit". Below the toolbar, the text "Amendment ID: NEW" is displayed. The main area contains several fields: "Session:" with a dropdown menu showing "2014 Regular Session"; "*Bill:" with an empty text input field; "*Version:" with a dropdown menu; "Amendment Type:" with a dropdown menu showing "Resume Digest"; and "Draft Type:" with a dropdown menu showing "Resume Digest".

14.3 ELEMENTS OF HOUSE BILLS

For bills, there are four elements of the résumé digest:

- A. Heading
- B. Instrument summary
- C. Effective date
- D. Citation line

There are slight differences in the elements for vetoed bills, constitutional amendments, resolutions, and study requests. These differences will be highlighted in the next few Sections.

A. Heading

The heading of the résumé digest for a bill consists of the Act number with the House bill number in parentheses, the session year and type, and the name of the lead author only, and is styled as follows:

RÉSUMÉ DIGEST		
ACT 367 (HB 29)	2015 Regular Session	Reynolds

RÉSUMÉ DIGEST		
HCR 50	2015 Regular Session	Wesley Bishop

RÉSUMÉ DIGEST		
HR 21	2015 Regular Session	Pierre

The Act number of the bill can be found on the joint legislative website.

B. Instrument summary

In the instrument summary or the body of the résumé digest, all references to "present law" and "proposed law" are updated. The drafter indicates the changes made in the law between

"prior law" and "new law" or "existing law" and "new law". Therefore all references to "present law" change to "prior law" or "existing law" as appropriate. References to "proposed law" change to "new law". However, drafting a résumé digest is not as simple as making these quick, easy changes.

The drafter must read the digest and make a determination in the use of “existing law” or “prior law”. The term "existing law" may be utilized when there is no change to the present law and present law is recited as "existing law" in order to provide background information for the reader and to make the résumé digest sensible. “Prior law” indicates the law as it existed before the passage of the bill. When "prior law" is included in the résumé digest, re-write the prior law using the past tense.

When drafting the instrument summary, the abstract is not included, therefore the drafter must be mindful of using the abstract to introduce a concept or acronym that is later used in the digest. If this is the case, the drafter will need to rewrite the digest to include the introductory language or acronym used in the abstract so the reader will understand the references.

Existing law establishes the Fishermen's Gear Compensation Fund to provide for compensation to commercial fishermen whose fishing gear is damaged as a result of shagging underwater obstructions when the owner of such obstruction cannot be determined.

Existing law further establishes the Underwater Obstruction Removal Fund to provide funds to locate and remove underwater obstructions when the owner of such obstruction cannot be determined.

Prior law terminated the law establishing the Underwater Obstruction Removal Fund on June 30, 2012.

New law repeals prior law.

Existing law provides for an annual transfer of \$250,000 from the Fisherman's Gear Compensation Fund into the Underwater Obstruction Removal Fund.

Prior law provided that the annual transfer would occur prior to June 30, 2012.

New law removes the termination date in prior law.

The drafter should make sure that the résumé digest reflects the current text of the bill. Do not assume making changes to the text affected by Senate amendments will suffice. Review the entire bill to ensure that the digest sufficiently summarizes the major provisions of the bill and

that it does not contain references to provisions found only in earlier versions of the bill that were later changed or deleted by amendment.

C. Effective date

The effective date for each bill is included in the résumé digest. The effective date should be verified with the text of the bill. The joint legislative website may also be used to verify an effective date but should not be solely relied upon.

For all bills with the default effective date of August 1st or other specific effective date, the date in the résumé digest is written as follows:

Effective August 1, 2014.

Effective January 1, 2015.

For bills with an emergency effective date, the date is written to include the phrase, “Effective upon signature of governor”. The month, day, and year the governor signed the bill is included in a set of parentheses. The effective date of the bill can be found on the joint legislative website.

Effective upon signature of governor (May 11, 2012).

D. Citation line

The citation line of a résumé digest must be updated to include any citations that were added to the bill upon enrollment. The citation line of the résumé digest is written in the same manner as in the digest.

(Amends R.S. 56:700.2(A)(4); Repeals R.S. 30:101.11)

14.4 ELEMENTS OF VETOED BILLS

Résumé digests for vetoed bills are drafted in a slightly different manner. Résumé digests for these bills have the following elements:

- A. Heading
- B. Instrument summary

- C. Citation line
- D. Veto message of the governor

A. Heading

The heading for vetoed bills consists of the House Bill number, session year and type, and lead author's name, and is styled as follows:

RÉSUMÉ DIGEST		
HB 837	2015 Regular Session	Price

B. Instrument summary

In writing the instrument summary for a vetoed bill, the drafter should use the phrases, "present law" and "proposed law" and the conditional verb tense "would have" for "proposed law".

Present law provides for the expungement of misdemeanor arrest and conviction records if either of the following occurs:

- (1) The conviction was set aside and the prosecution was dismissed.
- (2) Five years have elapsed since the completion of sentence, probation, or deferred sentence and the applicant has not been convicted of any felony offenses during the five-year period.

Proposed law would have added an additional criteria if the person was determined to be factually innocent and entitled to compensation for a wrongful conviction.

Present law provides for the expungement of felony arrest and conviction records if either of the following occurs:

- (1) The conviction was set aside and the prosecution was dismissed.
- (2) 10 years have elapsed since the completion of sentence, probation, or deferred sentence and the applicant has not been convicted of any offenses during the 10-year period.

Proposed law would have added an additional criteria if the person was determined to be

factually innocent and entitled to compensation for a wrongful conviction.

Present law provides for the expungement of certain misdemeanor and felony arrest and conviction records, but prohibits an expungement of a conviction for a crime of violence.

Proposed law would have changed present law to allow for the expungement of aggravated battery, second degree battery, aggravated assault, aggravated criminal damage to property, simple robbery, purse snatching, and illegal use of weapons or dangerous instrumentalities if more than 10 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the 10-year period, has no criminal charge pending against him, and has been employed for a period of 10 consecutive years.

Present law provides a form for a motion for expungement.

Proposed law would have added "factual innocence" as a ground for expungement to the motion for expungement form.

Proposed law would have otherwise retained present law.

C. Citation line

The citation line is written to include the phrase "proposed to":

(Proposed to amend C.Cr.P. Arts. 977(A)(intro. para.), 978(A)(intro. para.) and (B)(1), and 989; proposed to add C.Cr.P. Arts. 977(A)(3) and 978(A)(3) and (E))

(Proposed to amend R.S. 15:574.2(C)(2)(a) and 574.4(B)(1); proposed to add R.S. 15:824.2; proposed to repeal R.S. 15:827.1(E)(3)(b))

Note only the first "proposed to" action is capitalized.

D. Veto message of the governor

The text of the governor's veto message is included in the résumé digest. The governor's veto message can be found on the joint legislative website or in the House Journal.

VETO MESSAGE:

"House Bill No. 837 would allow offenders convicted of violent crimes such as Aggravated Battery, Second Degree Battery, Aggravated Assault, Aggravated Criminal Damage to Property, Simple Robbery, Purse Snatching, and Illegal Use of Weapons or Dangerous Instrumentalities to have these convictions permanently expunged from their criminal record.

Last year, I signed HB 55 by Representative Lopinto, which significantly expanded access to expungements for a broad range of non-violent, non-sexual felony and misdemeanor convictions. However, expanding access to expungements to include violent crimes is a step too far and creates a potential public safety risk to prospective employers, landlords, and various licensing boards that rely on accurate and complete criminal background information in order to make informed decisions. The potential to expand employment opportunities for ex-offenders is far outweighed by the need to have appropriate access to violent criminal histories.

For these reasons, I have vetoed House Bill No. 837 and hereby return it to the House of Representatives."

E. What about the effective date?

The effective date is not included in the résumé digest of a vetoed bill since the bill will not become effective.

14.5 ELEMENTS OF CONSTITUTIONAL AMENDMENTS

Résumé digests for constitutional amendments have the following elements:

- A. Heading
- B. Instrument summary
- C. Date to be submitted for election
- D. Citation line

A. Heading

The heading of the résumé digest for a constitutional amendment consists of the Act number with the House bill number in parentheses, the session year and type, and the name of the lead author only, and is styled as follows:

RÉSUMÉ DIGEST

ACT 470 (HB 360)

2015 Regular Session

Chaney

B. Instrument summary

In writing the instrument summary for a constitutional amendment résumé digest, the drafter should use the phrases, “present constitution”, “existing constitution”, and “proposed constitutional amendment”.

C. Date to be submitted for election

The effective date is not included in the résumé digest of a constitutional amendment, but instead the drafter should include the date the constitutional amendment will be submitted to the voters at a statewide election.

Provides for submission of the proposed amendment to the voters at the statewide election to be held Oct. 24, 2015.

D. Citation line

The citation line of the constitutional amendment résumé digest is written in the same manner as in the digest.

(Amends Const. Art. VII, §21(A))

14.6 ELEMENTS OF RESOLUTIONS AND STUDY REQUESTS

Résumé digests for resolutions and study requests have the following elements:

- A. Heading
- B. Instrument summary

A. Heading

The heading of resolutions and study requests consists of the lead author's name and instrument number and is styled as follows:

RÉSUMÉ DIGEST		
HR 49	2015 Regular Session	Barrow

B. Instrument summary

The instrument summary for resolutions and study requests are written in a similar manner as in digests.

Designates April 28, 2015, as Healthy Start Day at the state capitol.

14.7 EXAMPLES OF RÉSUMÉ DIGESTS

A. New law only

[House Bill No. 417](#) [2015 Regular Session]
[House Bill 153](#)[2015 Regular Session]

B. Prior Law – New Law

[House Bill No. 491](#)[2015 Regular Session]
[House Bill No. 134](#)[2015 Regular Session]

C. Existing Law – New Law

[House Bill No. 44](#)[2015 Regular Session]
[House Bill No. 761](#)[2015 Regular Session]

D. Prior Law – Existing Law – New Law

[House Bill No. 106](#)[2015 Regular Session]
[House Bill No. 695](#)[2015 Regular Session]

E. Resolutions

[House Resolution No. 148](#)[2015 Regular Session]
[House Resolution No. 136](#)[2015 Regular Session]
[House Concurrent Resolution No. 39](#)[2015 Regular Session]
[House Concurrent Resolution No. 81](#)[2015 Regular Session]

F. Study Resolutions

[House Study Resolution No. 1](#)[2015 Regular Session]
[House Study Resolution No. 2](#)[2015 Regular Session]

G. Constitutional Amendment

[House Bill No. 518](#)[2015 Regular Session]

H. Vetoed Bills

[House Bill No. 272](#)[2015 Regular Session]
[House Bill No. 577](#)[2015 Regular Session]

CHAPTER 15. CONSTITUTIONAL AMENDMENTS

15.1 OVERVIEW

Changes to the Louisiana Constitution are drafted in the form of a joint resolution. A "joint resolution" is a proposition which seeks to enact, amend, or repeal provisions of the constitution. A joint resolution may be proposed at any regular session, must be prefiled, and is given a bill number and processed as a bill; however, it is not presented to the governor for gubernatorial action after passage by the legislature. After passage by the legislature, it is submitted to the electors of the state for a vote. See [Constitution Article XIII](#) for additional details for filing joint resolutions.

The joint resolution is generally structured in the same manner as a bill having a oneliner, title, body, and digest. There are important differences outlined in the bill diagram that will be discussed in this Chapter.

15.2 STARTING THE CONSTITUTIONAL AMENDMENT

To begin drafting a constitutional amendment, a drafter should open a new Instrument Request in Task Organizer and select House Bill as the "Request Type" and Constitutional Amendment as the "Draft Type".

Instrument Request Card

Request Actions Tabs

Clear Relate Submit Draft Exit

Request ID: NEW Status:

Submitted On: Drafter:

*Session: *Request Type: Draft Type:

2014 Regular Session House Bill Constitutional Amendment

Keyword: Author:

*Oneliner:

15.3 SKELETON OF A JOINT RESOLUTION (CONSTITUTIONAL AMENDMENT)

HLS 14RS-185

ORIGINAL

Regular Session, 2014

HOUSE BILL NO. 341

BY REPRESENTATIVE HARRISON

A GOVERNMENT ORGANIZATION: (Constitutional Amendment) Provides relative to departments of the executive branch of state government

1 A JOINT RESOLUTION

2 Proposing to amend Article IV, Section 1(B) of the Constitution of Louisiana, relative to

3 organization of the executive branch of state government; to provide for the

B 4 maximum number of departments in the executive branch of state government; to

5 provide for submission of the proposed amendment to the electors; and to provide

6 for related matters.

7 Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members

C 8 elected to each house concurring, that there shall be submitted to the electors of the state of

9 Louisiana, for their approval or rejection in the manner provided by law, a proposal to

10 amend Article IV, Section 1(B) of the Constitution of Louisiana, to read as follows:

11 §1. Composition; Number of Departments; Reorganization

12 Section 1.

13 * * *

D 14 (B) Number of Departments. Except for the offices of governor and

15 lieutenant governor, all offices, agencies, and other instrumentalities of the executive

16 branch and their functions, powers, duties, and responsibilities shall be allocated

17 according to function within not more than twenty ~~twenty-one~~ departments. The

18 powers, functions, and duties allocated by this constitution to any executive office

19 or commission shall not be affected or diminished by the allocation provided herein

20 except as authorized by Section 20 of this Article.

21 * * *

Page 1 of 2

CODING: Words in struck through type are deletions from existing law; words underscored are additions.

1 Section 2. Be it further resolved that this proposed amendment shall be submitted
 [E] 2 to the electors of the state of Louisiana at the statewide election to be held on November 4,
 3 2014.

4 Section 3. Be it further resolved that on the official ballot to be used at the election,
 5 there shall be printed a proposition, upon which the electors of the state shall be permitted
 [F] 6 to vote YES or NO, to amend the Constitution of Louisiana, which proposition shall read as
 7 follows:
 8 Do you support an amendment to change the maximum number of
 9 departments in the executive branch of state government from twenty to
 10 twenty-one? (Amends Article IV, Section 1(B))

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Harrison

HB No. 341

Abstract: Changes the maximum number of departments in the executive branch of state government from 20 to 21.

[G] Present constitution provides that the executive branch of state government consists of all executive offices, agencies, and instrumentalities of the state. Requires that, except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than 20 departments.

Proposed constitutional amendment retains present constitution except changes the maximum number of executive branch departments from 20 to 21.

Provides for submission of the proposed amendment to the voters at the statewide election to be held Nov. 4, 2014.

(Amends Art. IV, §1(B))

15.4 ELEMENTS OF A JOINT RESOLUTION

A. Oneliner

The oneliner must contain the phrase "(Constitutional Amendment)".

GOVERNMENT ORGANIZATION: (Constitutional Amendment) Provides relative to departments of the executive branch of state government

B. Title

As with a bill, the title in a joint resolution must contain a brief summary of the changes proposed and be confined to one subject.

A JOINT RESOLUTION
Proposing to amend Article IV, Section 1(B) of the Constitution of Louisiana, relative to organization of the executive branch of state government; to provide for the maximum number of departments in the executive branch of state government; to provide for submission of the proposed amendment to the electors; and to provide for related matters.

The revision of an entire Article, though containing multiple objects or changes, may be proposed as one amendment.¹ Repeals may be done by reference ([Const. Art. XIII, §1\(B\)](#)). In cases where the joint resolution will contain a combination of changes like amending, enacting, and repealing provisions of the constitution, the cite line in the title must include the phrase "of the Constitution of Louisiana" after each different action. **[emphasis added]**

A JOINT RESOLUTION
Proposing to **amend** Article VII, Sections 9 and 13(B) and (C) **of the Constitution of Louisiana** and to **add** Article VII, Section (13)(D)(3) **of the Constitution of Louisiana**, relative to...

¹The 1973 Constitutional Convention transcripts indicate that the framers intended that only one Article of the constitution could be amended in one joint resolution; however, Act No. 170 (Senate Bill No. 1 by Dardenne, et al.) of the 1998 E.S. amended more than one Article and was ratified by the voters on October 3, 1998.

C. Introductory clause

Rather than an enacting clause, the joint resolution will contain as its first section the provision whereby the legislature resolves to propose the changes to be made to the constitution. The standard language is provided in the joint resolution template when “Constitutional Amendment” is selected in Task Organizer. The drafter will need to indicate the action the joint resolution is taking, whether it is amending, enacting, or repealing, and which section of the constitution will be affected.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state of Louisiana, for their approval or rejection in the manner provided by law, a proposal to _____ Article ____, Section ____ of the Constitution of Louisiana, to read as follows:

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state of Louisiana, for their approval or rejection in the manner provided by law, a proposal to amend Article IV, Section 1(B) of the Constitution of Louisiana, to read as follows:

D. Body of the Joint Resolution

Like the body of a bill, the body of the joint resolution contains the provisions of the constitution as the legislature intends it to be upon the approval of the electors of the state.

§1. Composition; Number of Departments; Reorganization

Section 1.

* * *

(B) Number of Departments. Except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than ~~twenty~~ twenty-one departments. The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 20 of this Article.

* * *

E. Election date

A joint resolution must contain a separate section to specify the statewide election, including the specific date, at which the amendment is to be submitted to a vote of the people.

Generally, the primary election, whether congressional or gubernatorial, is used because the primary election is certain to happen statewide.

If the author requests the use of another date, the drafter may wish to discuss the potential for the amendment to be the only item on a ballot. The drafter may also want to discuss with the author any concerns about the cost associated with holding a statewide election when there is only one item on the ballot and the risk of low voter turnout for that election. Ultimately, the decision still rests with the author. The drafter should draft at the author's direction.

Section 2. Be it further resolved that this proposed amendment shall be submitted to the electors of the state of Louisiana at the statewide election to be held on ____ __, 20__.

Section 2. Be it further resolved that this proposed amendment shall be submitted to the electors of the state of Louisiana at the statewide election to be held on November 4, 2014.

F. Ballot language

To satisfy the constitutional requirement for information on the election ballot to identify the different proposed amendments, each joint resolution must contain a separate section that provides the actual language that will be placed on the ballot by the secretary of state to identify that proposition. The ballot language is written by the drafter.

[Article XIII, Section 1 of the constitution](#) requires that when more than one proposed constitutional amendment is submitted at the same election, they must be presented on the ballot so as to enable the voters to vote on them separately. The courts have held that this provision means information which is sufficient to identify the proposed amendment which the voter is voting for or against.² The language for the ballot should not be confused with the digest of the proposed constitutional amendment required by [R.S. 24:153](#) to be published in newspapers. Such digests are prepared by the attorney general and secretary of state.

[Joint Rule No. 5](#) of the Joint Rules of the Senate and House of Representatives requires that ballots be posed in the form of a question, "Do you support an amendment to...". The language of the ballot should be brief and contain the simplest language possible so as to be easily understood by all voters. It is not a recitation of the title, though

The language of the ballot should be brief and easy to understand by all voters.

² For further discussion of the requirements for ballot language see *Hotard v. City of New Orleans*, (La. 1948), 35 So.2d 752, 213 La. 843.

the drafter might use the title as a foundation. Also try to avoid using terms of art or hyper-technical terms.

Section 3. Be it further resolved that on the official ballot to be used at the election, there shall be printed a proposition, upon which the electors of the state shall be permitted to vote YES or NO, to amend the Constitution of Louisiana, which proposition shall read as follows:

Do you support an amendment to change the maximum number of departments in the executive branch of state government from twenty to twenty-one? (Amends Article IV, Section 1(B))

When amending a joint resolution, the ballot language should be reviewed to determine whether the amendment necessitates a change in the language. If the original ballot language is broadly written it will be unlikely that it would need to change to accommodate a germane amendment. Specificity in the ballot language increases the possibility for a ballot to contain a material error, especially on bills that are heavily amended or prepared in conference committee in the waning hours of the session.

G. Digest

The digest of a joint resolution contains the same component parts as a digest of a bill. In addition to the abstract, summary, and citation line, a joint resolution digest also includes the election date of the proposed amendment.

Provides for submission of the proposed amendment to the voters at the statewide election to be held Nov. 4, 2014.

See [Chapter 9, Digests](#) for more details.

15.5 EFFECTIVE DATE

A constitutional amendment which is approved by the voters becomes effective twenty days after the proclamation of its adoption by the governor ([Const. Art. XIII, §1\(C\)](#)). However, the amendment may specify another effective date.

15.6 COMPANION LEGISLATION

There are times when changes in the Revised Statutes require changes to the state constitution. In other instances, a member may need to codify in the Revised Statutes the effects of a change

to the constitution. Bills to do that are often referred to as “companion legislation”. The Louisiana Constitution provides that whenever the legislature submits amendments to the constitution, the legislature may at the same session enact laws to carry them into effect, to become operative when the proposed amendments have been ratified ([Const. Art. XIII, §3](#)).

When drafting companion legislation, the drafter must consider the effective date for both the constitutional amendment and its companion legislation. In many cases, it may be necessary to include in the bill a special effective date providing that the bill will become effective upon the passage of the constitutional amendment. See [Chapter 8, Effective Dates and Special Effectiveness Provisions](#) for more details.

15.7 EXAMPLES OF CONSTITUTIONAL AMENDMENTS

The following list provides examples of various constitutional amendments:

A. Adds Paragraph

[House Bill No. 301 \[2012 Regular Session\]](#)

B. Amends Paragraph

[House Bill No. 426 \[2013 Regular Session\]](#)

C. Repeals Paragraph

[House Bill No. 32 \[2015 Regular Session\]](#)

D. Amends Paragraph and Subsubparagraph and adds Subsubparagraph

[House Bill No. 407 \[2013 Regular Session\]](#)

E. Amends and repeals in multiple Articles and Sections

[House Bill No. 273 \[2014 Regular Session\]](#)

F. Amends, adds, and repeals in multiple Articles and Sections

[House Bill No. 528 \[2013 Regular Session\]](#)

CHAPTER 16. LOCAL AND SPECIAL LAWS

16.1 OVERVIEW

In taking requests for the preparation of bills, a drafter is often confronted with legislative proposals which may be deemed by the courts to be local, special, or both in nature. This is significant because such acts on certain enumerated subjects are absolutely prohibited by the constitution, while others require prior public notice and other procedural actions in order to be valid. The constitution may also specify whether legislative action in certain matters is to be accomplished by passing a general law or through the enactment of local or special law. Accordingly, it is important that a drafter properly advise the requesting member with respect to this issue.

A. Local laws

The constitution does not provide a definition for what is a "local" or "special" law. In *Kimball v. Allstate Insurance Company*, 712 So.2d 46 (La. 1998), the Louisiana Supreme Court found that a local law "operates only in a particular locality or localities without the possibility of extending its coverage to other areas should the requisite criteria exist or come to exist there". The Court also determined that a law should not be deemed local even though its enforcement is "restricted to a particular locality or localities, where the conditions under which it operates simply do not prevail in other localities". Thus, a law may be considered general if it contains a flexible or nonfixed limitation through the use of "a reasonable classification such as population, size, or physical characteristics and not solely through the specific designation of a certain parish or parishes". Finally, the Court concluded that a law may be deemed general rather than local if "persons throughout the state are affected by it or it operates on a subject in which the people at large are interested".¹

B. Special laws

Even though a law is not local, it may still be a special law. In *Kimball*, the Louisiana Supreme Court defined a special law as one which "operates upon and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others". The Court further stated that a special law "confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of law".¹

¹ For further discussion of local and special laws, please see §§2.3 and 2.4 of Volume 20, *Legislative Law and Procedure*, of the *Louisiana Civil Law Treatise* by Raymond Lamonica and Jerry Jones.

C. Constitutional specifications

The constitutional provision authorizing legislative action in a certain matter may also specify whether that legislative action is to be accomplished by enacting a general law or through the adoption of a local or special law. Accordingly, it is important that a drafter carefully read the provision to determine if such a specification exists.

Examples of constitutional provisions specifying the use of a general law or requiring a special or local law include the following:

- ❖ Creation of municipalities and modification of municipal charters: [Article VI, Section 2](#)
- ❖ Restrictions upon acquisition of property by political subdivisions: [Article VI, Section 23](#)
- ❖ Collection of certain taxes levied by political subdivisions: [Article VII, Section 3\(B\)\(1\)](#)
- ❖ Definition of certain lands for ad valorem tax use value purposes: [Article VII, Section 18\(C\)](#)
- ❖ Removal by suit of certain public officials and employees: [Article X, Sections 25 and 25.1](#)
- ❖ Recall by election of certain public officials: [Article X, Section 26](#)
- ❖ Corporate dissolution or forfeiture of charter or franchise: [Article XII, Section 12](#)

D. Examples of general, local, and special bills from Joint Rule No. 20

To determine whether a request will most likely result in a general law or a local or special law, the drafter must analyze the request carefully and determine what effect the proposed action will actually have. Rule No. 20 of the Joint Rules of the Senate and House of Representatives, which provides relative to odd-numbered year session bill limitations, is an excellent source for guidance and examples of subject matters which would be deemed local or special.

[Joint Rule No. 20 \(A\)\(2\)\(a\)](#) list the following bills as examples of local and special bills:

- (1) Bills to enact a statute to create or provide relative to one or more particular school boards.
- (2) Bills which are enabling legislation relative to the subdivision of a school system.
- (3) Bills to call elections pursuant to [Article XII, Section 6\(C\)\(1\)\(a\)](#) of the Constitution of Louisiana.

- (4) Bills to allocate revenue dedicated to a local governmental subdivision.
- (5) Bills relative to particular levee districts.
- (6) Bills relative to particular airport authorities.
- (7) Bills relative to ports which are not deep water ports under [Article VI, Section 43 of the Constitution of Louisiana](#).
- (8) Bills relative to local retirement systems.
- (9) Bills to establish or to amend provisions relative to one or more special districts.
- (10) Resolutions suspending law whose object is a local or special law which is subject to [Article III, Section 2\(A\)\(4\)\(b\)\(ii\)](#) of the Constitution of Louisiana.

Some bills may appear to have an effect which gives rise to a local or special bill, however, according to constitutional provisions or current jurisprudence, they are considered general bills. [Joint Rule No. 20\(A\)\(3\)\(b\)](#) provides several examples of bills or resolutions which are considered general bills despite possibly having applicability in a particular locale or to certain persons. These bills are not required to be advertised as provided by [Article III, Section 13](#) of the Constitution of Louisiana and include the following:

- (1) Bills relative to institutions and officers for which provision is made in [Article V](#) of the Constitution of Louisiana.
- (2) Bills relative to deep water ports, as defined in [Article VI, Section 43](#) of the Constitution of Louisiana.
- (3) Bills relative to gaming, pursuant to [Article XII, Section 6\(C\)](#) of the Constitution of Louisiana, except a bill pursuant to [Article XII, Section 6\(C\)\(1\)\(a\)](#) of the Constitution of Louisiana providing with respect to elections.
- (4) Bills relative to state agencies, institutions, entities, facilities, property, roads, or bridges.
- (5) Bills which provide relative to local or city school systems pursuant to [Article VIII, Section 13\(D\)\(2\)](#) of the Constitution of Louisiana.
- (6) Bills, the effects of which are limited to a local classification established by a population range description, which is based upon the latest decennial census.
- (7) Bills relative to protecting the state's natural resources or environment.

- (8) Joint resolutions whose object is not listed in [Article III, Section 2\(A\)\(4\)\(b\)\(introductory paragraph\)](#) of the Constitution of Louisiana.
- (9) Resolutions suspending law whose object is not listed in [Article III, Section 2\(A\)\(4\)\(b\)\(introductory paragraph\)](#) of the Constitution of Louisiana nor subject to [Article III, Section 2\(A\)\(4\)\(b\)\(ii\)](#) of the Constitution of Louisiana.
- (10) The resolution to approve the formula to fund the Minimum Foundation Program.

The examples contained in [Joint Rule No. 20](#) are to be used as a guide only and should not substitute for an actual examination of the proposed legislation request. A drafter who is unsure whether a request will be general, local, or special should consult with the division director for further guidance.

E. Reasonable classifications

A law whose operation is limited to specific localities is still deemed general if the law applies in those certain localities solely through the effect of a reasonable general classification instead of the specific designation of the localities. A reasonable classification is usually based on objective criteria such as population or physical characteristics. Any locality that meets the required criteria at any time will then fall under the jurisdiction of the law. A drafter should be careful when creating a classification to ensure that the classification is, in fact, a reasonable general classification. In *State v. Brazley*, 773 So.2d 718 (La. 2000), the Louisiana Supreme Court found that recently enacted laws with a population range referencing a specific federal census were local in nature because the populations referenced in a specific federal census are not subject to fluctuation and there was no "possibility of extending their coverage to other localities or areas because the requisite criterion can never come to exist".

Example of a reasonable classification based upon population:

Do not reference a specific federal census:

B.(1) Notwithstanding any other provisions of law to the contrary, the commission shall adopt rules regulating account wagering and shall authorize account wagering to be conducted by a licensee operating a pari-mutuel live horse racing facility located in any municipality having a population in excess of four hundred fifty thousand persons as of **the 1990 federal decennial census**.

Do use a general reference to the latest federal census:

B.(1) Notwithstanding any other provisions of law to the contrary, the commission shall adopt rules regulating account wagering and shall authorize account wagering to be conducted by a licensee operating a pari-mutuel live horse racing facility located in any municipality having a population in excess of four hundred fifty thousand persons as of **the latest federal decennial census**.

16.2 PROHIBITED LOCAL AND SPECIAL LAWS

Article III, Section 12 of the Constitution of Louisiana provides that the legislature shall not pass a local or special law in the following areas, except as provided elsewhere in the constitution:

- (1) For the holding and conducting of elections, or fixing or changing the place of voting.
- (2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.
- (3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement or judgments, or prescribing the effects of judicial sales.
- (4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

- (5) Exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; refunding moneys legally paid into the treasury.
- (6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.
- (7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.
- (8) Regulating the management of parish or city public schools, the building or repairing of parish or city schoolhouses, and the raising of money for such purposes.
- (9) Legalizing the unauthorized or invalid acts of any officer, employee, or agent of the state, its agencies, or political subdivisions.
- (10) Defining any crime.

Further, [Article III, Section 12](#) provides that the legislature cannot indirectly enact special or local laws by the partial repeal or suspension of a general law.

16.3 PROCEDURES FOR ENACTING LOCAL OR SPECIAL LAWS

[Article III, Section 13\(A\)](#), provides for the general procedures for enactment of local or special laws as follows:

"No local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given."

If a request is made for a bill that may be local or special, the drafter should first carefully examine the prohibited categories. If the proposal would be so prohibited, the member should be advised of the problem; in some instances, it may be possible to prepare the bill in such a way that it will not be considered local or special, such as through the creation of a reasonable classification. If the subject matter is not prohibited and the bill would be considered local or special, the notice requirements of [Article III, Section 13](#), must still be satisfied.

Drafters should treat each situation on its own merits. If, after carefully considering the constitutional sections, previous legislative action on the same subject matter, and the relevant court cases, any reasonable premise exists that the subject may be local or special, the practical and prudent approach would be to advertise and appropriately advise the author. An overabundance of caution is warranted. A drafter who is unsure of whether a bill would be considered local or special should consult with his division director for further guidance.

The fact that a bill has been advertised in accordance with the provisions of [Article III, Section 13](#) is not conclusive of its status as a local or special law. The Louisiana Supreme Court has noted that compliance with the requirement of notice for local or special laws does not, of itself, make the enacted statutes local or special laws and that "an abundance of caution is what ordinarily prompts the proponents of legislation to take such action". In cases where it is uncertain during drafting whether the legislation is in fact local or special, an abundance of caution suggests that the notice requirements be followed.

This, of course, is assuming the bill is not almost certainly prohibited and that time is available for advertising. In either of the two latter cases, the author may wish to ignore the issue and simply proceed on the basis that the bill is not local or special and hope that such is not questioned.

If it is ultimately determined that public notice of a bill is required prior to introduction, the drafter should work in conjunction with the division administrative secretary and Administrative Services to create the notice and provide for its publication.

16.4 PUBLIC NOTICE PRIOR TO INTRODUCTION

A. Regular Session

Under the Louisiana Constitution and laws, notice of intent to introduce certain legislation must be published **prior** to introduction of the legislation in a regular session. Failure to conform to the requirements for preintroduction notice may **invalidate** the legislation.

Legislative drafters should be mindful of procedures and time periods for local advertising. Prefiling and session introduction time periods must be taken into account when planning to advertise in local journals. Many local journals do not publish on a daily basis and also have deadlines to receive notices for advertising. Drafters should notify Administrative Services as early as possible of local notices to be published. Drafters should also remember that the constitution prohibits payment for the advertisements by the state and that the running of the advertisement does not constitute a waiver of confidentiality of the bill request, including the author's name.

Preintroduction notice is required for all of the following:

1) *Local or special bills – generally*

Louisiana Constitution, [Article III, Section 13\(A\)](#) requires:

§13. Local or Special Laws; Notice of Intent; Publication

Section 13. (A) Except as otherwise provided in this Section, no local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given.

NOTE: The courts have held that notice of introduction is not required for a local or special law if the constitution specifically grants the legislature power to adopt such legislation on a particular subject, even though otherwise local or special in character. But the constitutional grant of power must be sufficiently specific to avoid the requirement of preintroduction notice.

2) *Crime prevention districts*

Louisiana Constitution, [Article III, Section 13\(B\)](#) requires:

§13. Local or Special Laws; Notice of Intent; Publication

(B) No local or special law relative to the creation of a special district, the primary purpose of which includes aiding in crime prevention and adding to the security of district residents by providing for an increased presence of law enforcement personnel in the district or otherwise promoting and encouraging security in the district, shall be enacted unless notice of the intent to introduce such bill has been published on three separate days, without cost to the state, in the official journal of the locality where the special district is to be situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and shall specifically disclose whether the governing authority of the special district would be authorized by the contemplated law to impose and collect a parcel fee within the district, whether the parcel fee will be imposed or may be increased without an election, and the maximum amount of the parcel fee if a maximum amount is set forth in the contemplated law. Every such bill shall recite that the required notice has been given.

3) *Retirement bills and joint resolutions*

Louisiana Constitution, [Article X, Section 29\(C\)](#) requires:

§29. Retirement and Survivor's Benefits

(C) Retirement Systems; Change; Notice. No proposal to effect any change in existing laws or constitutional provisions relating to any retirement system for public employees shall be introduced in the legislature unless notice of intention to introduce the proposal has been published, without cost to the state, in the official state journal on two separate days. The last day of publication shall be at least **sixty** days before introduction of the bill. The notice shall state the substance of the contemplated law or proposal, and the bill shall contain a recital that the notice has been given.

NOTE: Cases have interpreted this requirement to apply only to proposed legislation effecting changes and amendments to the basic systems of retirement. If the proposal affects city or other strictly local retirement systems, local notice is also necessary.

4) *Assessors' expense allowance, salary, or other emolument bills*

[R.S. 47:1907.1](#) requires:

§1907.1. Local notice; salary increases

The compensation set forth in Section 1907 shall not be changed by amendment to such Section, or by other Act regardless of whether it amends such Section, unless notice of intention to introduce the proposal has been published on two separate days without cost to the state in the official journal for the parish wherein the office is located. If the proposal would change the compensation of all parish assessors in the state, publication shall also be made in the official journal of the state. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the amount of the change, the bill shall contain a recital that the notice has been given, and certification of such publications shall be attached to the bill.

[R.S. 47:1908\(D\)](#) requires:

§1908. Expenses

D. The clerical and other expense allowances set forth in Paragraph (A) of this section shall not be changed by amendment to this section, or by other Act regardless of whether it amends this section, unless notice of intent to do so shall have been sent by the assessor to the school board and governing authority in each parish to be affected by such change. Such notice in

each parish affected shall state the amount of change to be applied for and shall be sent by certified mail.

The mailing of this notice of intent to change the clerical and other expense allowance set forth in Paragraph (A) of this section shall be made by the assessor at least ten days prior to the convening of the legislative session in which such change is to be made. The evidence of such notice having been mailed shall be exhibited in the legislature before such Act shall be passed, and every such Act shall contain a recital that such notice has been given.

5) *Compensation of sheriffs*

[R.S. 13:5521\(E\)](#) requires:

§5521. Compensation

E. The compensation set forth in this Section shall not be changed by amendment to this Section, or by other Act regardless of whether it amends this Section, unless notice of intention to introduce the proposal has been published on two separate days without cost to the state in the official journal for the parish wherein the office is located. If the proposal would change the compensation of all sheriffs in the state, publication shall also be made in the official journal of the state. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the amount of the change, the bill shall contain a recital that the notice has been given, and certification of such publication shall be attached to the bill.

6) *Compensation of registrars of voters and assistants*

[R.S. 18:55\(B\)](#) requires:

§55. Compensation of registrar of voters; amount and manner of payment; reduction during tenure prohibited; prohibited increase

B. No law to increase or decrease that portion of the salary payable by the parish shall be enacted hereafter unless notice of intent to enact such a law has been published on two separate days, without cost to the state, in the official journal of each locality affected by the enactment of the increase or decrease in the salary figures. The last day of publication shall be at least thirty days prior to introduction of the bill.

[R.S. 18:59\(D\)](#) requires:

§59. Deputies, confidential assistants, and other permanent office employees; temporary employees;

D. No law to increase or decrease that portion of the salary payable by the parish shall be enacted hereafter unless notice of intent to enact such a law has been published on two separate days, without cost to the state, in the official journal of each locality affected by the enactment of the increase or decrease in the salary figures. The last day of publication shall be at least thirty days prior to introduction of the bill.

7) *School board members*

R.S. 17:56(D) requires:

D. The compensation set forth in this Section shall not be changed by amendment to this Section, or by other Act regardless of whether it amends this Section, unless notice of intention to introduce the proposal has been published on two separate days without cost to the state in the official journal for the parish wherein the board is located. If the proposal would change the compensation of all school board members in the state, publication shall also be made in the official journal of the state. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the amount of the change, the bill shall contain a recital that the notice has been given, and certification of such publication shall be attached to the bill.

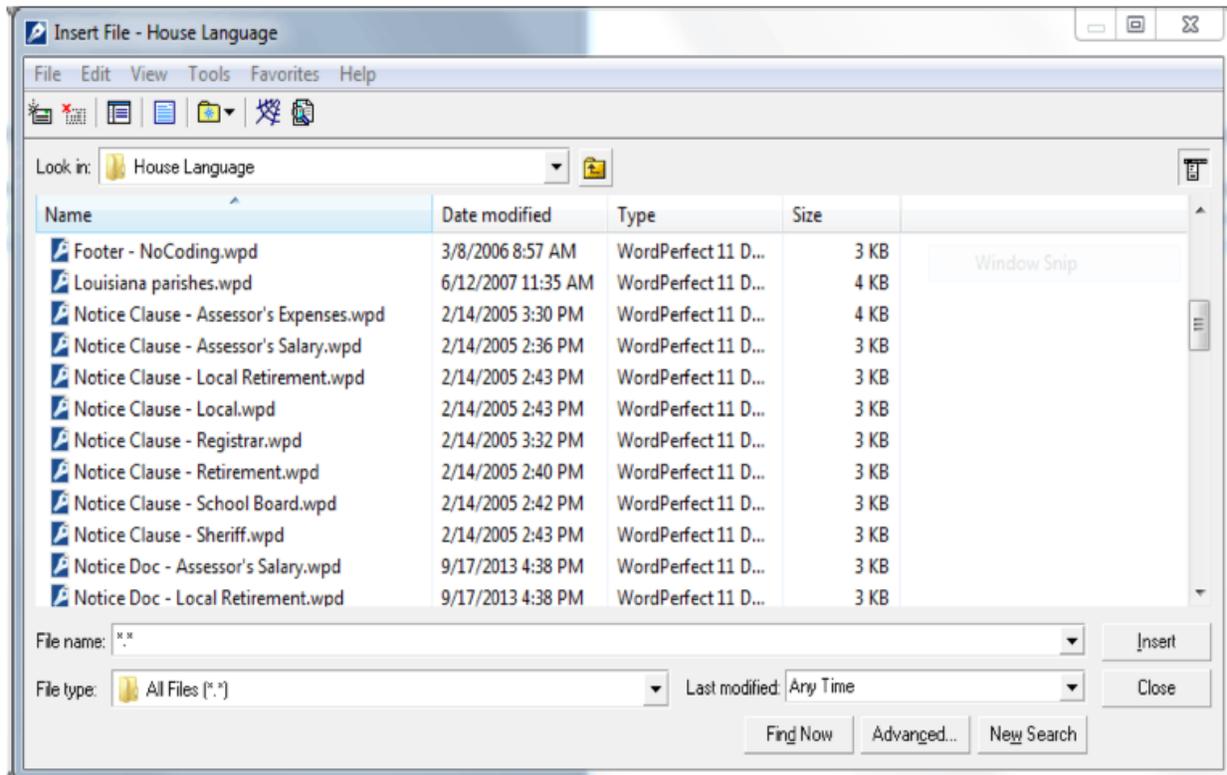
B. Special Session

Preintroduction public notice otherwise required for the above legislation does not appear to be necessary in special sessions. A proclamation or "call" must be issued prior to a special session that lists the objects to be considered during the session. Under penalty of nullity, legislation during a special session must be limited to the objects enumerated in the call. ([La. Const. Art. III, §2\(B\)](#)). Although there are no recent cases directly on point, listing an object in the "call" appears to satisfy the requirement for preintroduction notice. The power to convene a special session on objects enumerated in the call presupposes an urgent necessity for prompt action and is not controlled by the requirement of preintroduction notice.

16.5 RECITATION OF NOTICE

[Article III, Section 13\(A\)](#), as well as the various statutory notice requirements discussed above, require each bill to contain a statement that the required notice has been given. The drafter must be sure that the bill contains the appropriate required recitation.

If the required recitation must be added manually to the bill draft, this should be done only by choosing "Insert Bill Section" under the "LEGISuite" tab in WordPerfect and then selecting the appropriate type of "Notice Clause".



The recitation should be located between the bill title and the "Be it enacted" clause.

AN ACT

To amend and reenact R.S. 33:9097.19(F)(introductory paragraph), (2)(a), and (5), relative to East Baton Rouge Parish; to provide relative to the Sherwood Forest Crime Prevention and Neighborhood Improvement District; to provide relative to the parcel fee imposed and collected within the district; to provide relative to the collection fee; and to provide for related matters.

Notice of intention to introduce this Act has been published as provided by Article III, Section 13 of the Constitution of Louisiana.

Be it enacted by the Legislature of Louisiana:

16.6 EXAMPLES OF LOCAL AND SPECIAL BILLS

The following list provides various examples of local and special bills:

A. Local Bill

[House Bill No. 18 \[2013 Regular Session\]](#)

B. Special Bill

[House Bill No. 20 \[2013 Regular Session\]](#)

C. Local and Special

[House Bill No. 51 \[2014 Regular Session\]](#)

CHAPTER 17. TERMINATION AND RE-CREATION OF STATUTORY ENTITIES (SUNSET LAW)

17.1 OVERVIEW

The termination and re-creation of statutory entities also known as "Sunset Law", [R.S. 49:190](#) et seq., abolishes executive branch departments and the offices and agencies therein on particular specified dates unless they are re-created by statute prior to the termination date. The law provides that if not re-created by a year prior to the termination date, the entity will begin to terminate and will cease to exist on the termination date. The law also provides that all statutory authority for the abolished entity ceases upon termination. Therefore a bill to re-create a statutory entity, also referred to as a sunset bill, is usually introduced a year prior to the entity's termination date. A sunset bill can be introduced in either chamber.

17.2 STATUTORY GUIDELINES

The Revised Statutes require and provide the procedure for the termination and re-creation of statutory entities as follows:

[R.S. 49:190](#) defines "statutory entity" as any "agency", "department", or "office" as defined in [R.S. 36:3](#).

[R.S. 49:193](#) requires the standing committees of the legislature to evaluate the state's statutory entities to determine if the statutory entity shall be continued, modified, or terminated. Pursuant to [R.S. 49:193](#), the legislature is responsible for evaluating these entities for the purpose of:

- 1) The elimination of inactive entities.
- 2) The elimination or consolidation of entities, programs, or activities which duplicate other governmental entities, programs, or activities.
- 3) The elimination of unnecessary entities, programs, or activities or entities, programs, or activities which no longer serve the public interest.
- 4) The elimination or improvement of inefficient or ineffective entities, programs, or activities.
- 5) The elimination or revision of entities, programs, or activities that are inconsistent with the intent of legislation authorizing the entity, program, or activity.

[R.S. 49:190.1](#) provides that the termination date of a statutory entity is July 1 of an odd-numbered year.

[R.S. 49:191](#) provides that a statutory entity begins to terminate its operations one year before its termination date.

[R.S. 49:195](#) prohibits a statutory entity's new termination date from being more than six years after its current termination date.

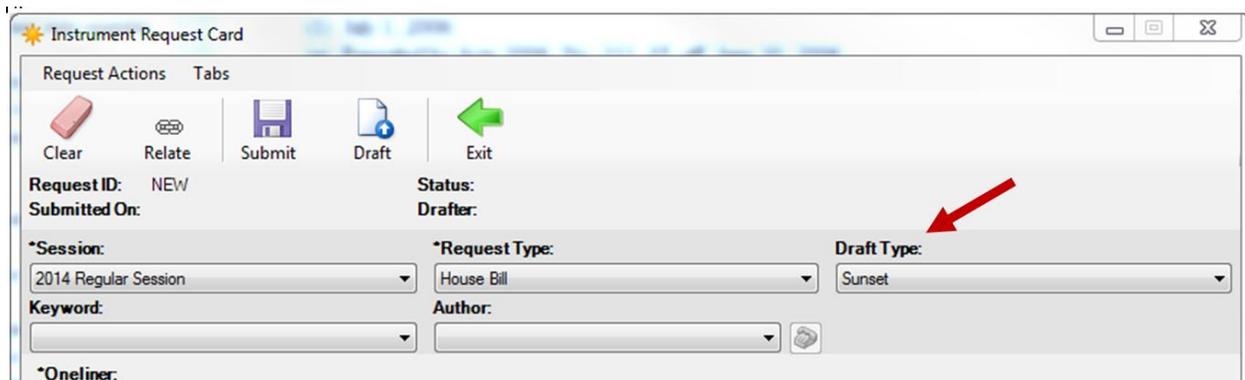
It is advisable that a drafter review all the pertinent sunset law found at [R.S. 49:190](#) et seq. and familiarize himself with the sunset process.

17.3 STARTING THE SUNSET BILL

To begin drafting a sunset bill, a drafter should open a new Instrument Request in Task Organizer and select "Sunset" as the "Draft Type".

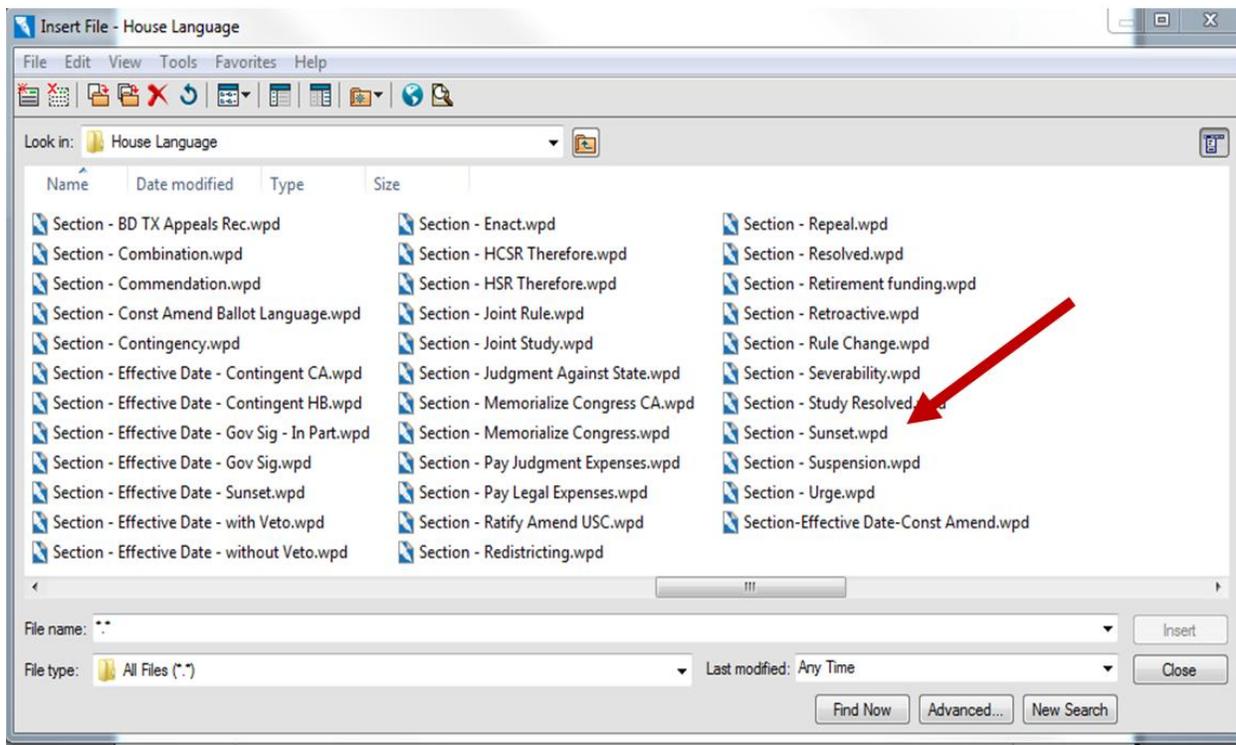
For consistency in drafting, the template for a sunset bill can be inserted into a bill draft in two ways:

- 1) Through Task Organizer on the request card.



The screenshot shows the "Instrument Request Card" window. At the top, there are "Request Actions" (Clear, Relate, Submit, Draft, Exit) and "Tabs". Below this, the "Request ID" is "NEW" and "Status" is "Submitted On:". The "Draft Type" dropdown menu is set to "Sunset", which is highlighted by a red arrow. Other fields include "Session" (2014 Regular Session), "Request Type" (House Bill), "Keyword", "Author", and "Oneliner".

2) Once a bill draft is in progress, a drafter can insert the sunset bill template by choosing "Insert Bill Section" under the LEGISuite tab in WordPerfect and then selecting "Section-Sunset".



17.4 DRAFTING THE SUNSET BILL

Because the sunset bill is a very technical bill, standard language has been developed that can be used for all statutory entities. The drafting tool provides the template for the six sections of the bill. The drafter will need to customize the bill by inserting information as it pertains to the specific statutory entity.

A. *Keyword and oneliner*

The keyword for the sunset bill is typically "Sunset Law". The oneliner is usually standard in indicating that the bill is to re-create a particular statutory entity.

SUNSET LAW: Re-creates the Department of Children and Family Services

B. Title

To draft the title, the drafter will need to determine the appropriate statutes to enact and repeal. The drafter will also need to include the name of the relevant statutory entity for which the bill is being drafted.

AN ACT

To ACTION, relative to the Department of DEPARTMENT, including provisions to provide for the re-creation of the Department of DEPARTMENT and the statutory entities made a part of the department by law; to provide for the effective termination date for all statutory authority for the existence of such statutory entities; and to provide for related matters.

AN ACT

To enact R.S. 49:191(7) and to repeal R.S. 49:191(5)(g), relative to the Department of Children and Family Services, including provisions to provide for the re-creation of the Department of Children and Family Services and the statutory entities made a part of the department by law; to provide for the effective termination date for all statutory authority for the existence of such statutory entities; and to provide for related matters.

C. Section 1: Re-creation effective date

Section 1 of the bill cites the authority of [R.S. 49:193](#). This Section provides for the continuous statutory authority of the entity and also provides the date the statutory entity will be re-created.

The drafter will need to include the name of the statutory entity and the re-creation date.

Section 1. Pursuant to R.S. 49:193, the Department of DEPARTMENT and the statutory entities made a part of the department by law shall be re-created effective June 30, EFFECTIVE-YEAR, and all statutory authority therefor is continued in accordance with the provisions of Part XII of Chapter 1 of Title 49 of the Louisiana Revised Statutes of 1950.

Section 1. Pursuant to R.S. 49:193, the Department of Children and Family Services and the statutory entities made a part of the department by law shall be re-created effective June 30, 2014, and all statutory authority therefor is continued in accordance with the provisions of Part XII of Chapter 1 of Title 49 of the Louisiana Revised Statutes of 1950.

D. Section 2: Termination date

Section 2 of the bill provides for the termination date of the statutory entity. This is the date the entity will completely cease operation if not re-created.

In drafting the bill for re-creation of the department and its offices and agencies, it is critical to distinguish between the actual termination date (the day the agency is abolished and statutory authority ceases) and the date one year prior to the termination date. The law requires that each termination date be July 1st of an odd-numbered year.

Each termination date must be July 1st of an odd-numbered year.

Section 2. All statutory authority for the existence of the Department of DEPARTMENT and the statutory entities made a part of the department as re-created by Section 1 of this Act shall cease as of TERMINATION-DATE, pursuant to R.S. 49:191. However, the Department of DEPARTMENT may be re-created prior to such date in accordance with the provisions of Part XII of Chapter 1 of Title 49 of the Louisiana Revised Statutes of 1950.

Section 2. All statutory authority for the existence of the Department of Children and Family Services and the statutory entities made a part of the department as re-created by Section 1 of this Act shall cease as of July 1, 2019, pursuant to R.S. 49:191. However, the Department of Children and Family Services may be re-created prior to such date in accordance with the provisions of Part XII of Chapter 1 of Title 49 of the Louisiana Revised Statutes of 1950.

E. Section 3

Section 3 of the bill is populated within the template and reads as follows:

Section 3. The provisions of R.S. 49:193 are hereby superseded to the extent that those provisions are in conflict with the provisions of this Act.

F. Section 4: Enacting Section

The drafter will need to determine the length of time that the entity is to continue in existence or the new termination date. The law provides that the new termination date cannot be more than six years from the existing termination date ([R.S. 49:193\(G\)](#)). However, it has been a practice over the last few years to limit this period to four years. This determination should be discussed with the author of the bill.

The drafter will need to enact the new date on which the statutory entity will begin to phase out its operations. The date listed in the statutes at R.S. 49:191 is one year prior to the actual termination date, and the statute provides that the agency shall begin to terminate on that date but that the termination date is one year later.

Section 4. CITE is hereby ACTION to read as follows:

The following examples are portions of bill drafts enacting a new paragraph and a new subparagraph, respectively.

Section 4. R.S. 49:191(7) is hereby enacted to read as follows:

§191. Termination of legislative authority for existence of statutory entities; phase-out period for statutory entities; table of dates

Notwithstanding any termination dates set by any previous Act of the legislature, the statutory entities set forth in this Section shall begin to terminate their operations on July first of each of the following years, and all legislative authority for the existence of any statutory entity, as defined in R.S. 49:190, shall cease as of July first of the following year, which shall be the termination date:

* * *

(7) July 1, 2018:

(a) The Department of Children and Family Services and all statutory entities made a part of the department by law.

Note that in the preceding example, the draft enacts Paragraph (7), but the language of the subparagraph is designated as "(a)". This is one instance in drafting whereby the drafter can enact a "Subparagraph (a)" even though there is no "(b)".

Section 4. R.S. 49:191(5)(n) is hereby enacted to read as follows:

§191. Termination of legislative authority for existence of statutory entities; phase-out period for statutory entities; table of dates

Notwithstanding any termination dates set by any previous Act of the legislature, the statutory entities set forth in this Section shall begin to terminate their operations on July first of each of the following years, and all legislative authority for the existence of any statutory entity, as defined in R.S. 49:190, shall cease as of July first of the following year, which shall be the termination date:

* * *

(5) July 1, 2014:

* * *

(n) The Department of State and all statutory entities made a part of the department by law.

Because several sunset bills may be introduced during the same legislative session, a drafter should draft a sunset bill based upon the present law, not in anticipation of other bills enacting law in the same section of law. The Louisiana State Law Institute will reconcile all the sunset bills that are enacted in the same year.

G. Section 5: Repeal section

The drafter will need to draft the repeal section. The statute that is repealed is the entity's previous termination date. Care should be used to ensure that the repealed statute in Section 5 is the repealed statute cited in the Title.

Section 5. CITE is hereby repealed in its entirety.

Section 5. R.S. 49:191(5)(g) is hereby repealed in its entirety.

H. Section 6: Effective date

The sunset bill template provides a special effective date of June 30 of the year the bill is introduced. This date typically matches the re-creation effective date in Section 1 of the bill.

Section 6. This Act shall become effective on June 30, Effective year; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on June 30, or on the day following such approval by the legislature, whichever is later.

Section 6. This Act shall become effective on June 30, 2014; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on June 30, 2014, or on the day following such approval by the legislature, whichever is later.

17.5 DRAFTING THE DIGEST

The digest of a sunset bill contains standard language that can be customized for each bill. Generally, the digest provides the entity's termination date, date to cease operation, and proposed new termination date.

Abstract: Re-creates the Dept. of Children and Family Services.

Present law (Sunset) provides that the Dept. of Children and Family Services and all the statutory entities made a part of that department by law shall begin to terminate their operations on July 1, 2014, and that all legislative authority for such entities shall cease as of July 1, 2015, unless the legislature enacts a bill authorizing the re-creation of the department and its statutory entities prior thereto.

Proposed law provides for the general re-creation of the Dept. of Children and Family Services and its statutory entities, effective June 30, 2014, in accordance with the "sunset" law. Proposed law supersedes the provisions of the "sunset" law which set out the procedure for review and re-creation and which require a separate bill to re-create each statutory entity within the department along with additional provisions. Proposed law makes July 1, 2019, the new termination date and termination would begin July 1, 2018, unless the department is re-created again.

Effective June 30, 2014.

(Adds R.S. 49:191(7)(a); Repeals R.S. 49:191(5)(g))

17.6 EXAMPLES OF SUNSET BILLS

The following list provides the blank sunset template as well as examples of sunset bills.

A. Sunset template

[Example](#)

B. Sunset bills

[House Bill No. 195](#) [2014 Regular Session]

[House Bill No. 372](#) [2012 Regular Session]

CHAPTER 18. CREATING STATE AGENCIES, INCLUDING BOARDS AND COMMISSIONS

18.1 OVERVIEW OF THE EXECUTIVE BRANCH

The executive branch is responsible for the administration and enforcement of the constitution and laws passed by the legislative branch. The governor is the chief executive officer of the state; however, the governor shares control of the state's executive branch with a large number of other elected officials.

Louisiana Constitution [Article IV, Section 1](#) provides for the composition and organization of the executive branch:

ARTICLE IV. EXECUTIVE BRANCH

§1. Composition; Number of Departments; Reorganization

Section 1.(A) Composition. The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executive offices, agencies, and instrumentalities of the state.

(B) Number of Departments. Except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments. The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 20 of this Article.

(C) Reorganization. Reallocation of the functions, powers, and duties of all departments, offices, agencies, and other instrumentalities of the executive branch, except those functions, powers, duties, and responsibilities allocated by this constitution, shall be as provided by law.

It is important to note that Section 1(B) limits the number of executive departments to twenty. Currently, all of these slots have been filled with the following twenty departments:

- ❖ Dept. of Agriculture and Forestry
- ❖ Dept. of Culture, Recreation and Tourism
- ❖ Dept. of Education
- ❖ Dept. of Health and Hospitals
- ❖ Dept. of Justice
- ❖ Dept. of Public Safety and Corrections
- ❖ Dept. of Revenue
- ❖ Dept. of State Civil Service
- ❖ Dept. of the Treasury
- ❖ Dept. of Wildlife and Fisheries
- ❖ Dept. of Children and Family Services
- ❖ Dept. of Economic Development
- ❖ Dept. of Environmental Quality
- ❖ Dept. of Insurance
- ❖ Dept. of Natural Resources
- ❖ Dept. of Public Service
- ❖ Dept. of State
- ❖ Dept. of Transportation and Development
- ❖ Dept. of Veterans Affairs
- ❖ Workforce Commission

This means that, in order to accomplish the goal of a member, a drafter will have to either assign new duties to one of the existing twenty departments or provide for the consolidation of one or more of the existing twenty departments before creating a new department. If the member chooses, however, to increase the number of executive departments authorized by the constitution, the drafter must include a Joint Resolution to amend the constitution to increase the maximum number of departments in the executive branch of state government in addition to the bill which will create the new executive department. For an example, please review [Act 874](#) of the 2014 Regular Session and the companion bill, [House Bill 246](#) of the 2014 Regular Session.

Generally, each executive department is subdivided into offices or other parts such as divisions or sections. Each department may also contain various state agencies including but not limited to boards and commissions. The drafter must look at what needs to be accomplished and the existing resources in state government and decide what is the best path to take: create a new program within or assign new duties to an existing state agency or create a new state agency. The drafter should advise the member accordingly of the possible ways to accomplish the member's goals.

18.2 CONSIDERATIONS FOR CREATING A STATE AGENCY

A. Creating new programs for existing state agencies

Often there is little need to create a new separate agency to administer a new program. Rather, it may be feasible to add the new program as additional duties and functions for an office of a department or other agency already in existence. There are at least three things a drafter must consider when creating a new program: 1) centralization and oversight, 2) elimination of duplication, and 3) increased responsiveness. When a member believes that a new program is needed, and unless the member gives contrary instructions, every effort should be made to

include that program in the functions of an existing department office or state agency. Even if the nature of the program is such that a board or commission is needed to oversee its functioning, it is likely that a board or commission already exists with similar functions to which the new program can be added.

B. Creating new state agencies

If, despite attempts to locate an appropriate existing office or other agency, a new program does not logically fall under the responsibilities of any department, office, or other state agency in existence, it may be necessary to create a new office or other agency to implement the program. There are three major elements to consider in the creation of a new state agency: 1) creation of the office or other agency and provision for its composition, duties, functions, and powers; 2) determination of which executive department would most appropriately administer or oversee the functions of the new agency; and 3) determination of the degree of independence required.

An office, being part of a department itself, generally is less independent than a separate agency created within a department. An agency's degree of independence depends upon how it is transferred to or placed in a department.

If the member requests or the drafter determines that a new state agency must be created, then the drafter will be required to address at least two issues in the bill: 1) the transfer type for the agency being created and 2) the specifics relative to the creation of the state agency, including organization and powers and duties.

18.3 TITLE 36 TRANSFER OF STATE AGENCIES

A. Transfer Types

Differing degrees of independence are detailed by the types of agency transfers described in Chapter 22 of Title 36 of the Louisiana Revised Statutes ([R.S. 36:801 et seq.](#)). These “transfer types” should be used to describe an agency's relationship with the executive department in which it is placed, if possible. Although the effect of such a transfer type for a newly created agency would not be to transfer the agency but rather to place it in the department, the descriptions contained in transfer types are still applicable and useful. In addition, the descriptions are necessary for a clear determination of responsibility for the new program. The following chart is a list of major transfer types. However, if existing provisions of transfer types are not satisfactory, a new transfer type can be crafted to fit the new agency.

Types of Transfers		
Type	Description	Citation
1.1 Totally independent	<p>Agency continues to administer and implement all functions and programs, including office of management and finance (OMF) functions, i.e. accounting and budget control, procurement and contract management, management and program analysis, data processing, personnel management, and grants management. Board or agency head is appointing authority. Agency implements functions and programs independently of department officers.</p> <p style="text-align: center;"><i>For an example, see R.S. 36:509(Q):</i></p> <p style="text-align: center;"><i>Q. The Poverty Point Reservoir District (R.S. 38:3087.1 et seq.) is placed within the Department of Transportation and Development and shall perform and exercise its powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with the provisions of R.S. 36:801.1.</i></p>	R.S. 36:801.1
1.2 Partly independent	<p>Agency continues to be composed and selected as provided by law; retains all of its policymaking, rulemaking, licensing, regulation, enforcement, or adjudication powers and functions; administers and implements these functions. Agency head is appointing authority relative to such functions, subject to budgetary control and applicable laws. Undersecretary performs certain budgetary and accounting functions, management analysis, program analysis, and grant management. Secretary exercises payroll, personnel management, procurement and contract management functions (except for retirement systems).</p> <p style="text-align: center;"><i>For an example, see R.S. 36:509(K):</i></p> <p style="text-align: center;"><i>K. The Louisiana Transportation Authority (R.S. 48:2071 et seq.) is placed within the Department of Transportation and Development and shall perform and exercise its powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with the provisions of R.S.</i></p>	R.S. 36:801

	36:801.	
Type	Description	Citation
2 Policymaking	<p>Agency continues to be composed and selected as provided by law; retains all of its policymaking, rulemaking, licensing, regulation, enforcement, or adjudication powers and functions (to be exercised independently of secretary and any assistant secretary). Secretary (not agency head) is appointing authority, except assistant secretaries appoint personnel for their offices and for agencies in them. Implementation and administration is department officers' responsibility. Undersecretary performs OMF functions.</p> <p><i>For an example, see R.S. 36:259(H):</i></p> <p><i>H. The Governor's Council on Physical Fitness and Sports (R.S. 40:2451 et seq.) is placed within the Department of Health and Hospitals and shall exercise and perform its powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with the provisions of R.S. 36:802.</i></p>	R.S. 36:802
3 Non-independent	<p>Agency's powers, duties, and functions are transferred to the secretary, who determines how they are to be carried out (according to office functions provided by law).</p> <p><i>For an example, see R.S. 36:409(O):</i></p> <p><i>O. The Louisiana Truck Center (R.S. 32:390.21 et seq.) is placed within the Department of Public Safety and Corrections as provided in R.S. 36:851.</i></p>	R.S. 36:851 et seq.
4 Advisory	<p>Same as Type 3 above except that the agency becomes advisory only.</p> <p><i>For an example, see R.S. 36:409 (I):</i></p> <p><i>I. The advisory board to the Liquefied Petroleum Gas Commission (R.S. 40:1851(F)) is placed within the Department of Public Safety and Corrections and shall perform and exercise its powers, duties, functions, and responsibilities in the manner provided for agencies</i></p>	R.S. 36:901 et seq.

	<i>transferred in accordance with R.S. 36:901 et seq.</i>	
Type	Description	Citation
5 Agency	<p>Agency is abolished; its powers, duties, and functions are transferred as for Type 3 above.</p> <p><i>For an example, see R.S. 36:4.1(E):</i></p> <p><i>E. The Department of Occupational Standards (R.S. 37:1-15) is hereby abolished and its powers, duties, functions, and responsibilities are transferred to the governor, through the commissioner of administration, in the office of the governor and hereafter shall be exercised and performed as provided in Part IV of Chapter 22 of this Title.</i></p>	R.S. 36:921 et seq.

Only general major categories of transfers were included in the chart; there are many other transfers tailored for individual agencies. Examples of other types of transfers:

R.S. 36:803.1. Transfer; certain appointing authority retained

The agency transferred by the provisions of R.S. 36:409(J)(1) shall be transferred as provided in R.S. 36:803, except that it shall continue to appoint its own director as otherwise authorized by law.

R.S. 36:807. Transfer; State Mineral and Energy Board

The State Mineral and Energy Board, transferred by the provisions of R.S. 36:359(E), shall be transferred as provided in R.S. 36:802, except the secretary of the Department of Natural Resources shall be an ex officio member of the State Mineral and Energy Board. The State Mineral and Energy Board shall retain supervision of all mineral leases granted by the state, and it shall retain general authority to take action for and on behalf of and to protect the interests of the state in accordance with the provisions of Title 30 of the Revised Statutes of 1950, as amended, and applicable laws.

B. Title 36 provisions

Legislation that creates a new state agency should consist of two major sections: 1) creation of the agency and delineation of its powers, duties, and functions, to be located in the appropriate title of the Louisiana Revised Statutes; and 2) placement of the new agency in the executive branch department by amending the appropriate sections of Title 36, including a citation of the appropriate transfer type to describe the degree of independence to be granted the new agency.

Avoid placing other substantive provisions in Title 36; these provisions belong in the appropriate title of the Revised Statutes.

If the entity created is not a separate agency but an office within one of the executive departments, such as the office of conservation in the Department of Natural Resources, Title 36 should be amended in more than one place. The newly created office must be amended into the list of offices in the section of Title 36 that provides for the creation, domicile, and composition of the department and a new subsection providing for the purposes and functions of that office in the department must be enacted.

An office is not included in the list of agencies transferred to the department, unless it is a separate agency but has "office" in its name.

Two examples from the office of conservation:

<p>R.S. 36:351. Department of Natural Resources; creation, domicile; composition; purposes and functions</p> <p style="text-align: center;">* * *</p> <p style="text-align: center;">C.(1) The Department of Natural Resources shall be composed of the executive office of the secretary, the office of management and finance, the office of conservation, the office of mineral resources, the office of coastal management, the Oilfield Site Restoration Commission, and such other offices as shall be created by law.</p> <p style="text-align: center;">* * *</p>

R.S. 36:358. Offices; purposes and functions

* * *

C. The office of conservation, in accordance with law, shall exercise the functions of the state with respect to the regulation, conservation, and use of the natural resources of the state which are not specifically within the jurisdiction of other state departments or agencies. Its functions shall include but not be limited to the conservation of the oil and gas resources of the state and matters pertaining thereto; the promotion and encouragement of exploration, production, and refining efforts for oil, intrastate gas, and other hydrocarbons; the control and allocation of energy supplies and distribution; the lease or construction and operation of intrastate pipeline systems; the implementation and enforcement of any emergency gas shortage allocation plan and the setting of priorities; regulation of the minimum sale price of intrastate natural gas, and management of ground water resources all in accordance with applicable laws.

* * *

If, however, the newly created entity is a board, commission, or other such agency, the section relative to transfer of agencies is the only section in Title 36 that should be amended. This can be done by either including the entity in an existing subsection or paragraph which places another entity in that department under the same transfer type provisions or by creating a new subsection or paragraph to be used exclusively for the entity in question. In either case, the transfer type provisions should be cited so that responsibility may be easily established.

18.4 CHECKLIST AND CONSIDERATIONS FOR DRAFTING A BILL CREATING A BOARD OR COMMISSION

This Section is applicable to state agencies. For a similar discussion regarding local boards and commissions, see [Chapter 20, Creating a Political Subdivision](#). For a bill creating a licensing or certifying agency, see [Chapter 19, Regulating a Profession or Occupation](#).

In addition to making the determination of which executive department would most appropriately administer or oversee the functions of a new state agency and the degree of independence required, the drafter must provide sufficient details to actually create the agency and provide for its composition, duties, functions, and powers. This is particularly important when creating a board or commission as the drafter will have to provide for extra details such as membership, meetings, and funding of the board or commission. The following checklist will help the drafter consider the details that may need to be included in legislation creating a board or commission.

A. Name. Give the agency a name to indicate the basic function of the agency and designate it formally as a state agency by doing all of the following:

- 1) *Placing the state agency in an executive department of state government.*
- 2) *Designating the "transfer type".*

A. There is hereby established within the Department of Health and Hospitals the Louisiana Emergency Response Network Board.

B. Membership. Determine the scope of the membership of the board or commission, including but not limited to the following factors:

- 1) *Composition of the membership: the number of members; designation of any members with powers different from those of other members, such as nonvoting members.*

NOTE: Ex officio members are voting members unless bill provides otherwise.

B. The network shall be governed by a board of twenty-eight members which shall include:

- (1) One cardiologist from nominees submitted by the Louisiana Chapter of the American College of Cardiology.
- (2) One member from nominees submitted by the Rural Hospital Coalition to represent hospitals with fewer than sixty beds.
- (3) One member from nominees submitted by the Metropolitan Hospital Council of New Orleans to represent hospitals with one hundred beds or more.
- (4) One member from nominees submitted by the Louisiana Hospital Association to represent a service district hospital.
- (5) Two members from nominees submitted by the Department of Health and Hospitals which shall include a member from the office of behavioral health.
- (6) One member from nominees submitted by the Governor's Office of Homeland Security and Emergency Preparedness.

(7) Two members from nominees submitted by the Louisiana State Medical Society which shall include a member specializing in pediatric surgery.

(8) One member from nominees submitted by the Louisiana Medical Association.

(9) One member from nominees submitted by the Committee on Trauma or American College of Surgeons.

(10) One member from nominees submitted by the Louisiana American College of Emergency Physicians.

(11) One member from nominees submitted by the Louisiana State University Health Sciences Center at Shreveport.

(12) One member from nominees submitted by the Louisiana State University Health Sciences Center at New Orleans.

(13) One member from nominees submitted by Tulane University Health Sciences Center.

(14) One member from nominees submitted by the Louisiana State Coroners Association.

(15) Two members from the Louisiana House of Representatives.

(16) Two members from the Louisiana Senate.

(17) One 211 member of the Louisiana Alliance of Information and Referral Systems.

(18) One member of the Louisiana Rural Ambulance Alliance.

(19) One 911 member of the National Emergency Number Association.

(20) One member of the Louisiana Hospital Association rehabilitation constituency group.

(21) One physician from nominees submitted by the American Stroke Association.

(22) One registered nurse practicing in emergency or critical care from nominees

submitted by the Louisiana State Board of Nursing.

(23) One medical director of an emergency medical services agency from nominees submitted by the Louisiana Association of EMS Physicians.

(24) One optometrist from nominees submitted by the Optometry Association of Louisiana.

2) Selection of the members: by appointing authority or election; list any restrictions on manner of appointment such as appointment from nominations or certain geographical areas; whether the appointment is subject to confirmation or reconfirmation by the Senate.

C.(1) The members listed in Paragraphs (B)(1) through (14) and (17) through (24) of this Section shall be appointed by the governor from a list of qualified candidates nominated by the respective organizations.

(2) The organizations listed in Paragraphs (B)(1) through (14) and (17) through (24) of this Section shall each submit a list of at least four nominees for the respective board positions to the governor.

(3) The members listed in Paragraphs (B)(15) and (16) of this Section shall be appointed by the speaker of the House of Representatives and the president of the Senate, respectively.

F. Each appointment by the governor shall be subject to Senate confirmation.

3) Required qualifications of the members including any of the following: education; experience; licensure, certification, or registration; etc.

B. Each board member, with the exception of the public member, shall be a person who holds a current, valid license or registration issued pursuant to this Chapter. At all times the board shall consist of at least three members who are engaged primarily in rendering direct services in social work and at least one member who is engaged primarily in social work education or a practice specialty other than clinical.

A.(1) The Louisiana Professional Engineering and Land Surveying Board is hereby created, whose duty it shall be to administer the provisions of this Chapter. The board shall consist of eleven members, nine of whom shall be licensed professional engineers, and two of whom shall be licensed professional land surveyors.

(2) At least two members of the board shall be licensed professional engineers who are active in the private practice of engineering. For the purposes of this Section, an engineer engaged in private practice is a person legally qualified in the profession of engineering who practices engineering as a principal business and who provides analytical, creative design, and design implementation capabilities devoid of judgment-biasing commercial or product affiliations to clients on a fee basis. At least two of the members of the board shall be licensed professional engineers in government employment, at least two of the members of the board shall be licensed professional engineers employed in the field of industry, at least two of the members shall be licensed professional engineers employed in the field of education, and one member shall be a licensed professional engineer employed in the field of construction. Two members of the board shall be licensed professional land surveyors who are actively engaged in the field of surveying.

D. All members of the board shall serve terms of three years, except for initial terms beginning on the effective date of this Chapter, and determined by lot at the first meeting of the board as follows:

- (1) Six shall serve until July 1, 2015.
- (2) Seven shall serve until July 1, 2016
- (3) Seven shall serve until July 1, 2017

4) *Length of term of service, which can be any of the following: at pleasure of appointing authority; during term of office held, also referred to as ex officio; or for a specific period of time, also referred to as term. If terms are selected, the drafter must specify the length of time or if the term is concurrent with the appointing authority. The drafter may prefer to provide for initial terms of different lengths so as to stagger successive terms. The drafter should also state any limitations on holding successive terms.*

5) *Removal of members including causes for removal and the procedure for filling vacancies.*

H. The board shall adopt rules and regulations to provide for the governance of the board. Such rules and regulations shall include but not be limited to:

* * *

(2) Procedures and grounds for the removal of any board member. Grounds for removal shall include conviction of a felony or may include failure to meet board attendance rules as provided by rule.

I. Procedures for filling a vacancy created by the removal, resignation, or death of any board member prior to the end of the board member's term shall follow those used for initial appointments.

6) Compensation of the membership. Compensation choices include none, per meeting compensation, per diem, reimbursement of expenses, and, in rare cases, salary; the drafter should specify whether state travel regulations or other limitations apply.

G. Each board member shall serve without compensation. Legislators shall receive the same per diem and travel reimbursement for attending meetings of the board as is normally provided for members of the legislature. Nonlegislative board members may receive reimbursement for expenses in accordance with the guidelines of the entity they represent.

7) Required or authorized officers including the specific positions, their powers and duties, and whether they are elected by the board or commission, designated by appointing authority, or chosen by other selection process.

E. The chairman shall be elected by the board for a term to be determined by the board and no member shall serve more than two consecutive terms as chairman.

H. The board shall adopt rules and regulations to provide for the governance of the board. Such rules and regulations shall include but not be limited to:

* * *

(1) Procedures for the election of board officers, including terms of office and methods and grounds for removal.

C. Organization. Determine the organization of the board or commission, including the following details:

1) *Domicile of the board or commission.*

B. The domicile of the network shall be Baton Rouge, Louisiana.

2) *Meetings of the board or commission, including but not limited requirements for all of the following: notice; time and place; limit on number per year; and calling of meetings.*

A. The board shall:

* * *

(5) Hold regular quarterly meetings and special meetings as necessary for the conduct of its business. Special meetings may be called upon forty-eight-hour notice by the chairperson, or in his absence, upon the written authorization of a majority of the members of the board.

3) *Quorum and voting. The general rule is that all members of a board or commission are considered for purposes of voting and establishing a quorum unless otherwise indicated; i.e., if a member is not to have the right to vote or is not to be counted for purposes of establishing a quorum, this should be stated in the bill.*

(J) The number of board members necessary to constitute a quorum for the transaction of business shall never be less than one third of the entire membership of the board. A majority vote of the board members constituting a quorum shall be necessary for any action taken by the board.

4) *Adoption of bylaws or other procedural rules.*

H. The board shall adopt rules and regulations to provide for the governance of the board. Such rules and regulations shall include but not be limited to:

- (1) Procedures for the election of board officers, including terms of office and methods and grounds for removal.
- (2) Procedures and grounds for the removal of any board member. Grounds for removal shall include conviction of a felony or may include failure to meet board attendance rules as provided by rule.

D. Powers and duties. Delineate the powers and duties of the board by providing for the following, as necessary:

- 1) *General powers and duties, including whether the power or duty is mandatory or permissive.*

Example of mandatory duties:

A. The board shall:

(1) Establish and maintain a statewide trauma system that shall include a centralized communication center for resource coordination of medical capabilities for participating trauma centers as defined by R.S. 40:2171 and emergency medical services.

(2) Provide for implementation of a network and plan designed to achieve:

(a) A reduction of deaths and incidents of morbidity caused by trauma and time-sensitive illnesses.

(b) A reduction in the number and severity of disabilities caused by trauma.

(c) Measures to demonstrate a return on investment for the LERN system.

(d) Implementation of regional injury prevention programs.

(3)(a) Establish and appoint nine regional commissions that correspond with the nine administrative regions of the department. These regional commissions shall implement and manage each regional component of the network. The board shall promulgate rules and regulations to provide for the duties and responsibilities of the nine regional commissions.

* * *

(4)(a) Enter into interagency agreements with the department, the Governor's Office of Homeland Security and Emergency Preparedness, and such other entities, public or private, as may be necessary to assure continuity of care during emergencies.

* * *

(6) Establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of pre-hospital or out-of-hospital care and hospital trauma care services.

* * *

(7) Work with the department to develop stroke and ST segment elevation myocardial infarction (STEMI) systems that are designed to promote rapid identification of, and access to, appropriate stroke and STEMI resources statewide.

Example of permissive powers:

B. In addition to its function as provided in Subsection A of this Section, the board shall have the following powers and duties:

(1) To enter into any contract related to its responsibilities in compliance with this Chapter and other state laws.

(2) To employ an executive director and necessary staff to oversee the operations of the network and to be responsible to the board for the administration and coordination of all aspects of the network.

(3) To standardize and review performance indicators that evaluate the quality of services delivered by the network and to ensure that improvement in the quality of services delivered is accomplished and documented.

(4) Shall apply for all available appropriate public and all available appropriate public and private federal grants, donations, or gifts of money or services from any available source.

2) *Authority to hire clerical and professional personnel and whether the positions will be in the classified or unclassified service. Members of state boards, authorities, and commissions, and one person holding a confidential position and one principal assistant or deputy to any board, commission, or authority shall be in the unclassified service of the state or city civil service. All other employees are in the classified service. (Const. Art. X, §2)*

NOTE: The confidential position and principal assistant/deputy are automatically unclassified only if the board or commission appoints them or has a significant role in their appointment; otherwise civil service will consider them classified. If appointment is by another official with board approval, check with civil service to be sure the position will be considered unclassified.

A. The board shall be responsible for the control and regulation of the practice of cosmetology and shall do all of the following:

* * *

(7) Employ or contract for inspectors, clerical help, legal assistance, and other personnel necessary for the proper operation of the board office and for any other purpose under this Chapter. No inspector shall own, operate, or be employed by a beauty shop, salon, or school while employed by the board or under contract to perform inspections.

3) *Authority to promulgate and adopt rules, pursuant to the Administrative Procedure Act.*

A. The board shall adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of this Chapter. Such rules and regulations shall be promulgated in accordance with the Administrative Procedure Act.

B. The rules and regulations shall be submitted to the House and Senate Committees on Health and Welfare.

C. Upon request of the board, the department shall provide advice, information, and assistance to the board concerning rules to be promulgated by the board.

4) Duty to keep certain books or records and to make reports.

C.(1) The board shall submit an annual written report to the Senate and House Committees on Health and Welfare at least thirty days prior to each regular session. The report shall include a summary of the data relevant to the goals set forth in Paragraph (A)(2) of this Section and all other information relevant to trauma-patient care and its delivery in Louisiana through the network.

(2) The board shall submit any additional reports or information to the secretary of the department upon request of the secretary and the Senate and House Committees on Health and Welfare upon request of the chairman of either committee.

E. Funding. Provide for funding of the board or commission through any of the following means, as appropriate:

- 1) Designation of a funding source, such as any of the following: state general fund; a special fund to which monies not generated by the agency are dedicated; or grants and donations.*

D(1) The board may accept grants, donations, or gifts of money or services from public or private organizations or from any other sources to be utilized for the purposes of the board.

(2) There is hereby created in the state treasury, a special fund called the Louisiana Emergency Response Network Fund. The source of monies deposited into the fund may be any monies appropriated annually by the legislature, including federal funds, any public or private donations, gifts, or grants from individuals, corporations, nonprofit organizations, or other business entities which may be made to the fund, and any other monies which may be provided by law.

(3) Monies in the fund shall be invested in the same manner as monies in the state general fund, and interest earned on investment of monies in the fund shall be credited to the state general fund. Unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund.

- 2) Self-generated funding, such as through licensing fees or fines. The drafter may need to create a special fund to which monies generated by the agency are dedicated.*

For a more detailed discussion on the creation of a special fund, see [Chapter 23, Revenue Dedication and Special Treasury Funds](#).

A. Subject to the exception contained in Article VII, Section 9(A) of the Constitution of Louisiana, all fees and funds collected by the board from every source shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund hereby created in the state treasury and designated as the Fund for the Louisiana State Board of Private Investigator Examiners, an amount equal to the total amount of funds paid into the treasury by the board.

3) Prohibited funding, including any restriction on the source of funding, such as a prohibition against the agency receiving state funds or against a reduction in the agency's general fund appropriation as the result of the creation of a special fund.

D. No fee shall be charged to any pharmacist or pharmacy to defray the costs of acquiring, implementing, or maintaining the central computer monitoring system as authorized by the provisions of this Part, nor shall any fee be charged to any pharmacist or pharmacy for the transmission of information to the central computer monitoring system.

4) Disposition of funds by the board or commission, including any limitations on expenditures. The drafter should also specify whether funds remain to the credit of the agency at the end of the fiscal year.

E. Subject to any appropriation by the legislature, monies in the fund shall be used as directed by the board solely to fund grants, projects, and services which will address the goals and objectives of the board as authorized in this Chapter.

F. Additional issues. Additional issues of which the drafter must be aware:

- 1) *Consider the application of the following laws: the Public Records Law (R.S. 44:1 et seq.), the Open Meetings Law (R.S. 42:11 et seq.), the Procurement Code (R.S. 39:1551 et seq.), the Licensing Agency Budget Act (R.S. 39:1331 et seq.), the Code of Governmental Ethics (R.S. 42:1101 et seq.), the Administrative Procedure Act (R.S. 49:950 et seq.), and laws relative to public contracts (R.S. 38:2181 et seq.), public printing (R.S. 43:1 et seq.), public document depositories (R.S. 25:121 et seq.), and dual officeholding and employment (R.S. 42:61 et seq.).*

A. Patient and peer review data or information submitted or transmitted pursuant to this Chapter to the trauma registry, the board, any committee acting on behalf of the board, any hospital or pre-hospital care provider, any physician or other direct care provider, any regional commission, any emergency medical services council, emergency medical services agency, or other group or committee whose purpose is to monitor and improve quality care pursuant to this Chapter, shall be confidential and exempt from the provisions of law relative to public records as provided in R.S. 44:4.1(B)(24).

- 2) *If a state agency is placed within an executive department, not including the governor's office, it will "sunset" on the same date as that department. See R.S. 49:191 for specific dates. Otherwise, if an agency is to be created for a limited period of time, clearly state in the bill the date that its statutory authority will terminate.*

F. The commission shall terminate operations on March 31, 2018.

If rulemaking authority or the authority to assess fees is conferred, that authority should be clearly expressed and care taken that an overly broad delegation of legislative authority is not made.

B. If the board provides by rule or regulation for certifying massage therapy instructors, the board may set fees as part of such rules or regulations, not to exceed ten dollars for initial certification, ten dollars for annual renewal, fifty dollars for late applications less than thirty days late, and one hundred dollars for late applications thirty days late or more.

18.5 EXAMPLE OF STATUTORY LAW CREATING A BOARD OR COMMISSION

The statutory law creating the Louisiana Emergency Response Network and the Louisiana Emergency Response Network Board, [R.S. 40:2841](#) et seq. was listed as examples in Section 18.4.

The entire law can be found [here](#) to allow the drafter to see how the provisions flow and interact together as one body to create the board.

The following is the complete listing of the statutory law creating the Louisiana Emergency Response Network and the Louisiana Emergency Response Network Board, R.S. 40:2841 et seq. The appropriate individual sections were listed as examples in Section 18.4. In this Section, the entire law is cited to allow the drafter to see how the provisions flow and interact together as one body to create the board.

CHAPTER 34. LOUISIANA EMERGENCY RESPONSE NETWORK (LERN)

§2841. Legislative purpose

The legislature declares that in order to safeguard the public health, safety, and welfare of the people of this state against unnecessary trauma and time-sensitive related deaths and incidents of morbidity due to trauma, a comprehensive, coordinated statewide system for access to regional trauma-patient care throughout the state be established. This system shall be compatible and interfaced with the Governor's Office of Homeland Security and Emergency Preparedness.

§2842. Definitions

As used in this Chapter the following terms shall have the following meanings:

- (1) "Board" means the Louisiana Emergency Response Network Board.
- (2) "Department" means the Department of Health and Hospitals.
- (3) "Louisiana Emergency Response Network" (LERN) means the statewide system of regional trauma-patient care that is an organized, seamless, coordinated effort among each component of care including pre-hospital, acute care, post-acute care, rehabilitation, and injury prevention in a defined geographic area which provides access to local health systems for time-sensitive patient care treatment and is integrated with local public health systems and the Governor's Office of Homeland Security and Emergency Preparedness.
- (4) "Network" means the Louisiana Emergency Response Network.

§2843. Louisiana Emergency Response Network; creation; domicile

A. The Louisiana Emergency Response Network is hereby created as a network which, through its board, shall direct the efforts to decrease trauma-related deaths and incidents of morbidity and mortality due to trauma in Louisiana. By maximizing the integrated delivery of optimal resources for patients who ultimately need acute trauma care, the network shall address the daily demands of trauma care and form the basis for disaster preparedness. The resources required for each component of the system shall be clearly identified, deployed, and studied to ensure that all injured patients gain access to the appropriate level of care in a timely, coordinated, and cost-effective manner.

B. The domicile of the network shall be Baton Rouge, Louisiana.

§2844. Governing board; membership, appointment, terms, compensation, vacancies

A. There is hereby established within the department the Louisiana Emergency Response Network Board.

. The network shall be governed by a board of twenty-eight members which shall include:

(1) One cardiologist from nominees submitted by the Louisiana Chapter of the American College of Cardiology.

(2) One member from nominees submitted by the Rural Hospital Coalition to represent hospitals with fewer than sixty beds.

(3) One member from nominees submitted by the Metropolitan Hospital Council of New Orleans to represent hospitals with one hundred beds or more.

(4) One member from nominees submitted by the Louisiana Hospital Association to represent a service district hospital.

(5) Two members from nominees submitted by the Department of Health and Hospitals which shall include a member from the office of behavioral health.

(6) One member from nominees submitted by the Governor's Office of Homeland Security and Emergency Preparedness.

(7) Two members from nominees submitted by the Louisiana State Medical Society which shall include a member specializing in pediatric surgery.

(8) One member from nominees submitted by the Louisiana Medical Association.

(9) One member from nominees submitted by the Committee on Trauma or American College of Surgeons.

(10) One member from nominees submitted by the Louisiana American College of Emergency Physicians.

(11) One member from nominees submitted by the Louisiana State University Health Sciences Center at Shreveport.

(12) One member from nominees submitted by the Louisiana State University Health Sciences Center at New Orleans.

(13) One member from nominees submitted by Tulane University Health Sciences Center.

(14) One member from nominees submitted by the Louisiana State Coroners Association.

(15) Two members from the Louisiana House of Representatives.

(16) Two members from the Louisiana Senate.

(17) One 211 member of the Louisiana Alliance of Information and Referral Systems.

(18) One member of the Louisiana Rural Ambulance Alliance.

(19) One 911 member of the National Emergency Number Association.

(20) One member of the Louisiana Hospital Association rehabilitation constituency group.

(21) One physician from nominees submitted by the American Stroke Association.

(22) One registered nurse practicing in emergency or critical care from nominees submitted by the Louisiana State Board of Nursing.

(23) One medical director of an emergency medical services agency from nominees submitted by the Louisiana Association of EMS Physicians.

(24) One optometrist from nominees submitted by the Optometry Association of Louisiana.

C.(1) The members listed in Paragraphs (B)(1) through (14) and (17) through (24) of this Section shall be appointed by the governor from a list of qualified candidates nominated by the respective organizations.

(2) The organizations listed in Paragraphs (B)(1) through (14) and (17) through (24) of this Section shall each submit a list of at least four nominees for the respective board position to the governor.

(3) The members listed in Paragraphs (B)(15) and (16) of this Section shall be appointed by the speaker of the House of Representatives and the president of the Senate, respectively.

D. All members of the board shall serve terms of three years, except for initial terms beginning on the effective date of this Chapter, and determined by lot at the first meeting of the board as follows:

(1) Six shall serve until July 1, 2005.

(2) Seven shall serve until July 1, 2006.

(3) Seven shall serve until July 1, 2007.

E. The chairman shall be elected by the board for a term to be determined by the board and no member shall serve more than two consecutive terms as chairman.

F. Each appointment by the governor shall be subject to Senate confirmation.

G. Each board member shall serve without compensation. Legislators shall receive the same per diem and travel reimbursement for attending meetings of the board as is normally provided for members of the legislature. Nonlegislative board members may receive reimbursement for expenses in accordance with the guidelines of the entity they represent.

H. The board shall adopt rules and regulations to provide for the governance of the board. Such rules and regulations shall include but not be limited to:

(1) Procedures for the election of board officers, including terms of office and methods and grounds for removal.

(2) Procedures and grounds for the removal of any board member. Grounds for removal shall include conviction of a felony or may include failure to meet board attendance rules as provided by rule.

I. Procedures for filling a vacancy created by the removal, resignation, or death of any board member prior to the end of the board member's term shall follow those used for initial appointments.

J. The number of board members necessary to constitute a quorum for the transaction of business shall never be less than one third of the entire membership of the board. A majority vote of the board members constituting a quorum shall be necessary for any action taken by the board.

§2845. Board; functions, powers, and duties

A. The board shall:

(1) Establish and maintain a statewide trauma system that shall include a centralized communication center for resource coordination of medical capabilities for participating trauma centers as defined by R.S. 40:2171 and emergency medical services.

(2) Provide for implementation of a network and plan designed to achieve:

(a) A reduction of deaths and incidents of morbidity caused by trauma and time-sensitive illnesses.

(b) A reduction in the number and severity of disabilities caused by trauma.

(c) Measures to demonstrate a return on investment for the LERN system.

(d) Implementation of regional injury prevention programs.

(3)(a) Establish and appoint nine regional commissions that correspond with the nine administrative regions of the department. These regional commissions shall implement and manage each regional component of the network. The board shall promulgate rules and regulations to provide for the duties and responsibilities of the nine regional commissions.

(b) The membership of each commission shall consist of the following members including but not limited to:

(i) A representative from the Governor's Office of Homeland Security and Emergency Preparedness.

(ii) The Department of Health and Hospitals, office of public health regional medical director.

(iii) A representative of local ambulance services.

(iv) A representative of emergency medical response.

(v) A hospital chief executive officer or administrative representative from a hospital with less than sixty beds.

(vi) A hospital chief executive officer or administrative representative from a hospital with more than one hundred beds.

(vii) A hospital chief executive officer or an administrative representative from a service district hospital.

(viii) A representative of the local component society of the Louisiana State Medical Society.

(ix) A representative of the local chapter of the Louisiana Medical Association.

(x) A specialist from the American College of Emergency Physicians.

(xi) A specialist from the American College of Surgeons.

(xii) A representative from the Louisiana Chapter of the National Emergency Number Association.

(4)(a) Enter into interagency agreements with the department, the Governor's Office of Homeland Security and Emergency Preparedness, and such other entities, public or private, as may be necessary to assure continuity of care during emergencies.

(b) Agreements between the board and these entities shall provide for the protocols of mandatory data collection and shall include provisions regarding the specific data to be shared among the entities, the individual or individuals allowed by each party to have access to the other party's data, and the security arrangements between the parties to ensure the protection of the data from unauthorized access that would threaten the privacy of individuals and the confidentiality of the data.

(c) The parties shall not agree to share data pursuant to a specific agreement if any law would otherwise prohibit the sharing of such data by the parties.

(d) The parties shall protect all individually identifiable health information to the extent of their ability within the context of the mission of the Louisiana Emergency Response Network.

(5) Hold regular quarterly meetings and special meetings as necessary for the conduct of its business. Special meetings may be called upon forty-eight-hour notice by the chairperson, or in his absence, upon the written authorization of a majority of the members of the board.

(6) Establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of pre-hospital or out-of-hospital care and hospital trauma care services.

(a) The board shall promulgate rules and regulations according to the Administrative Procedure Act to do the following:

(i) Define specific data elements required to be furnished to the registry by every health care facility certified by the department as a trauma center.

(ii) Define trauma data elements that all other health care facilities shall be required to furnish to the registry.

(iii) Establish a process for submission, analysis, and reporting of registry data.

(b) Required reporting to the state trauma registry is contingent on LERN providing adequate financial support through the Louisiana Emergency Response Network Fund to cover administrative costs.

(7) Work with the department to develop stroke and ST segment elevation myocardial infarction (STEMI) systems that are designed to promote rapid identification of, and access to, appropriate stroke and STEMI resources statewide.

B. In addition to its function as provided in Subsection A of this Section, the board shall have the following powers and duties:

(1) To enter into any contract related to its responsibilities in compliance with this Chapter and other state laws.

(2) To employ an executive director and necessary staff to oversee the operations of the network and to be responsible to the board for the administration and coordination of all aspects of the network.

(3) To standardize and review performance indicators that evaluate the quality of services delivered by the network and to ensure that improvement in the quality of services delivered is accomplished and documented.

(4) Shall apply for all available appropriate public and all available appropriate public and private federal grants, donations, or gifts of money or services from any available source.

C.(1) The board shall submit an annual written report to the Senate and House Committees on Health and Welfare at least thirty days prior to each regular session. The report shall include a summary of the data relevant to the goals set forth in Paragraph (A)(2) of this Section and all other information relevant to trauma-patient care and its delivery in Louisiana through the network.

(2) The board shall submit any additional reports or information to the secretary of the department upon request of the secretary and the Senate and House Committees on Health and Welfare upon request of the chairman of either committee.

D.(1) The board may accept grants, donations, or gifts of money or services from public or private organizations or from any other sources to be utilized for the purposes of the board.

(2) There is hereby created in the state treasury, a special fund called the Louisiana Emergency Response Network Fund. The source of monies deposited into the fund may be any monies appropriated annually by the legislature, including federal funds, any public or private donations, gifts, or grants from individuals, corporations, nonprofit organizations, or other business entities which may be made to the fund, and any other monies which may be provided by law.

(3) Monies in the fund shall be invested in the same manner as monies in the state general fund, and interest earned on investment of monies in the fund shall be credited to the state general fund. Unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund.

E. Subject to any appropriation by the legislature, monies in the fund shall be used as directed by the board solely to fund grants, projects, and services which will address the goals and objectives of the board as authorized in this Chapter.

F. In addition to annual reports to the legislature, the board may publish documents and materials intended to further the mission or purpose of the board.

§2845.1. Public records exception

Patient and peer review data or information submitted or transmitted pursuant to this Chapter to the trauma registry, the board, any committee acting on behalf of the board, any hospital or pre-hospital care provider, any physician or other direct care provider, any regional commission, any emergency medical services council, emergency medical services agency, or other group or committee whose purpose is to monitor and improve quality care pursuant to this Chapter, shall be confidential and exempt from the provisions of law relative to public records as provided in R.S. 44:4.1(B)(24).

§2846. Rules and regulations; Department of Health and Hospitals

A. The board shall adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of this Chapter. Such rules and regulations shall be promulgated in accordance with the Administrative Procedure Act.

B. The rules and regulations shall be submitted to the House and Senate Committees on Health and Welfare.

C. Upon request of the board, the department shall provide advice, information, and assistance to the board concerning rules to be promulgated by the board.

CHAPTER 19. REGULATING A PROFESSION OR OCCUPATION

19.1 OVERVIEW

The goal of regulating a profession or occupation is to safeguard and promote the health, safety, and welfare of the public by ensuring that licensure qualifications and standards for professional practice are properly evaluated, applied, and enforced. Legislation to regulate a profession or occupation may contain provisions to impose requirements, restrictions, and conditions relative to the practice of the profession or occupation, set standards in relation to certain activities, and secure compliance or enforcement.

A drafter must first determine whether there is a need to create a new separate licensing or certifying agency to regulate the occupation or profession. It may be feasible to add the new regulatory program as additional duties and functions for an office of a department or other agency already in existence. When a member believes that a new regulatory program is needed, and unless the member gives contrary instructions, every effort should be made to include that program in the functions of an existing department office or state agency. Even if the nature of the regulatory program is such that a board or commission is needed to oversee its functioning, it is likely that a board or commission already exists with similar functions to which the new program can be added.

If, despite attempts to locate an appropriate existing office or other agency, a new program does not logically fall under the responsibilities of any department, office, or other state agency in existence, it may be necessary to create a new office, board or commission, or other agency to implement the program. For a general discussion regarding the creation of new state agencies, see [Chapter 18, Creating State Agencies, Including Boards and Commissions](#).

The drafter must also provide sufficient details to actually create the regulatory scheme and provide for the necessary requirements, restrictions, and conditions for the practice of the profession or occupation, sufficient standards for certain activities related to the profession or occupation, and the enforcement of the regulatory scheme. The Sections in this Chapter will help the drafter consider the details that may need to be included in legislation to regulate a profession or occupation.

19.2 DEFINITIONS AND GENERAL CONCEPTS

In order to regulate a profession or occupation, the drafter should first clearly set out the general framework of the profession or occupation by addressing the following issues:

A. *Defining the activity.* What is the definition of the activity to be regulated?

B. *Definitions.* Are there any pertinent terms that need to be defined? It is important to define any terms that may be used differently than in their usual context, any terms of art, or specialty terms.

A. As used in this Chapter, these terms shall have the definitions ascribed to them, unless the context indicates otherwise:

(1) "Applicant" means any person applying for a license under this Chapter.

(2) "Apprentice" means any person who is employed, either directly or indirectly, by an auctioneer to deal or engage in auctions or who is studying to become an auctioneer.

(3) "Auction" means the sale by competitive bid of any property which sale consists of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid.

(3.1) "Auction house", "auction company", and "auction business" are synonymous and interchangeable terms and mean any entity, whether a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation, or any other legal entity defined by the board, which arranges, manages, sponsors, advertises, or carries out two or more auctions within any twelve-month period and which regularly represents that goods are sold at auction. However, a public livestock auction business which exclusively auctions livestock and which is regulated as a public livestock market by the Louisiana Board of Animal Health pursuant to R.S. 3:2091 et seq. shall not be defined as an auction business for purposes of this Chapter. "Auction house", "auction company", and "auction business" shall not mean an entity which sells property through an Internet-based trading platform unless such entity's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

(4) "Auctioneer" means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at an auction. "Auctioneer" shall not mean a person who sells property through an Internet-based trading platform unless such person's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

(5) "Board" means the Louisiana Auctioneers Licensing Board created in this Chapter.

(6) "Department" means the office of the governor.

(7) "Licensee" means any person holding a license under this Chapter.

(8) "Person" means an individual, partnership, company, corporation, association, or group however organized.

(9) "Property" means any property, tangible and intangible, real, personal, or mixed.

(10) "Secured party" means a person holding a security interest.

19.3 CREATING THE STATE REGULATORY AGENCY

If the new regulatory program does not logically fall under the responsibilities of any existing department, office, board or commission, or other state agency, it will be necessary to create a new office, board or commission, or other agency to implement the program. With respect to the specific duty of regulating a profession or occupation, a drafter should consider the following questions when creating a new agency:

A. Name. Give the agency a name.

B. Purpose of agency. Is the agency a licensing or certifying agency? Licensing boards and other agencies usually should be placed in the appropriate executive branch department pursuant to the [R.S. 36:803](#) transfer type. However, if a board will operate in a different manner than that prescribed in [R.S. 36:803](#), a new transfer type may need to be created for the board. If creating a new agency, also see [Chapter 18, Creating State Agencies, Including Boards and Commissions](#).

A. The Louisiana Auctioneers Licensing Board is hereby created as an agency of the state government in the office of the governor. No member of the board shall be held liable as an individual in any suit against the board.

B. The board shall be composed of seven persons, five of whom shall be auctioneers; one selected from each public service commission district, and two of whom shall be consumers from the public at large, all appointed by the governor. Each appointee shall be a citizen of the United States of America, a resident of Louisiana, and at least thirty years of age. The governor shall designate one member of the board to serve as chairman. The board shall elect a vice chairman annually by majority vote of the total membership of the board.

C. The board shall be domiciled in Baton Rouge, but shall be authorized to meet elsewhere in the state.

D. Each appointed member shall serve at the pleasure of the governor for a term concurrent to the term of office of the governor appointing him, except that each member shall serve until his successor has been appointed and begins serving. Each appointment by the governor shall be submitted to the Senate for confirmation. In the event of the death, resignation, or disability of a member of the board, the governor shall fill the vacancy by appointing a qualified person for the remainder of the unexpired term.

E. Each member of the board shall receive a certificate of appointment from the governor, and before beginning his term of office, shall file with the secretary of state his written oath or affirmation for faithful discharge of his official duty.

F. Members of the board may receive a per diem or compensation when actually attending a meeting of the board or any of its committees and for the time spent on behalf of the board on official business. Additionally, members may be reimbursed for actual and necessary travel, incidental, and clerical expenses incurred in carrying out the provisions of this Chapter when and if funds are available from the board's funds.

19.4 BASIC OPERATION AND SCOPE OF PRACTICE

An important part of regulating a profession or occupation is determining the scope of practice, or the activities that will be allowed or prohibited for licensed persons. The drafter must be careful not to establish a scope of practice that is too limited as it may preclude a licensed person from accomplishing necessary related tasks. The drafter also must be careful not to make the scope of practice too broad as this might allow a licensed or certified person to

perform more than the activities for which the required training or experience will qualify the licensee. The following questions will assist the drafter in setting the proper scope of practice:

A. Responsibilities and capabilities. What are the responsibilities and capabilities of the profession or occupation? Clearly set out what members of the profession or occupation can do. Are there tasks or other actions related to the profession or occupation that may have to be specifically authorized?

A. No person, firm, auction house, or corporation, or combination thereof shall sell, dispose of, or offer for sale at public auction or cause or permit to be sold, disposed of, or offered for sale at any public auction any property of whatsoever nature unless said auction is conducted by a duly licensed auctioneer and if such sale takes place at an auction house, by a duly licensed auction house, if the owner of the auction house is not a licensed auctioneer.

B. Notwithstanding any other provision of law to the contrary, a person, firm or corporation, or combination thereof, may sell, dispose of, or offer for sale at any public auction any property of whatever nature without the necessity of any other license, provided that the auction is conducted by a person who is a duly licensed Louisiana auctioneer or Louisiana livestock auctioneer or Louisiana apprentice auctioneer working under the supervision of a Louisiana licensed auctioneer, whichever is applicable, or otherwise meets the exceptions in accordance with the provisions of this Chapter.

A. Notwithstanding any provision of this Chapter to the contrary, an auctioneer may bid on behalf of an absentee bidder for the protection of a consignor or owner of property sold or offered for sale at an auction. Prior to the commencement of the auction, the auctioneer shall provide public notice of the right and intention of the auctioneer to bid by printing such notice in the auction catalogue, other printed matter on the auction, or any newspaper advertisements publicizing the event or by announcing at the opening of the auction the intention to bid. In addition to the requirement for prior notice of intention of the auctioneer to bid as provided herein, written notice of the intention of the auctioneer to bid at an auction shall be openly displayed on the auction premises during the auction. Failure to provide this notice or to make the announcement shall nullify the sale.

B. Prohibited acts. Are there any prohibited acts of the profession or occupation?

A. No person acting as auctioneer shall purchase, either directly or indirectly, any property at a sale made by him except as provided in R.S. 37:3130. Any such sale is null.

B. No person shall act at any auction sale as bidder or what is commonly known as "capper", "booster", or "shill" or place or offer to place any false bids or offer to buy or pretend to buy any property sold or offered for sale by auction.

C. Nothing in this Part shall be construed to prohibit the taking of bids in any auction sale by telephone or by other electronic means.

19.5 LICENSURE PROVISIONS

The drafter must include provisions for the actual licensure, certification, or registration of applicants who wish to practice the regulated profession or occupation. Each of the following issues should be considered when drafting the provisions for licensure, certification, or registration:

A. Licensure requirements. What are the requirements for licensure? What is the applicability of the requirements? Are there any exclusions to be considered?

A. The board shall base determination of satisfactory minimum qualifications for licensure as an auctioneer on whether the applicant:

(1) Is of good moral character.

(2) Is a citizen of the United States or a legal resident of the state of Louisiana.

(3) Is at least eighteen years of age.

(4) Has completed one of the following:

(a) A series of studies at a school of auctioneering licensed or approved by the board.

(b) An apprenticeship of one year working with and under an auctioneer duly licensed in the state of Louisiana.

B. The board shall base determination of satisfactory minimum qualifications for licensure of an entity as an auction business on the following requirements:

(1) That the entity employs or will employ an auctioneer licensed pursuant to this Chapter to conduct auctions in this state.

(2) If the entity is a foreign corporation, partnership, or limited liability company, that the entity is authorized to do business in this state by and is registered with the secretary of state pursuant to Title 12 of the Louisiana Revised Statutes of 1950.

B. Application for licensure. What is the application process? Are there any base qualifications such as age, education, or experience? Is there a requirement for the submission of evidence satisfactory to the board?

C. An applicant for licensure as an auctioneer shall fill out and file with the board an application form provided by the board. The form shall require relevant information about the applicant's character, knowledge, and experience in application of that knowledge. Among the data required on the application form, the applicant shall submit the following information:

(1) Educational background.

(2) Previous occupational experience in the auction business.

(3) Three references, including their business addresses, who attest to the applicant's reputation and adherence to ethical standards.

D.(1) An applicant for licensure of an entity as an auction business shall submit the following information on an application form designated by the board:

(a) The name of each owner of the entity and the length of time each such person has been an owner.

(b) Each business address of the entity.

(c) Each auctioneer licensed by the date of application who has been employed by the business for more than one auction in the previous calendar year.

(d) The nature of the business and the product sought to be sold.

(e) Two references who shall be auctioneers currently licensed in this state in good standing with the board.

(2) An auction business may operate at more than one location; however, it shall only operate under the name on its license issued by the board.

C. Application by reciprocity. Is reciprocity allowed? If so, are there any limitations to reciprocity? The term "reciprocity" refers to recognition by the board of licensure by another jurisdiction as a qualification for licensure by the board. Generally, reciprocity is extended only to licensees of those jurisdictions which have standards and requirements of practice and licensure which substantially conform to this state's requirements.

A. A person holding a license to engage in auctions issued to him by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia having licensing requirements comparable to Louisiana and who in the opinion of the board otherwise meets the requirements of this Chapter may upon application be licensed without further examination.

B. Nothing in this Section shall prevent the conduct of an auction in this state by a nonresident auctioneer from another licensing jurisdiction if such auctioneer is duly licensed by such other jurisdiction and the other jurisdiction through reciprocity permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in such other jurisdiction without being required to obtain a license in such other jurisdiction.

C. Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other jurisdiction and temporarily present in this state shall conduct an auction in this state unless he acts in association with an auctioneer duly licensed in this state if the jurisdiction in which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that jurisdiction before an auctioneer duly licensed in Louisiana may conduct an auction in that jurisdiction.

D. Every nonresident applicant for a license under this Chapter shall file with the board as part of the application for a license a written irrevocable consent that any cause of action growing out of any transaction subject to this Section may be commenced against the licensee in the proper court of any parish of this state in which the cause of action may arise or in which the plaintiff may reside by a service of process upon the board as the licensee's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service has been made upon the person according to the laws of this or any other state. Such instrument shall be in such form and supported by such additional information as the board may by rule require.

D. Examination prior to licensure. Is an examination required? Is it waived for certain classes of applicants? Are there any fees associated with the examination? What are the conduct and scope of the examination? Is there a process for notifying applicants of results? Are there any limitations on the number of times or the period within which the examination may be retaken? Is there any appeals process?

A. The board shall determine the scope, form, and content of the examinations for licensure which shall be written and shall include questions on Louisiana auction law and sound business practices.

B. The board shall issue a numbered license to an applicant who meets the requirements of this Chapter, passes satisfactorily the examination administered by the board, and pays the fee to be a licensed auctioneer.

C. An applicant failing in an examination may be examined again upon filing a new application and the payment of the reexamination fee fixed by this Chapter.

D. The board within ten days and in writing shall notify any applicant who is denied licensing of the reason therefor. Within thirty days after receipt of notice, such applicant may make written request to the board for a hearing which, if granted, shall be conducted under the Administrative Procedure Act.

E. Additional qualifications for licensure. Are there any qualifications for licensure in addition to or in lieu of examination such as education or experience, including practice of the activity prior to the time that it was regulated, such as a grandfather clause? The term "grandfather clause" refers to provisions which exempt certain classes of applicants or licensees from certain requirements for licensure, such as examination, formal training or education, or fees. Often persons who have been practicing a profession for a certain number of years prior to the requirement for licensure are "grandfathered" into licensing legislation. For a detailed discussion of grandfather clauses, see [Chapter 7, Special Provisions](#).

A.(1) Except as otherwise provided in Paragraph (4) of this Subsection and in Subsection D of this Section, each applicant for licensure as a resident auctioneer, apprentice auctioneer, or auction business shall deliver to and deposit with the board at the time of application either the sum of ten thousand dollars in cash or a surety bond in the amount of ten thousand dollars. Such bond shall:

(a) Be executed by the applicant as principal and by a surety company qualified to do business in the state as a surety.

(b) Be in a form approved by the board.

(c) Be conditioned upon compliance by the applicant with the conditions of any written auctioneer's contract made by such applicant in connection with a sale or auction in which he is a party.

(d) Be conditioned upon the assurance that the applicant shall not violate any provision of this Chapter or state law in the conduct of the business for which he is licensed.

(e) Be made payable to the board for the use, benefit, and indemnity of any person who suffers any loss as a result of a violation of this Chapter and for the proper disposition of all funds, taxes, and registration fees.

(f) Be for the period of licensure on a calendar year basis.

(2) The bond shall be maintained throughout the period of licensure. If the bond is canceled for any reason, the license shall be revoked as of the date of cancellation unless a new bond is furnished prior to that date.

(3) A new bond or a proper continuation certificate shall be delivered to the board at the beginning of each period of licensure. However, the aggregate liability of the surety in any one year shall not exceed the sum of the bond.

(4) A licensed resident auctioneer shall not be required to deposit with the board an additional cash amount or an additional surety bond upon application for licensure as an auction business.

B. The board may promulgate rules to require a cash deposit or surety bond not to exceed ten thousand dollars as a condition of reinstatement of a license revoked, canceled, suspended, or otherwise restricted pursuant to R.S. 37:3121.

C. The board may promulgate rules to require a cash deposit or surety bond not to exceed ten thousand dollars of a nonresident auctioneer either licensed in or conducting an auction in Louisiana under the reciprocity provisions of R.S. 37:3117 if a bond is required of a Louisiana auctioneer for licensure or the conduct of an auction in the licensing jurisdiction of such nonresident auctioneer.

D.(1) An auction business which is owned by a nonresident auctioneer shall, prior to being licensed by the board, post a surety bond in an amount which shall be the greater of either:

(a) Ten thousand dollars.

(b) The amount of the bond required of an auction business owned by an auctioneer licensed in Louisiana in the licensing jurisdiction of such nonresident auctioneer.

M. The board shall waive the examination required and grant a mechanical contractor or an electrical contractor license to any person working in the electrical or mechanical construction industry who meets at least one of the following requirements:

(1) Holds either a mechanical or an electrical contractor's license which was issued prior to July 1, 2014, by a local municipality after having passed an examination administered or written by a national testing company approved by the board.

(2) Submits five original building permits, issued within the last three years, as proof that he has actually been engaged in either the mechanical or electrical construction building industry prior to July 1, 2014.

(3) Has completed six mechanical or electrical construction projects within the ten-year period prior to July 1, 2014, or has constructed one such project for another person within the five-year period prior to July 1, 2014.

F. Issuance of the license, permit, or certificate. What are the rights and privileges of licensees? Is there any requirement to display the license? What is the expiration date, either calendar day or anniversary date, of the license? Are there special classes of licensure such as temporary, provisional, student, or apprentice? Are there any restrictions on the special classes of licensure?

A.(1) Each original license issued by the board shall be valid throughout this state from the date of issuance until the last day of December next succeeding the date upon which said license was issued unless the license shall have been revoked or suspended for cause as provided in this Chapter.

G. *Renewal of the license, permit, or certificate.* What is the procedure for renewal? How often will the license have to be renewed? Are there any qualifications for renewal, such as continuing education requirements? What is the fee for renewal including any late fees? What is the effect of a failure to timely renew? What are the requirements for reinstatement?

(2) All bonds and licenses issued under the provisions of this Chapter shall expire on December thirty-first following the date of issuance and shall be nontransferable. Each renewal license shall be valid throughout this state from January first of each year to December thirty-first of each year. All applications for renewal of auctioneers' licenses shall be submitted to the board by November first of each year, and licenses shall be issued by January tenth of each year. If application for renewal of license has not been made, the license shall expire on December thirty-first and it shall be illegal for any person to represent himself and act as an auctioneer thereafter. Any auctioneer who submits a renewal application after January first shall be subject to a late penalty of seventy-five dollars, which shall be paid to the Louisiana Auctioneers Licensing Board. Any auctioneer having a previous annual license shall be presumed to be a renewal applicant unless that auctioneer has allowed the license to lapse for more than one year from the date of renewal. If such license has lapsed for twelve continuous months or more, then the auctioneer shall be deemed unlicensed and shall only be licensed by completing the same requirements as a new applicant. This requirement may be waived and restoration of the license granted if, in the board's discretion, the circumstances surrounding the auctioneer's failure to renew timely so warrant.

(3) The board shall notify the auctioneer of the need for renewal at the latest known address at least sixty days in advance of the expiration and send such forms for renewal as required by law. The board shall require in such application, or otherwise, information relating to the following:

(a) The name of the applicant.

(b) The street address of applicant's principal place of business and each additional place of business.

(c) The type of business organization of applicant.

(d) The applicant's financial standing.

(e) The applicant's business integrity.

(f) Whether the applicant has an established place of business and is engaged in the pursuit, avocation, or business for which a license is applied for.

(g) Whether the applicant is able to properly conduct the business for which a license is applied for.

(4) All applications for renewal shall be accompanied by the appropriate fee or fees in accordance with the schedule as provided in this Chapter. In the event any application for renewal is denied and the license applied for is not issued, the initial license fee only shall be refunded.

B. The board shall issue the same number for the renewed license as that number issued for the original license.

H. Denial, suspension, revocation, or failure to renew a license, permit, or certificate.

What are the causes for denial, suspension, revocation, or refusal to renew? What is the procedure for a hearing and appeals of a denial, suspension, revocation, or refusal to renew? What are the requirements for reinstatement? The Administrative Procedure Act ([R.S. 49:950 et seq.](#)) provides a hearing and appeals procedure, eliminating the need for special provisions for a specific board. If hearing and appeal procedures different from the APA procedures are drafted into the bill, care should be taken to insure that constitutional rights of due process are protected.

A. The board may refuse to issue or may suspend, revoke, or impose probationary or other restrictions on any license issued under this Chapter for any of the following causes:

(1) Conviction of a felony or entry of a plea of guilty or nolo contendere to a felony charge under the laws of the United States of America or of any state.

(2) Deceit or perjury in obtaining any certificate or license issued under this Chapter.

(3) Providing false testimony before the board.

(4) Efforts to deceive or defraud the public.

(5) Incompetency or gross negligence.

(6) Rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions or reports.

(7) The refusal of the licensing authority of another state to issue or renew a license, permit, or certificate in that state or the revocation or suspension of or other restriction imposed on a license, permit, or certificate issued by such licensing authority.

(8) Aiding or abetting a person to evade the provisions of this Chapter or knowingly combining or conspiring with an unlicensed person or acting as an agent, partner, associate or otherwise, of an unlicensed person with intent to evade provisions of this Chapter.

(9) Violation of any provision of this Chapter or any rules or regulations of the board or rules of conduct promulgated by the board.

(10) Indebtedness to the state or to any municipal corporation for any tax as an auctioneer or for any license or commission that he has neglected to pay after final judgment has been rendered against him for it.

(11) Selling goods at an auction before the auctioneer or auction house has first entered into a written contract with the owner or consignor of the goods when the minimum price for such goods has been set or requested at a value above five hundred dollars.

(12) Failing for a period of seven calendar days after notice is given to make good a check which has been returned for insufficient funds (NSF check) or bank draft remitted to the owner or consignor of auctioned goods in settlement pursuant to R.S. 37:3125.

B. The board may require any auctioneer who has been charged with a complaint, or any citizen deemed to have raised a frivolous complaint before the board, to pay all costs of the board proceedings, including investigators', stenographers', and attorneys' fees.

C. Four concurring votes of the board shall be required for the revocation of any license. Four concurring votes shall be required for suspension of any license or the imposition of costs or fines in excess of five hundred dollars.

D. Any certificate or license suspended, revoked, or otherwise restricted by the board may be reinstated by majority vote of the board.

19.6 FUNDING OF THE REGULATORY PROGRAM

A state regulatory program will require funding before it can be implemented. The drafter must remember to include fiscal provisions such as fees and fines. The following questions will guide the drafter in establishing means through which the regulatory program will be funded:

A. Fees for licensure. What fees are required, such as fees for application for licensure, examination, or renewal? What is the schedule of or guidelines for fees? Are the fees refundable or is there any possibility for a waiver or proration of a fee? The authority to impose fees should be clearly expressed in terms that will not result in an overly broad delegation of legislative authority. For example, if fees are not set by statute, the drafter must establish guidelines for the state agency to follow in setting the fees. The drafter should avoid direct incorporation of standards set by bodies other than the state agency as such provisions create a question of delegation of legislative authority.

A. Except as otherwise provided in Subsections B and C of this Section, the board may assess the following schedule of fees:

- (1) Application fee - \$75.00
- (2) Examination fee - \$75.00
- (3) Reexamination fee - \$50.00
- (4) Initial license fee for an auctioneer - \$150.00
- (5) Annual license renewal fee for an auctioneer - \$150.00
- (6) Restoration fee for a license - \$100.00
- (7) Replacement fee for a lost, destroyed, or mutilated license - \$25.00
- (8) Delinquent renewal fee - \$75.00
- (9) Apprentice fee - \$100.00
- (10) Annual certification of a licensed auctioneering school or a school offering auctioneering courses - \$150.00.
- (11) Initial license fee for an auction business - \$300.00.
- (12) Annual license renewal fee for an auction business - \$300.00.

B. The fee for initial licensure or annual renewal of licensure of a nonresident auctioneer licensed or to be licensed by reciprocity pursuant to R.S. 37:3117 shall be the greater of either:

(1) The sum of one hundred fifty dollars.

(2) The amount of such fee assessed an auctioneer licensed in Louisiana for licensure by reciprocity in the licensing jurisdiction of such nonresident auctioneer.

C. The fee for initial licensure or annual renewal of licensure of an auction business owned by a nonresident auctioneer shall be the greater of either:

(1) The sum of three hundred dollars.

(2) The amount of such fee assessed an auction business owned by a Louisiana auctioneer in the licensing jurisdiction of such nonresident auctioneer.

D. All fees shall be paid by certified check or money order made payable to the board and shall not be refundable.

B. *Fines for violations.* What fines must be established? How much will the fines be? How will the fines be assessed? Are there limitations on the assessment of fines?

A. Any person who engages in auctions without a valid license violates this Chapter.

B. Any person who violates any provisions of this Chapter or any rules and regulations adopted under its authority shall be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each such violation. Each individual sale or act in connection with the conduct of an auction in violation of any provisions of this Chapter shall constitute a separate offense and violation of this Chapter.

C. *Disposition of funds.* Are there any limitations on expenditures? Is the state agency prohibited from receiving or expending state funds? Article VII, Section 9 of the constitution provides that funds received by trade or professional associations are exempt from the requirement of deposit of state funds in the state treasury. This provision has been interpreted to apply to agencies of state government which are engaged in licensing or regulating persons and firms engaged in various trades and professions. Therefore, there is no need to create a special fund in the state treasury for a licensing or regulatory board.

C. The commission shall maintain a minimum level of four hundred thousand dollars for recovery and guaranty purposes. These funds may be invested by the commission under the same limitations as other state funds and the interest thereon shall be deposited to the credit of the recovery fund.

19.7 POWERS AND DUTIES OF THE STATE REGULATORY AGENCY

The drafter must delineate the powers and duties, both mandatory and permissive, required for the state regulatory agency to administer and enforce the regulatory program by providing for the following, as necessary:

A. Inspections. What are the requirements for the conduct, scope, and frequency of inspections? What are the procedures for handling complaints, including investigation of complaints?

A. The board may upon its own initiative and shall upon the written complaint of any person investigate alleged violations of this Chapter by any licensed or unlicensed auctioneer, auction house, any applicant, or any apprentice auctioneer or applicant.

B. Whoever violates any provision of this Chapter shall be subject to the penalties provided in R.S. 37:3123.

B. Training. What is required for the establishment of training or apprenticeship programs? What records and reports are required?

C.(1) The board may promulgate such rules and regulations as are necessary and reasonable for the enforcement of this Chapter, for the establishment, operation, and approval of any electrology schools or electrologist apprenticeship programs in Louisiana, and for requiring each school of electrology or electrologist apprenticeship program to establish and maintain in force a bond to be determined by the board, but not to exceed the sum of ten thousand dollars in favor of the state, with surety by a corporate bonding company authorized to do business in this state.

(2) Any school of electrology or electrologist apprenticeship program that is approved or licensed by the board shall include one hundred ten hours of clinical experience, ninety hours of lectures on insertion techniques, modalities, healing, regrowth problems, and office management to qualify an individual to take the examination for licensure as an electrologist technician.

(3) No apprenticeship program approved by the board may receive monetary compensation from an apprentice or student instructor.

C. Prohibited practices. What activities are considered the unlawful practice or advertisement of the profession or occupation, including definitions of what constitutes such unlawful acts? Is certain conduct by licensees prohibited or deemed to be offenses?

A. At all such sales by auction any licensee shall at all times truly and correctly represent to the public attending the auction the actual facts in respect to the quality and manufacture of the items being offered for auction. It shall be a violation of this Chapter for any licensee hereunder to place what is popularly known in the trade as fictitious price tags on items sold at any such auction.

A. No person, unless licensed as a marriage and family therapist, shall advertise as being a "licensed marriage and family therapist" or a "provisional licensed marriage and family therapist".

A. No person, not certified and registered under the provisions of this Chapter, shall embalm, or pretend to practice the science of embalming, or conduct the business of funeral directing; however, a licensed funeral director shall not be required to supervise the disinterment of a dead human body when disinterment and reburial is made in the same cemetery by its designated sexton who shall be responsible to supervise the disinterment and reburial.

B. Every member of a firm or corporation engaged in the practice of the science of embalming or the business of funeral directing, or both, and the manager of each place of business conducted by such firm or corporation, whose duties engage him directly in the care and preparation, or the supervision of the disposal, burial or disinterment of dead human bodies, shall possess a certificate issued under the provisions of this Chapter. No such firm or corporation shall permit an assistant who is not a certified embalmer under the provisions of this Chapter to care for or prepare for burial or transportation, the body of any person who has died of a communicable disease.

C. It shall be unlawful for anyone to engage in the business of funeral directing or embalming as defined in R.S. 37:831 unless such business is conducted by a duly licensed Louisiana funeral establishment.

D. Only a licensed embalmer may embalm a dead human body.

D. Sanctions. When and how can the state regulatory agency revoke or suspend the license, permit, or certificate? When and how can the state regulatory agency assess fines? When and how can the state regulatory agency issue cease and desist orders? When and how can the state regulatory agency apply for injunctive relief? Are there penalties upon conviction of a licensee?

A. In addition to or in lieu of the criminal penalties and administrative sanctions provided in this Chapter the board is empowered to issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of any provision of this Chapter directing such person or firm to cease and desist from such activity, conduct, or practice. Such order shall be issued in the name of the state of Louisiana under the official seal of the board.

B. Upon a proper showing by the board that such person or firm has engaged in any activity, conduct, or practice proscribed by this Chapter, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct, or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after hearing commanding the cessation of the unlawful activity, conduct, or practices complained of, all without the necessity of the board having to give bond as usually required in such cases. A temporary restraining order, preliminary injunction, or permanent injunction issued hereunder shall not be subject to being released upon bond.

C. If the person or firm to whom the board directs a cease and desist order does not cease and desist the proscribed activity, conduct, or practice within ten days from service of such cease and desist order by certified mail the board may cause to issue in any court of competent jurisdiction and proper venue a writ of injunction enjoining such person or firm from engaging in any activity, conduct, or practice proscribed by this Chapter.

19.8 EXAMPLE OF STATUTORY LAW REGULATING A PROFESSION OR OCCUPATION

The statutory law regulating the practice of auctioneering known as the “Auctioneers Licensing Law”, [R.S. 37:3101](#) et seq. was listed as examples in the preceding Sections. The entire law can be found [here](#) to allow the drafter to see how the provisions flow and interact together as one body to regulate the practice of auctioneering.

The following is the complete listing of the statutory law regulating the practice of auctioneering known as the “Auctioneers Licensing Law”, R.S. 37:3101 et seq. The appropriate individual sections were listed as examples in the preceding Sections. In this Section, the entire law is cited to allow the drafter to see how the provisions flow and interact together as one body to regulate the practice of auctioneering.

CHAPTER 42. AUCTIONEER LICENSING BOARD
PART I. GENERALLY

§3101. Declaration of purpose

A. The Legislature of Louisiana declares that requiring the licensure of qualified auctioneers and auction houses is in the best interest of the citizens of this state.

B. The purpose of this Chapter is to require qualifying criteria in a presently unregulated occupational field in which unqualified, irresponsible, or unscrupulous individuals may injure the public. The requirements of this Chapter shall contribute to the safety, health, and property of the people of Louisiana in the transfer of property by auction.

§3102. Short title

This Act shall be known as and may be cited as the "Auctioneers Licensing Law."

§3103. Definitions of terms

A. As used in this Chapter, these terms shall have the definitions ascribed to them, unless the context indicates otherwise:

(1) "Applicant" means any person applying for a license under this Chapter.

(2) "Apprentice" means any person who is employed, either directly or indirectly, by an auctioneer to deal or engage in auctions or who is studying to become an auctioneer.

(3) "Auction" means the sale by competitive bid of any property which sale consists of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid.

(3.1) "Auction house", "auction company", and "auction business" are synonymous and interchangeable terms and mean any entity, whether a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation, or any other legal entity defined by the board, which arranges, manages, sponsors, advertises, or carries out two or more auctions within any twelve-month period and which regularly represents that goods are sold at auction. However, a public livestock auction business which exclusively auctions livestock and which is regulated as a public livestock market by the Louisiana Board of Animal Health pursuant to R.S. 3:2091 et seq. shall not be defined as an auction business for purposes of this Chapter. "Auction house," "auction company," and "auction business" shall not mean an entity which sells property through an Internet-based trading platform unless such entity's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

(4) "Auctioneer" means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at an auction. "Auctioneer" shall not mean a person who sells property through an Internet-based trading platform unless such person's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

(5) "Board" means the Louisiana Auctioneers Licensing Board created in this Chapter.

(6) "Department" means the office of the governor.

(7) "Licensee" means any person holding a license under this Chapter.

(8) "Person" means an individual, partnership, company, corporation, association, or group however organized.

(9) "Property" means any property, tangible and intangible, real, personal, or mixed.

(10) "Secured party" means a person holding a security interest.

B. The board may define terms in the regulation of licensing of auctioneers only pursuant to and consistent with the provisions of this Chapter.

§3104. Exclusions

The provisions of this Chapter shall not apply to the following:

(1) A sale conducted by order of any United States Court pursuant to Title 11 of the United States Code relating to bankruptcy.

(2) A sale conducted by an employee of the United States or the state of Louisiana or its political subdivisions in the course and scope of his employment.

(3) A sale conducted by a charitable or nonprofit organization.

(4) A sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a regular basis.

(5) A foreclosure sale of realty conducted personally by a trustee under a recorded deed of trust.

(6) A foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee of such mortgagee or other secured party acting in the course and scope of his employment under a recorded chattel mortgage or other security or agreement.

(7) A sale conducted by sealed bid.

§3105. Auction regulations generally

A. No person, firm, auction house, or corporation, or combination thereof shall sell, dispose of, or offer for sale at public auction or cause or permit to be sold, disposed of, or offered for sale at any public auction any property of whatsoever nature unless said auction is conducted by a duly licensed auctioneer and if such sale takes place at an auction house, by a duly licensed auction house, if the owner of the auction house is not a licensed auctioneer.

B. Notwithstanding any other provision of law to the contrary, a person, firm or corporation, or combination thereof, may sell, dispose of, or offer for sale at any public auction any property of whatever nature without the necessity of any other license, provided that the auction is conducted by a person who is a duly licensed Louisiana auctioneer or Louisiana livestock auctioneer or Louisiana apprentice auctioneer working under the supervision of a Louisiana licensed auctioneer, whichever is applicable, or otherwise meets the exceptions in accordance with the provisions of this Chapter.

§3106. Rules and regulations adoption; procedure; oaths

A. The board may make reasonable rules and regulations relating to the form and manner of filing applications for licenses; the issuance, denial, suspension, and revocation of licenses; and the conduct of hearings consistent with the provisions of the Administrative Procedure Act, R.S. 49:951 et seq.

B. The board or other person authorized by the board may administer oaths and hear testimony in matters relating to the duties imposed on the board pursuant to this Section.

§3107. Complaints; penalties

A. The board may upon its own initiative and shall upon the written complaint of any person investigate alleged violations of this Chapter by any licensed or unlicensed auctioneer, auction house, any applicant, or any apprentice auctioneer or applicant.

B. Whoever violates any provision of this Chapter shall be subject to the penalties provided in R.S. 37:3123.

PART II. LICENSING OF AUCTIONEERS AND AUCTION BUSINESSES

§3111. Board creation; qualification; domicile; term of office; confirmation; oath of office; compensation

A. The Louisiana Auctioneers Licensing Board is hereby created as an agency of the state government in the office of the governor. No member of the board shall be held liable as an individual in any suit against the board.

B. The board shall be composed of seven persons, five of whom shall be auctioneers; one selected from each public service commission district, and two of whom shall be consumers from the public at large, all appointed by the governor. Each appointee shall be a citizen of the United States of America, a resident of Louisiana, and at least thirty years of age. The governor shall designate one member of the board to serve as chairman. The board shall elect a vice chairman annually by majority vote of the total membership of the board.

C. The board shall be domiciled in Baton Rouge, but shall be authorized to meet elsewhere in the state.

D. Each appointed member shall serve at the pleasure of the governor for a term concurrent to the term of office of the governor appointing him, except that each member shall serve until his successor has been appointed and begins serving. Each appointment by the governor shall be submitted to the Senate for confirmation. In the event of the death, resignation, or disability of a member of the board, the governor shall fill the vacancy by appointing a qualified person for the remainder of the unexpired term.

E. Each member of the board shall receive a certificate of appointment from the governor, and before beginning his term of office, shall file with the secretary of state his written oath or affirmation for faithful discharge of his official duty.

F. Members of the board may receive a per diem or compensation when actually attending a meeting of the board or any of its committees and for the time spent on behalf of the board on official business. Additionally, members may be reimbursed for actual and necessary travel, incidental, and clerical expenses incurred in carrying out the provisions of this Chapter when and if funds are available from the board's funds.

§3112. Powers, duties, authorities, and responsibilities; meeting, quorum

A. The board shall perform the following duties:

(1) Examine each applicant desiring to be licensed as an auctioneer in the state of Louisiana.

(2) Administer a written examination for licensing at least four times each year in the city of Baton Rouge.

(3) Adopt rules and regulations to govern auctioneers and auction houses in the state of Louisiana.

(4) Issue, suspend, modify, or revoke licenses to do business in the state of Louisiana.

(5) Report to the attorney general of the state of Louisiana all persons violating the provisions of this Chapter.

(6) Repealed by Acts 1997, No. 923, §2.

(7) Adopt its official seal.

(8) Furnish, upon request, a copy of Louisiana auction laws and also an accurate list of those states having reciprocity with Louisiana.

B. The board is authorized to and shall do the following:

(1)(a) Adopt and enforce rules and regulations, bylaws, and rules of professional conduct as the board may deem necessary and proper to regulate auctions and auction houses under its jurisdiction in the state of Louisiana.

(b) To provide for the efficient operation of the board; and

(c) Otherwise to discharge its duties and powers under this Chapter.

(2) Repealed by Acts 2009, No. 411, §1.

(3) Authorize any member of the board to make any affidavit necessary to the issuance of any injunction of other legal process authorized under this Chapter or under the rules and regulations of the board.

(4) Authorize and issue subpoenas to require attendance and testimony and the production of documents for the purpose of enforcing the laws relative to auctions and securing evidence of violations thereof.

(5) Maintain a current list of licensed auctioneers.

(6) Except for the position of chairman, select its officers annually.

C. The board is authorized and may do the following:

(1) Appoint a qualified executive secretary.

(2) Employ clerical assistance necessary to carry out the administrative work of the board.

(3) Employ legal counsel to carry out the provisions of this Chapter, provided that the fees of such counsel and the costs of all proceedings, except criminal prosecutions, are paid by the board from its own funds.

(4) Incur all necessary and proper expenses.

(5) Select and appoint investigators to assist the board in investigating complaints filed against any licensed auctioneer. Such investigators may serve subpoenas, gather data, and investigate complaints in the scope and manner and within the authority prescribed by the board.

D. The legal counsel of the board, or in his absence any other member of the board, may administer oaths in the taking of testimony upon any matter appertaining to the duties and powers of the board.

E. The board shall meet bimonthly at regular meetings each year. A special meeting may be held at such time and place as specified by the executive secretary on call of the chairman or four members. The executive secretary shall give written notice of all meetings to the members of the board and the interested public.

F. Four members of the board constitute a quorum for all purposes including the granting or issuance of licenses and the rulemaking and adjudicative functions of the board.

§3113. Qualifications of applicants

A. The board shall base determination of satisfactory minimum qualifications for licensure as an auctioneer on whether the applicant:

- (1) Is of good moral character.
- (2) Is a citizen of the United States or a legal resident of the state of Louisiana.
- (3) Is at least eighteen years of age.
- (4) Has completed one of the following:
 - (a) A series of studies at a school of auctioneering licensed or approved by the board.
 - (b) An apprenticeship of one year working with and under an auctioneer duly licensed in the state of Louisiana.

B. The board shall base determination of satisfactory minimum qualifications for licensure of an entity as an auction business on the following requirements:

(1) That the entity employs or will employ an auctioneer licensed pursuant to this Chapter to conduct auctions in this state.

(2) If the entity is a foreign corporation, partnership, or limited liability company, that the entity is authorized to do business in this state by and is registered with the secretary of state pursuant to Title 12 of the Louisiana Revised Statutes of 1950.

C. An applicant for licensure as an auctioneer shall fill out and file with the board an application form provided by the board. The form shall require relevant information about the applicant's character, knowledge, and experience in application of that knowledge. Among the data required on the application form, the applicant shall submit the following information:

- (1) Educational background.
- (2) Previous occupational experience in the auction business.
- (3) Three references, including their business addresses, who attest to the applicant's reputation and adherence to ethical standards.

D.(1) An applicant for licensure of an entity as an auction business shall submit the following information on an application form designated by the board:

(a) The name of each owner of the entity and the length of time each such person has been an owner.

(b) Each business address of the entity.

(c) Each auctioneer licensed by the date of application who has been employed by the business for more than one auction in the previous calendar year.

(d) The nature of the business and the product sought to be sold.

(e) Two references who shall be auctioneers currently licensed in this state in good standing with the board.

(2) An auction business may operate at more than one location; however, it shall only operate under the name on its license issued by the board.

E. If, in the opinion of the board, the applicant provides inadequate information to allow the board to ascertain whether the applicant satisfies the qualifications for licensure, the applicant shall be required to provide additional information for purposes of the application or may be required to present himself for an interview for this purpose.

§3114. Examination; failure; passage; hearing; prior qualification

A. The board shall determine the scope, form, and content of the examinations for licensure which shall be written and shall include questions on Louisiana auction law and sound business practices.

B. The board shall issue a numbered license to an applicant who meets the requirements of this Chapter, passes satisfactorily the examination administered by the board, and pays the fee to be a licensed auctioneer.

C. An applicant failing in an examination may be examined again upon filing a new application and the payment of the reexamination fee fixed by this Chapter.

D. The board within ten days and in writing shall notify any applicant who is denied licensing of the reason therefor. Within thirty days after receipt of notice, such applicant may make written request to the board for a hearing which, if granted, shall be conducted under the Administrative Procedure Act.

E. Repealed by Acts 1984, No. 780, §3.

§3115. Renewal of license, certificate; penalty

A.(1) Each original license issued by the board shall be valid throughout this state from the date of issuance until the last day of December next succeeding the date upon which said license was issued unless the license shall have been revoked or suspended for cause as provided in this Chapter.

(2) All bonds and licenses issued under the provisions of this Chapter shall expire on December thirty-first following the date of issuance and shall be nontransferable. Each renewal license shall be valid throughout this state from January first of each year to December thirty-first of each year. All applications for renewal of auctioneers' licenses shall be submitted to the board by November first of each year, and licenses shall be issued by January tenth of each year. If application for renewal of license has not been made, the license shall expire on December thirty-first and it shall be illegal for any person to represent himself and act as an auctioneer thereafter. Any auctioneer who submits a renewal application after January first shall be subject to a late penalty of seventy-five dollars, which shall be paid to the Louisiana Auctioneers Licensing Board. Any auctioneer having a previous annual license shall be presumed to be a renewal applicant unless that auctioneer has allowed the license to lapse for more than one year from the date of renewal. If such license has lapsed for twelve continuous months or more, then the auctioneer shall be deemed unlicensed and shall only be licensed by completing the same requirements as a new applicant. This requirement may be waived and restoration of the license granted if, in the board's discretion, the circumstances surrounding the auctioneer's failure to renew timely so warrant.

(3) The board shall notify the auctioneer of the need for renewal at the latest known address at least sixty days in advance of the expiration and send such forms for renewal as required by law. The board shall require in such application, or otherwise, information relating to the following:

- (a) The name of the applicant.
 - (b) The street address of applicant's principal place of business and each additional place of business.
 - (c) The type of business organization of applicant.
 - (d) The applicant's financial standing.
 - (e) The applicant's business integrity.
 - (f) Whether the applicant has an established place of business and is engaged in the pursuit, avocation, or business for which a license is applied for.
 - (g) Whether the applicant is able to properly conduct the business for which a license is applied for.
- (4) All applications for renewal shall be accompanied by the appropriate fee or fees in accordance with the schedule as provided in this Chapter. In the event any application for renewal is denied and the license applied for is not issued, the initial license fee only shall be refunded.

B. The board shall issue the same number for the renewed license as that number issued for the original license.

§3116. Fees

A. Except as otherwise provided in Subsections B and C of this Section, the board may assess the following schedule of fees:

- (1) Application fee - \$75.00
- (2) Examination fee - \$75.00
- (3) Reexamination fee - \$50.00
- (4) Initial license fee for an auctioneer - \$150.00
- (5) Annual license renewal fee for an auctioneer - \$150.00
- (6) Restoration fee for a license - \$100.00
- (7) Replacement fee for a lost, destroyed, or mutilated license - \$25.00
- (8) Delinquent renewal fee - \$75.00
- (9) Apprentice fee - \$100.00
- (10) Annual certification of a licensed auctioneering school or a school offering auctioneering courses - \$150.00.
- (11) Initial license fee for an auction business - \$300.00.
- (12) Annual license renewal fee for an auction business - \$300.00.

B. The fee for initial licensure or annual renewal of licensure of a nonresident auctioneer licensed or to be licensed by reciprocity pursuant to R.S. 37:3117 shall be the greater of either:

- (1) The sum of one hundred fifty dollars.

(2) The amount of such fee assessed an auctioneer licensed in Louisiana for licensure by reciprocity in the licensing jurisdiction of such nonresident auctioneer.

C. The fee for initial licensure or annual renewal of licensure of an auction business owned by a nonresident auctioneer shall be the greater of either:

(1) The sum of three hundred dollars.

(2) The amount of such fee assessed an auction business owned by a Louisiana auctioneer in the licensing jurisdiction of such nonresident auctioneer.

D. All fees shall be paid by certified check or money order made payable to the board and shall not be refundable.

§3117. Reciprocity; licensure without examination

A. A person holding a license to engage in auctions issued to him by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia having licensing requirements comparable to Louisiana and who in the opinion of the board otherwise meets the requirements of this Chapter may upon application be licensed without further examination.

B. Nothing in this Section shall prevent the conduct of an auction in this state by a nonresident auctioneer from another licensing jurisdiction if such auctioneer is duly licensed by such other jurisdiction and the other jurisdiction through reciprocity permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in such other jurisdiction without being required to obtain a license in such other jurisdiction.

C. Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other jurisdiction and temporarily present in this state shall conduct an auction in this state unless he acts in association with an auctioneer duly licensed in this state if the jurisdiction in which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that jurisdiction before an auctioneer duly licensed in Louisiana may conduct an auction in that jurisdiction.

D. Every nonresident applicant for a license under this Chapter shall file with the board as part of the application for a license a written irrevocable consent that any cause of action growing out of any transaction subject to this Section may be commenced against the licensee in the proper court of any parish of this state in which the cause of action may arise or in which the plaintiff may reside by a service of process upon the board as the licensee's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service has been made upon the person according to the laws of this or any other state. Such instrument shall be in such form and supported by such additional information as the board may by rule require.

§3118. Bond requirements

A.(1) Except as otherwise provided in Paragraph (4) of this Subsection and in Subsection D of this Section, each applicant for licensure as a resident auctioneer, apprentice auctioneer, or auction business shall deliver to and deposit with the board at the time of application either the sum of ten thousand dollars in cash or a surety bond in the amount of ten thousand dollars. Such bond shall:

(a) Be executed by the applicant as principal and by a surety company qualified to do business in the state as a surety.

(b) Be in a form approved by the board.

(c) Be conditioned upon compliance by the applicant with the conditions of any written auctioneer's contract made by such applicant in connection with a sale or auction in which he is a party.

(d) Be conditioned upon the assurance that the applicant shall not violate any provision of this Chapter or state law in the conduct of the business for which he is licensed.

(e) Be made payable to the board for the use, benefit, and indemnity of any person who suffers any loss as a result of a violation of this Chapter and for the proper disposition of all funds, taxes, and registration fees.

(f) Be for the period of licensure on a calendar year basis.

(2) The bond shall be maintained throughout the period of licensure. If the bond is canceled for any reason, the license shall be revoked as of the date of cancellation unless a new bond is furnished prior to that date.

(3) A new bond or a proper continuation certificate shall be delivered to the board at the beginning of each period of licensure. However, the aggregate liability of the surety in any one year shall not exceed the sum of the bond.

(4) A licensed resident auctioneer shall not be required to deposit with the board an additional cash amount or an additional surety bond upon application for licensure as an auction business.

B. The board may promulgate rules to require a cash deposit or surety bond not to exceed ten thousand dollars as a condition of reinstatement of a license revoked, canceled, suspended, or otherwise restricted pursuant to R.S. 37:3121.

C. The board may promulgate rules to require a cash deposit or surety bond not to exceed ten thousand dollars of a nonresident auctioneer either licensed in or conducting an auction in Louisiana under the reciprocity provisions of R.S. 37:3117 if a bond is required of a Louisiana auctioneer for licensure or the conduct of an auction in the licensing jurisdiction of such nonresident auctioneer.

D.(1) An auction business which is owned by a nonresident auctioneer shall, prior to being licensed by the board, post a surety bond in an amount which shall be the greater of either:

(a) Ten thousand dollars.

(b) The amount of the bond required of an auction business owned by an auctioneer licensed in Louisiana in the licensing jurisdiction of such nonresident auctioneer.

(2) Such bond shall name the board as beneficiary.

§3120. Adoption of rules

The adoption of any rule or regulation, guideline, substantive procedure, or code of conduct shall be subject to the provisions of the Administrative Procedure Act.

§3121. Causes for nonissuance, suspension, revocation, or restrictions; fines; reinstatement

A. The board may refuse to issue or may suspend, revoke, or impose probationary or other restrictions on any license issued under this Chapter for any of the following causes:

(1) Conviction of a felony or entry of a plea of guilty or nolo contendere to a felony charge under the laws of the United States of America or of any state.

(2) Deceit or perjury in obtaining any certificate or license issued under this Chapter.

(3) Providing false testimony before the board.

(4) Efforts to deceive or defraud the public.

(5) Incompetency or gross negligence.

(6) Rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions or reports.

(7) The refusal of the licensing authority of another state to issue or renew a license, permit, or certificate in that state or the revocation or suspension of or other restriction imposed on a license, permit, or certificate issued by such licensing authority.

(8) Aiding or abetting a person to evade the provisions of this Chapter or knowingly combining or conspiring with an unlicensed person or acting as an agent, partner, associate or otherwise, of an unlicensed person with intent to evade provisions of this Chapter.

(9) Violation of any provision of this Chapter or any rules or regulations of the board or rules of conduct promulgated by the board.

(10) Indebtedness to the state or to any municipal corporation for any tax as an auctioneer or for any license or commission that he has neglected to pay after final judgment has been rendered against him for it.

(11) Selling goods at an auction before the auctioneer or auction house has first entered into a written contract with the owner or consignor of the goods when the minimum price for such goods has been set or requested at a value above five hundred dollars.

(12) Failing for a period of seven calendar days after notice is given to make good a check which has been returned for insufficient funds (NSF check) or bank draft remitted to the owner or consignor of auctioned goods in settlement pursuant to R.S. 37:3125.

B. The board may require any auctioneer who has been charged with a complaint, or any citizen deemed to have raised a frivolous complaint before the board, to pay all costs of the board proceedings, including investigators', stenographers', and attorneys' fees.

C. Four concurring votes of the board shall be required for the revocation of any license. Four concurring votes shall be required for suspension of any license or the imposition of costs or fines in excess of five hundred dollars.

D. Any certificate or license suspended, revoked, or otherwise restricted by the board may be reinstated by majority vote of the board.

§3122. Cease and desist order; injunctive relief

A. In addition to or in lieu of the criminal penalties and administrative sanctions provided in this Chapter the board is empowered to issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of any provision of this Chapter directing such person or firm to cease and desist from such activity, conduct, or

practice. Such order shall be issued in the name of the state of Louisiana under the official seal of the board.

B. Upon a proper showing by the board that such person or firm has engaged in any activity, conduct, or practice proscribed by this Chapter, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct, or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after hearing commanding the cessation of the unlawful activity, conduct, or practices complained of, all without the necessity of the board having to give bond as usually required in such cases. A temporary restraining order, preliminary injunction, or permanent injunction issued hereunder shall not be subject to being released upon bond.

C. If the person or firm to whom the board directs a cease and desist order does not cease and desist the proscribed activity, conduct, or practice within ten days from service of such cease and desist order by certified mail the board may cause to issue in any court of competent jurisdiction and proper venue a writ of injunction enjoining such person or firm from engaging in any activity, conduct, or practice proscribed by this Chapter.

§3123. Violations; penalties

A. Any person who engages in auctions without a valid license violates this Chapter.

B. Any person who violates any provisions of this Chapter or any rules and regulations adopted under its authority shall be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each such violation. Each individual sale or act in connection with the conduct of an auction in violation of any provisions of this Chapter shall constitute a separate offense and violation of this Chapter.

§3124. Compensation of auctioneers

A.(1) No auctioneer shall demand or receive a higher compensation for his services on judicial sales of immovable property made under order of court than a commission of seven percent on the amount of each adjudication made by him.

(2) On sales of succession property in which minors have an interest, property belonging to minors or in which they have an interest, and of property surrendered by insolvents made pursuant to an order or decree of any court of the state, the auctioneer shall not demand or receive a commission on each adjudication of more than four percent on the first ten thousand dollars and two percent on the excess. However, in cases where minors are interested, these lower rates shall be charged only on their proportionate share of the property, reserving to the auctioneer the right to receive the regular rate on the remainder of the interest involved.

(3) Upon sales of movables, the commission shall not be more than ten percent as to judicial sales.

B. On all sales made by the representative of a succession or syndic or an insolvent, there shall be a commission of no more than two percent.

C.(1) The auctioneer shall include in all advertisements, including but not limited to newspaper, radio, television, and brochures, the amount of any buyer's fee that will be charged.

(2) The auctioneer shall post in writing at the registration desk, in a conspicuous place, the amount of any buyer's fee.

(3) Upon opening an auction, the auctioneer shall verbally announce the amount of any buyer's fee, explain what the fee is, how such fee will be paid, and how the fee will work.

§3125. Payments and accounts

A. All funds derived from an auction sale paid to an auctioneer licensed in this state or to a person, corporation, firm or combination thereof which conducted the sale, shall be deposited in one or more identifiable bank accounts maintained in the state in which the auctioneer is situated and no funds belonging to the auctioneer shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to the person who employs the auctioneer and in part to the auctioneer must be deposited therein, but the portion belonging to the auctioneer may be withdrawn when due unless the right of the auctioneer to receive it is disputed by the person who employs the auctioneer, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

B. Every auctioneer shall pay the consignor within thirty days from the receipt of funds, or within sixty days from the date of sale at auction, whichever is lesser,* or alternatively return to the consignor by that time, all property purchased but not yet paid for, except as provided in Paragraph A(2) of this Section, and render a full account of all sales and all property entrusted to him for sale by anyone employing his services whenever the owner of such money or property demands an accounting. Each auctioneer, surety on his bond, and auction house shall be liable in solido to the owner of goods thereof for all money and property coming into the auctioneer's hands or the hands of the auction house which is unaccounted for.

§3128. Production of mortgage certificates

No immovable property shall be sold by public auction without the production and reading by the auctioneer of a certificate of mortgages and encumbrances against the property offered. No such certificate is necessary in extrajudicial sales.

§3129. Shills

A. No person acting as auctioneer shall purchase, either directly or indirectly, any property at a sale made by him except as provided in R.S. 37:3130. Any such sale is null.

B. No person shall act at any auction sale as bidder or what is commonly known as "capper," "booster," or "shill" or place or offer to place any false bids or offer to buy or pretend to buy any property sold or offered for sale by auction.

C. Nothing in this Part shall be construed to prohibit the taking of bids in any auction sale by telephone or by other electronic means.

§3130. Absentee bidder; consignor or property owner; public notice required

Notwithstanding any provision of this Chapter to the contrary, an auctioneer may bid on behalf of an absentee bidder for the protection of a consignor or owner of property sold or

offered for sale at an auction. Prior to the commencement of the auction, the auctioneer shall provide public notice of the right and intention of the auctioneer to bid by printing such notice in the auction catalogue, other printed matter on the auction, or any newspaper advertisements publicizing the event or by announcing at the opening of the auction the intention to bid. In addition to the requirement for prior notice of intention of the auctioneer to bid as provided herein, written notice of the intention of the auctioneer to bid at an auction shall be openly displayed on the auction premises during the auction. Failure to provide this notice or to make the announcement shall nullify the sale.

§3131. Property struck off to highest bidder

All property sold at auction shall in all cases be struck off to the highest bidder except such as may be limited. When the owner or any person employed by him is the highest bidder, he is subject to the same duties as if the property had been struck off to any other person.

§3132. Representation as to quality and price

At all such sales by auction any licensee shall at all times truly and correctly represent to the public attending the auction the actual facts in respect to the quality and manufacture of the items being offered for auction. It shall be a violation of this Chapter for any licensee hereunder to place what is popularly known in the trade as fictitious price tags on items sold at any such auction.

§3133. Conduct of auction

At any auction to be conducted pursuant to this Chapter, the auctioneer, prior to offering the goods for sale, shall announce in a loud, clear voice the identifying inventory number of each article and shall again immediately after it is sold announce its identifying number and state the amount for which the item is sold. No auctioneer shall sell or offer for sale at any such sale by auction any goods, wares, or merchandise that have been falsely described or concerning which any untruthful statement has been made as to the character, quality, kind, description, or cost.

PART III. LIVESTOCK AUCTIONEERS

§3134. Livestock auctioneers

The provisions of this Chapter shall not apply to and the board shall not have jurisdiction over auctioneers who are engaged in the auction business exclusively as an employee or agent of a Louisiana public livestock market which is regulated by the Louisiana Board of Animal Health and who are registered with that board as required by R.S. 3:2100.

PART IV. ADVERTISING AUCTION SALES

§3140. Statement in proces verbal of manner, time, and place of making advertisement

In all auction sales made by sheriffs, auctioneers, or others authorized to sell at public auction that are required by law to be preceded by advertisement, the officer making the sale

in his proces verbal or act of sale shall state the manner, time, and place of making the advertisements. This statement shall be proof of the manner, time, and place of making the advertisement.

§3141. Information required in advertisement

Any licensed auctioneer who advertises to hold or conduct an auction shall indicate in such advertisement his name, business addresses, license number, and such other reasonable information as may be required by rule.

§3142. Sale as prima facie evidence of legal advertisement

When any question arises out of any public sale made by any person authorized to sell at public auction and the sale was required by law to be preceded by advertisements, the sale being proved, shall be prima facie evidence that the legal advertisements were regularly made.

§3143. Failure to advertise; liability for damages

If any person authorized by law to sell at public auction fails to advertise as required by law he shall be personally liable for all damages which result therefrom and shall be subject to the discipline of the Louisiana Auctioneers Licensing Board.

CHAPTER 20. CREATING A POLITICAL SUBDIVISION

20.1 OVERVIEW

A drafter may get a request to address an issue that is inappropriate to handle on the state level. In those instances, it may be necessary to create a political subdivision to deal with the situation on a local level.

A political subdivision is a unit of local government formed to handle issues on a local level. [Article VI, Section 44](#) of the Constitution of Louisiana defines a political subdivision as a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Because it is defined in the constitution, the definition applies throughout the statutes unless more specifically defined for use in a particular subdivision of law.

Some examples of different types of political subdivisions are listed below. Please note that the following list is not exhaustive:

- 1) Parish governing authority and all districts, boards, or commissions created by such parish governing authority either independently or in conjunction with other units of government.
- 2) Municipality and all boards and commissions created by such municipality, either independently or in conjunction with other units of government.
- 3) School board.
- 4) Special district created pursuant to and under the authority of Article VI, Section 16 or 19 of the Louisiana Constitution.
- 5) City court.
- 6) District public defender office.
- 7) Housing authority.
- 8) Mortgage authority.

- 9) Political subdivisions of the state not included within the state's Comprehensive Annual Financial Reports.
- 10) Registrar of voters.
- 11) Independently elected parish offices, including the office of assessor, clerk of district court, coroner, district attorney, sheriff, and judges.

A political subdivision is not a state agency and should not be placed in Title 36. The following Sections will provide guidance to create a political subdivision and factors to consider.

20.2 CREATION OF A POLITICAL SUBDIVISION

When creating a political subdivision of the state, the drafter should determine what type of political subdivision will be necessary to meet the needs of the member and consider the role it will play in the community and state. The following will assist the drafter in creating a political subdivision:

A. Name. The drafter should give the political subdivision a name and designate it as a political subdivision by using language like the following:

The Olla, Urania, Tullos, Standard Economic and Industrial Development District, referred to in this Subpart as the "district", is hereby constituted and is declared to be a body politic and political subdivision of the state of Louisiana, as defined in Article VI, Section 44 of the Constitution of Louisiana.

B. Creation of the political subdivision. Will the bill create or authorize some other entity to create the new political subdivision?

A. Creation. The governing authority of the parish of Jefferson is hereby authorized pursuant to this Part and more specifically by this Section to create, by ordinance, a special taxing district and political subdivision of the state, referred to in this Section as the "district".

C. Authority to create and govern. What is the constitutional or statutory provision under which the political subdivision was created or authorized? If pursuant to existing statutory authority, specify any provisions about members, operation, or powers that differ from the authorizing statute. Who will have the authority to govern the political subdivision?

B. Pursuant to Article VI, Sections 19 and 21 of the Constitution of Louisiana, the district, acting through its board of commissioners, the governing authority of the district, is hereby granted all of the rights, powers, privileges, and immunities granted to or authorized for political subdivisions for industrial, commercial, research, and economic development purposes, including but not limited to the power of taxation, the power to incur debt and issue revenue and general obligation bonds, certificates of indebtedness, bond and certificate anticipation notes, and refunding bonds, subject to the limitations provided in this Subpart.

D. Governmental function. What is the purpose or governmental function of the political subdivision?

C. The district shall be established for the primary object and purpose of promoting and encouraging industrial development to stimulate the economy through commerce, industry, and research and for the utilization and development of natural and human resources of the area by providing job opportunities.

E. Jurisdiction or boundaries. What is the territorial jurisdiction of the political subdivision?

D. The boundaries of the district shall be as follows: from a point of beginning located along the LaSalle Parish border two miles South of the Little River Bridge on United States Highway 165; from said point continue in a Easterly direction on a line parallel to United States Highway 165 to a point that is two miles East of United States Highway 165 along the LaSalle Parish-Caldwell Parish line; from said point run westerly along the boundary existing between Caldwell and LaSalle Parishes to its intersection with the boundary of Winn Parish; thence continue in a southerly direction along the LaSalle Parish boundary to the original point of beginning.

F. Special relationship. Is there any special relationship between the district or other entity and the city or parish in which it is located?

(3) The minute books and archives of the board shall be maintained by the board's secretary with the help and assistance of and through the office of the metropolitan council administrator. The monies and funds of the district in the official custody and control of the board's treasurer shall be deposited, expended, and accounted for, accounts and records maintained, and idle funds invested through the department of finance, under the director of finance, and checks issued through the office of the parish treasurer as in the case of city-parish monies. The office of parish attorney shall serve as the board's regular attorney, and the services of other offices and departments of the city-parish shall be furnished in accordance with Subsection G of this Section.

A. Creation. (1) There is hereby created within East Baton Rouge Parish the Florida Boulevard Economic Development District, also referred to in this Section as the "district". The district shall be a special district and political subdivision of the state created to plan and facilitate the revitalization of the residential and commercial areas within the district.

* * *

C. Administration. (3) The minute books and archives of the board shall be maintained by the board's secretary with the help and assistance of and through the office of the metropolitan council administrator. The monies and funds of the district in the official custody and control of the board's treasurer shall be deposited, expended, and accounted for, accounts and records maintained, and idle funds invested through the department of finance, under the director of finance, and checks issued through the office of the parish treasurer as in the case of city-parish monies. The office of parish attorney shall serve as the board's regular attorney, and the services of other offices and departments of the city-parish shall be furnished in accordance with Subsection G of this Section.

* * *

G. Services and improvements. (1) All services to be furnished within the district pursuant to any development plan finally and conclusively adopted may be furnished, supplied, and administered by the city-parish through its regularly constituted departments, agencies, boards, commissions, and instrumentalities. All capital improvements and facilities to be acquired, constructed, or provided within the district may likewise be acquired, constructed, or provided by the city-parish through its regularly constituted departments, agencies, boards, commissions, and instrumentalities, it being the intention of this Paragraph to avoid duplication of administrative and management efforts and expense in the implementation of the development plan.

(2) In order to provide services or provide, construct, or acquire capital improvements or facilities, the board may enter into intergovernmental local service contracts with the city-parish.

20.3 MEMBERSHIP OF THE GOVERNING AUTHORITY

The new political subdivision will require a governing body to carry out the functions of its operation. The drafter should determine the scope of the membership of the governing body of the political subdivision and consider the qualifications of and the compensation to its members. He may use the following factors as a guideline of issues to consider regarding membership of the governing authority:

A. Composition of membership. How many members will there be? Will there be a designation of any members with powers different from those of other members, such as nonvoting members?

A. The district shall be governed by a board of commissioners, referred to in this Subpart as the "board", consisting of six members as follows:

- (1) One member shall be appointed by the governing authority of the town of Olla.
- (2) One member shall be appointed by the governing authority of the town of Tullos.
- (3) One member shall be appointed by the governing authority of the town of Urania.
- (4) The mayor of the town of Olla.
- (5) The mayor of the town of Urania.
- (6) The mayor of the town of Tullos.

NOTE: Ex officio members vote unless law otherwise provides.

B. Selection of members. Will the members be selected by an appointing authority or by election? Will there be any restrictions on manner of appointment, such as appointment from nominations or certain geographical areas? Will the appointments be subject to confirmation or reconfirmation by the local governing authority or by the Senate?

B. Appointments made pursuant to Paragraphs (A)(1) through (3) of this Section shall be made at a public meeting from a list of nominations submitted by residents of the respective municipality.

C. Required qualifications of the members. What will be the residency, education, experience, licensure, certification, or registration requirements of the members?

A.(1) The district shall be governed by a board of commissioners consisting of seven members selected as set out herein. All members shall be citizens of the United States and qualified voters and taxpayers within the limits of the district during their term of office.

D. Length of time of service. Will the members serve at the pleasure of the appointing authority or will they be appointed for a specific term? Will there be any limitations on holding successive terms?

C.(1) Members appointed pursuant to Paragraphs (A)(1) through (3) of this Section shall serve terms of four years after initial terms as provided in Paragraph (2) of this Subsection.
(2) One member shall serve an initial term of two years, one shall serve three years, and one shall serve four years, as determined by lot at the first meeting of the board.

E. Removal of members and filling of vacancies. Will there be a procedure for the removal of members? What will be the causes for removal? How will vacancies be filled?

D. Any vacancy in the membership of the board, occurring either by reason of the expiration of the term or by reason of death, resignation, or otherwise, shall be filled in the manner of the original appointment. If the entity responsible for the appointment of a member fails to fill a vacancy within thirty days, the board shall appoint an interim successor to serve until the position is filled by the appointing entity.

E. Any member of the board may be removed by the entity that originally appointed him for cause.

F. Compensation of members. Will the members receive a salary, a per meeting compensation, per diem, reimbursement of expenses, or no compensation at all? Which funds may be used for such purpose? Will there be any state travel regulations applicable to or other limitations on the compensation of members?

F. The members of the board shall serve without compensation. The board may reimburse any member for expenses actually incurred in the performance of his duties pursuant to this Subpart.

G. Election of officers. What positions or offices will there be? How will the officers be elected? What will be their powers and duties? Are these issues designated by the appointing authority, specified in the bill, to be provided in board bylaws, or by election or other selection process?

H. The board shall elect from among its own members a president, a vice president, a secretary, and a treasurer, whose duties shall be those usual to such offices. At the option of the board, the offices of secretary and treasurer may be held by one person.

H. Liability of members. Will the members have any individual liability or are they protected from liability? Will a bond be required for members or selected officers?

C.(1) No member of the board acting within the scope of his official functions and duties shall be held individually liable for a policy recommendation or policy action by the board, unless damage or injury is caused by the member's willful or wanton misconduct.

(2) A person immune from liability under the provisions of Paragraph (1) of this Subsection shall not be subject to civil or administrative subpoena for his recommendations or exercise of judgment as a member of the board, including a subpoena seeking his oral or written testimony at trial, discovery, or other proceeding, and a subpoena duces tecum seeking documents, inspections, things, or information in electronic or any other form.

I. Limitations on activities. Are members of the board prohibited from certain activities?

G. Members of the board individually and members of their immediate families are prohibited from bidding on or entering into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the district.

20.4 OPERATION

Now that the political subdivision has been established and named and the membership has been decided, the drafter should consider the practical aspect of the operation of the political subdivision by taking the following issues into account:

A. Domicile. Where will be the domicile of the political subdivision?

J. The board shall prescribe rules to govern its meetings, may draft and implement bylaws to control and implement the activities of the board, and shall maintain suitable offices in the district.

B. Meetings and quorum. How frequently will the board meet? Where and when will the meetings be held? What kind of meeting notice will be required? What will be the quorum requirements? Will any members not be counted for purposes of a quorum?

I. The board shall meet in regular session once each month and shall also meet in special session as often as the president of the board convenes the board or on the written request of four members. Four members of the board shall constitute a quorum.

C. Bylaws. What will be the procedural rules and the process for the adoption of bylaws?

J. The board shall prescribe rules to govern its meetings, may draft and implement bylaws to control and implement the activities of the board, and shall maintain suitable offices in the district.

20.5 POWERS AND DUTIES

The drafter should now consider the power the political subdivision needs to carry out its goals. Will the political subdivision have the power to acquire and dispose of property, to call elections to institute a tax, to construct or renovate property, or to engage in other fundraising activities? The drafter should consider the following issues:

A. Legal authority. Will the political subdivision have the power to sue and be sued? Will it have a corporate seal? Can it enter into contracts?

A. The district shall have and exercise all powers of a political subdivision necessary or convenient for the carrying out of its objects and purposes, including but not limited to rights and powers set out in this Section:

(1) To sue and be sued.

(2) To adopt, use, and alter at will a corporate seal.

(3) To acquire by gift, grant, purchase, or otherwise, but not by expropriation, all property, including rights-of-way, and to hold and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the objects and purposes of the district, including but not limited to the establishment, maintenance, and operation of industrial parks.

(4) To enter into contracts for the purchase, acquisition, construction, and improvement of works and facilities.

B. Governmental function. What will be the powers peculiar to the specific governmental function that the district performs? For districts with responsibility for a public facility, will that responsibility include construction, maintenance, operation, or renovation of that facility?

A.(1) The district may construct and acquire industrial parks and industrial plant buildings, and subordinate and related facilities, including the acquisition of sites and other necessary property or appurtenances thereto within the district, or outside the district if the project is undertaken conjointly with another state or with other units of local government, under the authority of The Local Services Law, R.S. 33:1321 et seq., or other authorizing authority, and to acquire, construct, improve, operate, maintain, and provide improvements and services necessary therefor, including but not limited to roads, street lighting, bridges, rail facilities, drainage, sewers, sewerage disposal facilities, solid waste disposal facilities, waterworks, and other utilities and related properties.

C. Acquisition and disposal of property. How will property be acquired, held, or disposed of? What will be the procedure for the sale or lease of property? Will there power to expropriate, if necessary?

(2) The district may sell, lease, or otherwise dispose of, by suitable and appropriate contract, to any enterprise locating or existing within the district all or any part of a site, building, or other property owned by the district. In determining the consideration for any contract to lease, sell, or otherwise dispose of lands, buildings, or other property of the district, the board may take into consideration the value of the lands, buildings, or other properties involved, as well as the potential value of the economic impact of the enterprise being induced to locate or expand within the district.

D. Employees. Will the political subdivision have the authority to hire employees? Will the employees be part of a parish, municipal, or other civil service system?

(9) To appoint officers, agents, and employees, prescribe their duties, and fix their compensation.

B. The district shall not be deemed to be an instrumentality of the state for purposes of Article X, Section 1(A) of the Constitution of Louisiana.

NOTE: If the entity is created by the bill and the intent is that employees not be in state civil service use the following boilerplate language:

"The district [or other entity] shall not be deemed to be an instrumentality of the state for purposes of Article X, Section 1(A) of the Constitution of Louisiana."

E. Elections. Will the political subdivision have the authority to call elections for purposes of approving taxes, bonds, or other proposals? Will the district be required to call an election upon petition?

A. The district may levy annually an ad valorem tax not to exceed ten mills on the dollar of assessed valuation of all property, provided that the amount, term, and purpose of such tax, as set out in a proposition submitted to a vote in accordance with the Louisiana Election Code, shall be approved by a majority of the qualified electors voting in a special election held for that purpose.

20.6 FUNDING

All units of government require a funding source to accomplish their goals. There are several options available to fund political subdivisions. The drafter should consult with the author to decide the most appropriate method. Consider the following factors when researching funding sources:

A. Sources of revenue. What are some possible sources of revenue for the new political subdivision? Will short-term borrowing be an option? The drafter may consider other revenue sources such as service charges, fees, rent, grants, donations, state appropriations, or self-generated revenue.

B. Pursuant to Article VI, Sections 19 and 21 of the Constitution of Louisiana, the district, acting through its board of commissioners, the governing authority of the district, is hereby granted all of the rights, powers, privileges, and immunities granted to or authorized for political subdivisions for industrial, commercial, research, and economic development purposes, including but not limited to the power of taxation, the power to incur debt and issue revenue and general obligation bonds, certificates of indebtedness, bond and certificate anticipation notes, and refunding bonds, subject to the limitations provided in this Subpart.

B. Taxes. Will the political subdivision be funded by property tax, sales tax, or another type of tax? What will be the term for the collection of the tax and maximum rate of taxation? Will voter approval be required and will renewal be authorized?

B.(1) The tax shall be levied upon the sale at retail, the use, the lease or rental, consumption, distribution, and storage for use or consumption of tangible personal property, and upon the sales of services within the district, all as presently defined in R.S. 47:301 et seq.

C. Bonds. If the political subdivision is planning to use bonds, how will they be secured? Will voter approval be required?

A. Bonds, certificates, or other evidence of indebtedness issued by the district under this Subpart are deemed to be securities of public entities within the meaning of Chapters 13 and 13-A of Title 39 of the Louisiana Revised Statutes of 1950, and shall be subject to defeasance in accordance with the provisions of Chapter 14 of Title 39 of the Louisiana Revised Statutes of 1950, and may be refunded in accordance with the provisions of Chapters 14-A and 15 of Title 39 of the Louisiana Revised Statutes of 1950, and may also be issued as short-term revenue notes of a public entity under Chapter 15-A of Title 39 of the Louisiana Revised Statutes of 1950.

20.7 ADDITIONAL CONSIDERATIONS

There may very well be other issues when creating a political subdivision. Read and consider the application of the following laws that may affect its creation and operation:

A. Statutory law.

- ❖ Public Records Law ([R.S. 44:1](#) et seq.)
- ❖ Open Meetings Law ([R.S. 42:11](#) et seq.)
- ❖ Procurement Code ([R.S. 39:1551](#) et seq.)
- ❖ Local Government Budget Act ([R.S. 39:1301](#) et seq.)
- ❖ Code of Governmental Ethics ([R.S. 42:1101](#) et seq.)
- ❖ Laws relative to official journals ([R.S. 43:171](#) et seq.)
- ❖ Local depositories ([R.S. 39:1211](#) et seq.)
- ❖ Securities and investments ([R.S. 39:1272, 1273](#))
- ❖ Deposit and expenditure of funds of political subdivisions ([R.S. 33:2921](#) et seq.)
- ❖ Public contracts ([R.S. 38:2181](#) et seq.)
- ❖ Public printing ([R.S. 43:1](#) et seq.)
- ❖ Public document depositories ([R.S. 25:121.1](#) et seq.)
- ❖ Dual officeholding and employment ([R.S. 42:61](#) et seq.)

B. Home rule charter. Consider the effect of any home rule charter or local law which affects the area in which the political subdivision is located. For more information, please see [Constitutional Article VI, Section 4](#).

C. Constitutional concerns. Be aware of constitutional provisions that may apply, such as Articles relative to:

- ❖ Compensation ([Article VI, §12](#))
- ❖ Unfunded mandates ([Article VI, §14](#))
- ❖ Taxes ([Article VI, §19](#))
- ❖ Sales taxes ([Article VI, §19](#))
- ❖ Taxes ([Article VI, §30](#) and [32](#))
- ❖ Definitions ([Article VI, §44](#))
- ❖ Donation of public funds ([Article VII, §14](#))

20.8 EXAMPLE OF STATUTORY LAW CREATING A POLITICAL SUBDIVISION

The statutory law creating the Olla, Urania, Tullos, Standard Economic and Industrial Development District, [R.S. 33:130.821](#) et seq. was listed as examples in this Chapter. The entire law can be found [here](#) to allow the drafter to see how the provisions flow and interact together as one body to create the political subdivision.

The following is the complete listing of the statutory law creating the Olla, Urania, Tullos, Standard Economic and Industrial Development District, R.S. 33:130.821 et seq. The appropriate individual sections were listed as examples in this Chapter. In this Section, the entire law is cited to allow the drafter to see how the provisions flow and interact together as one body to create the political subdivision.

RS 33:130.821 through 130.830

SUBPART B-45. OLLA, URANIA, TULLOS, STANDARD
ECONOMIC AND INDUSTRIAL DEVELOPMENT DISTRICT

§130.821. Olla, Urania, Tullos, Standard Economic and Industrial Development District; creation; purpose; territorial jurisdiction

A. The Olla, Urania, Tullos, Standard Economic and Industrial Development District, referred to in this Subpart as the "district", is hereby constituted and is declared to be a body politic and political subdivision of the state of Louisiana, as defined in Article VI, Section 44 of the Constitution of Louisiana.

B. Pursuant to Article VI, Sections 19 and 21 of the Constitution of Louisiana, the district, acting through its board of commissioners, the governing authority of the district, is hereby granted all of the rights, powers, privileges, and immunities granted to or authorized for political subdivisions for industrial, commercial, research, and economic development purposes, including but not limited to the power of taxation, the power to incur debt and issue revenue and general obligation bonds, certificates of indebtedness, bond and certificate anticipation notes, and refunding bonds, subject to the limitations provided in this Subpart.

C. The district shall be established for the primary object and purpose of promoting and encouraging industrial development to stimulate the economy through commerce, industry, and research and for the utilization and development of natural and human resources of the area by providing job opportunities.

D. The boundaries of the district shall be as follows: from a point of beginning located along the LaSalle Parish border two miles South of the Little River Bridge on United States Highway 165; from said point continue in a Easterly direction on a line parallel to United States Highway 165 to a point that is two miles East of United States Highway 165 along the LaSalle Parish-Caldwell Parish line; from said point run westerly along the boundary existing between Caldwell and LaSalle parishes to its intersection with the boundary of Winn Parish; thence continue in a southerly direction along the LaSalle Parish boundary to the original point of beginning.

§130.822. Board of commissioners; members; officers

A. The district shall be governed by a board of commissioners, referred to in this Subpart as the "board", consisting of six members as follows:

- (1) One member shall be appointed by the governing authority of the town of Olla.
- (2) One member shall be appointed by the governing authority of the town of Tullos.
- (3) One member shall be appointed by the governing authority of the town of Urania.
- (4) The mayor of the town of Olla.

(5) The mayor of the town of Urania.

(6) The mayor of the town of Tullos.

B. Appointments made pursuant to Paragraphs (A)(1) through (3) of this Section shall be made at a public meeting from a list of nominations submitted by residents of the respective municipality.

C.(1) Members appointed pursuant to Paragraphs (A)(1) through (3) of this Section shall serve terms of four years after initial terms as provided in Paragraph (2) of this Subsection.

(2) One member shall serve an initial term of two years, one shall serve three years, and one shall serve four years, as determined by lot at the first meeting of the board.

D. Any vacancy in the membership of the board, occurring either by reason of the expiration of the term or by reason of death, resignation, or otherwise, shall be filled in the manner of the original appointment. If the entity responsible for the appointment of a member fails to fill a vacancy within thirty days, the board shall appoint an interim successor to serve until the position is filled by the appointing entity.

E. Any member of the board may be removed by the entity that originally appointed him for cause.

F. The members of the board shall serve without compensation. The board may reimburse any member for expenses actually incurred in the performance of his duties pursuant to this Subpart.

G. Members of the board individually and members of their immediate families are prohibited from bidding on or entering into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the district.

H. The board shall elect from among its own members a president, a vice president, a secretary, and a treasurer, whose duties shall be those usual to such offices. At the option of the board, the offices of secretary and treasurer may be held by one person.

I. The board shall meet in regular session once each month and shall also meet in special session as often as the president of the board convenes the board or on the written request of four members. Four members of the board shall constitute a quorum.

J. The board shall prescribe rules to govern its meetings, may draft and implement bylaws to control and implement the activities of the board, and shall maintain suitable offices in the district.

§130.823. Powers of district

A. The district shall have and exercise all powers of a political subdivision necessary or convenient for the carrying out of its objects and purposes, including but not limited to rights and powers set out in this Section:

(1) To sue and be sued.

(2) To adopt, use, and alter at will a corporate seal.

(3) To acquire by gift, grant, purchase, or otherwise, but not by expropriation, all property, including rights-of-way, and to hold and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the objects and purposes of the district, including but not limited to the establishment, maintenance, and operation of industrial parks.

(4) To enter into contracts for the purchase, acquisition, construction, and improvement of works and facilities.

(5) In its own name and on its own behalf, to incur debt and to issue general obligation bonds, revenue bonds, certificates, notes, and other evidence of indebtedness and to levy and cause to be collected ad valorem taxes as provided in this Subpart and as may be provided by general law.

(6) To require and issue licenses with respect to its properties and facilities.

(7) To regulate the imposition of fees and rentals charged by the district for its facilities and services rendered by it.

(8) To borrow money and pledge all or part of its revenues, leases, rents, or other advantages as security for such loans.

(9) To appoint officers, agents, and employees, prescribe their duties, and fix their compensation.

B. The district shall not be deemed to be an instrumentality of the state for purposes of Article X, Section 1(A) of the Constitution of Louisiana.

§130.824. Industrial development

A.(1) The district may construct and acquire industrial parks and industrial plant buildings, and subordinate and related facilities, including the acquisition of sites and other necessary property or appurtenances thereto within the district, or outside the district if the project is undertaken jointly with another state or with other units of local government, under the authority of The Local Services Law, R.S. 33:1321 et seq., or other authorizing authority, and to acquire, construct, improve, operate, maintain, and provide improvements and services necessary therefor, including but not limited to roads, street lighting, bridges, rail facilities, drainage, sewers, sewerage disposal facilities, solid waste disposal facilities, waterworks, and other utilities and related properties.

(2) The district may sell, lease, or otherwise dispose of, by suitable and appropriate contract, to any enterprise locating or existing within the district all or any part of a site, building, or other property owned by the district. In determining the consideration for any contract to lease, sell, or otherwise dispose of lands, buildings, or other property of the district, the board may take into consideration the value of the lands, buildings, or other properties involved, as well as the potential value of the economic impact of the enterprise being induced to locate or expand within the district. Such economic impact shall include increased employment, increased use of local labor, wages and salaries to be paid, consumption of local materials, products, and resources, and special tax revenues to be generated by the enterprise acquiring or leasing lands, buildings, or other property from the district. In no event, however, and under no circumstances shall the board dispose of any property of the district for less than the fair market value of the property as defined in R.S. 47:2321 without the prior approval of the State Bond Commission. The district shall be empowered to enter into leases having a term, including all renewal terms, not to exceed fifty years in the aggregate. The approval of the State Bond Commission shall be conclusive for purposes of compliance with the requirements of this Paragraph.

(3) The resolution or ordinance adopted by the board authorizing any lease, sale, or other disposition of lands, buildings, or other property of the district or any attachment thereto shall set forth, in a general way, the terms of the authorized lease, sale, or other disposition, and such resolution or ordinance shall be published as soon as possible in one issue of the official journal of the district. For a period of thirty days from the date of publication of any such resolution or ordinance, any interested person may contest the legality of such resolution or ordinance or the validity of the authorized lease, sale, or other disposition of district property, after which time no one shall have any cause of action to contest the legality of such resolution or ordinance or to draw in question the legality of the authorized lease, sale, or other disposition of district property for any cause whatsoever, and it shall be conclusively presumed thereafter that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of said thirty days.

B. The district shall have the following additional powers, together with all powers incidental thereto or necessary for the performance of those stated:

(1) To acquire, whether by purchase, exchange, gift, lease, or otherwise, but not by expropriation, and to construct and improve, maintain, equip, and furnish one or more economic development projects, including all real and personal properties which the board may deem necessary in connection therewith.

(2) To lease or to contract for the use of any or all of its authorized projects and to charge and collect rent, fees, or charges therefor, and to terminate any such lease or contractual arrangement upon the failure of the lessee or contracting party to comply with any of the obligations thereof, all as may be provided for in the lease agreement to which the district may become a party.

(3) To sell, exchange, donate, and convey any or all of its projects upon such terms and conditions as the board may deem advisable, including the power to receive for any such sale the first mortgage note or notes of the purchaser of a project representing unpaid installments of the purchase price due by the purchaser to the district whenever the board finds any such actions to be in furtherance of the purposes for which the district was organized.

(4) As security for the payment of the principal of and interest on any bonds, notes, or other obligations of the district, and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues and receipts therefrom or from any other source.

(5)(a) To enter into any cooperative financing of an economic development project between or among the district and the state, any of its local governmental subdivisions, political corporations or public benefit corporations, the United States or its agencies, or any public or private association, corporation, or individual. Said methods of financing shall include loan guarantees, land write-downs, grants, lease guarantees, or any form of financial subsidy or incentive that complies with the provisions of Article VII, Section 14 of the Constitution of Louisiana.

(b) To enter into any cooperative development between or among the district and the state, any of its local governmental subdivisions, political corporations or public benefit corporations, the United States or its agencies, or any public or private association, corporation, or individual. Said methods of cooperative development shall include but not be limited to any number of

joint development agreements such as condominiums and cooperative ownership, limited partnerships, and investment syndicates not prohibited by the Constitution of Louisiana. Regardless of the method of financing, the district shall attempt to obtain the most favorable security available in order to protect and ensure recovery of sums loaned or paid pursuant to such financing.

(c) "Cooperative endeavor" means any form of economic development assistance between or among the district and the state, any of its local governmental subdivisions, political corporations or public benefit corporations, the United States or its agencies, or any public or private association, corporation, or individual. The term "cooperative endeavor" shall include but not be limited to cooperative financing, cooperative development, or any other form of cooperative economic development activity.

§130.825. Fees and ad valorem tax; borrowing money

A. The district may levy annually an ad valorem tax not to exceed ten mills on the dollar of assessed valuation of all property, provided that the amount, term, and purpose of such tax, as set out in a proposition submitted to a vote in accordance with the Louisiana Election Code, shall be approved by a majority of the qualified electors voting in a special election held for that purpose.

B. All funds derived under this Section may be used for any expenses or purposes of the district. The board shall establish and maintain, in addition to all necessary and normal accounts, the following special accounts:

(1) A revolving loan guarantee fund, to be used to guarantee industrial, port, harbor, or terminal development loans to the extent permitted by the Constitution of Louisiana under the following guidelines:

(a) Loan guarantees shall be made only when adequate financing for the project is unavailable through normal lending channels, and the project represents a sound business venture that is financially and economically feasible.

(b) Loan guarantees shall be used to assist an identifiable business concern to finance plant construction, conversion, or expansion and acquisition of land, existing structures, machinery, or equipment and to provide operational funds.

(c) The terms and rates shall be compatible with loans offered by local lending institutions, and the guarantee shall never exceed forty percent of the cost of the total project. In addition, the district shall attempt to obtain the most favorable security available under the circumstances to protect and ensure the recovery of its commitment under the guarantee.

(d) Loan guarantees shall be evaluated for their economic impact in terms of the number and types of jobs created or saved, the wage and income levels of the positions, the likelihood of placement of these positions with persons from specific groups, such as the long-term unemployed, low income, women, or minorities, and the tax dollars generated.

(e) Loan guarantees shall be made to leverage other sources of private and public capital to attain the greatest economic impact possible with the limited funds available.

(f) Loan guarantees shall be targeted to export industries, manufacturing firms, and wholesale distribution and service firms.

(g) No project shall be considered unless the project will be constructed and maintained by persons at least eighty percent of whom are residents of LaSalle Parish, and at least eighty percent of the goods and services for maintenance of the project are obtained from a supplier domiciled within LaSalle Parish, except where not reasonably possible to do so without substantial added expense, substantial inconvenience, or substantial sacrifice in operational efficiency.

(h) The lending or underwriting principals shall have such demonstrated experience, ability, and net worth as would allow for the success, continuation, security, and solvency of the program. Prudent lending and underwriting standards shall be applied in order to comply with the primary objectives of this Section.

(2) An economic development operational fund, for the development and attraction of industries to accomplish the following:

(a) The operational fund shall be used for operating expenses necessary in creation of industrial and commercial development, in hiring sufficient staff to accomplish the purposes set out in this Subpart, and other related expenses.

(b) The operational fund may also be utilized in contracting for services as may be required by the district, including but not limited to planning assistance, surveys, land use studies, technical services, and other services necessary to effectuate a unified industrial development plan.

(3) An account for the maintenance and operation of a governmental procurement center to provide necessary information to companies and individuals engaged in providing services and goods to accomplish the following:

(a) Pinpoint and identify potential buying centers, aid in placing the company on a bidder's list for these centers, and assist companies in obtaining specifications for their products or services.

(b) Provide trained counselors to assist in acquiring solicitation and bid packages and conduct seminars designed to disseminate other information needed by the target companies and individuals.

§130.826. Sales and use tax authorization

A.(1) The district may levy and cause to be collected a sales and use tax within the boundaries of the district for such purposes and at such rate as may be provided by the proposition authorizing its levy, not exceeding one-half of one percent, which tax may exceed the limitation set forth in Article VI, Section 29(A) of the Constitution of Louisiana, provided that the proposition is approved by a majority of the qualified electors of the district voting in the election held for such purpose.

(2) Such an election shall be conducted in accordance with the provisions of the Louisiana Election Code and at the time another election is being conducted throughout the state.

(3) The duration of the tax set forth in the proposition shall not exceed five years; however, such tax may be renewed for an additional period not to exceed five years.

B.(1) The tax shall be levied upon the sale at retail, the use, the lease or rental, consumption, distribution, and storage for use or consumption of tangible personal property, and upon the sales of services within the district, all as presently defined in R.S. 47:301 et seq.

(2) Except where inapplicable, the procedure established by R.S. 47:301 et seq. shall be followed in the imposition, collection, and enforcement of the tax, and procedural details necessary to supplement those sections and to make them applicable to the tax herein authorized shall be fixed in the resolution imposing the tax.

C. The sales and use tax authorized by this Section shall be in addition to all other taxes which an economic and industrial development district is now or hereafter authorized to levy and collect.

§130.827. Obligations of the district

A. The district shall have authority to incur debt for any one or more of its lawful purposes set forth in this Subpart, to issue in its name negotiable bonds, notes, certificates of indebtedness, or other evidence of debt and to provide for the security and payment thereof.

B.(1) The district may in its own name and behalf incur debt and issue general obligation ad valorem property tax secured bonds under the authority of and subject to the provisions of Article VI, Section 33 of the Constitution of Louisiana, and Subpart A of Part III of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised Statutes of 1950, when approved by a majority of the qualified voters who vote in a special election called and conducted under the authority of the Louisiana Election Code, including Chapter 6-A of Title 18 of the Louisiana Revised Statutes of 1950, as amended. General obligation bonds of the district may be issued for any of the purposes for which the district is created or is authorized to act under any provisions of this Subpart, all of which purposes are hereby found and declared to be public purposes and functions of the state of Louisiana, which are delegated to the district.

(2) The district may in its own name and behalf issue revenue bonds for the purposes for which the district is created or is authorized to act under any of the provisions of this Subpart, including industrial and commercial development revenue bonds. Said bonds shall be issued in the manner as provided for in R.S. 39:991 through 1001 and R.S. 39:1011 through 1024.

(3) The district may in its own name and behalf borrow from time to time in the form of certificates of indebtedness. The certificates shall be secured by the dedication and pledge of monies of the district derived from any lawful sources, including fees, lease rentals, service charges, local service agreement payments from one or more other contracting parties, the avails of ad valorem property taxation, or any combination of such sources of income, provided that the term of such certificates shall not exceed ten years, and the annual debt service on the amount borrowed shall not exceed the anticipated revenues to be dedicated and pledged to the payment of the certificates of indebtedness, as shall be estimated by the board of the district at the time of the adoption of the resolution authorizing the issuance of such certificates. The estimate of the board referred to in the authorizing resolution shall be conclusive for all purposes of this Section.

(4) The district may borrow the amount of the anticipated ad valorem tax, not to exceed ten mills, authorized by R.S. 33:130.825 for a period not to exceed ten years and may issue certificates of indebtedness therefor and may dedicate the avails of the tax funded for the payment thereof for the period of time said certificates are outstanding.

(5) The board, as the governing authority of the district, is authorized to adopt all necessary resolutions or ordinances which may be necessary for ordering, holding, canvassing, and

promulgating the returns of any election required for the issuance of general obligation bonds, or limited tax secured obligations, or for the voting of a property tax millage, which resolutions or ordinances may include covenants for the security and payment of any bonds or other evidence of debt so issued.

(6) For a period of thirty days from the date of publication of any resolution or ordinance authorizing the issuance of any bonds, certificates of indebtedness, notes, or other evidence of debt of the district, any interested person may contest the legality of such resolution or ordinance and the validity of such bonds, certificates of indebtedness, notes, or other evidence of debt issued or proposed to be issued thereunder and the security of their payment, after which time no one shall have any cause of action to contest the legality of said resolution or ordinance or to draw in question the legality of said bonds, certificates of indebtedness, notes, or other evidence of debt, the security therefor, or the debts represented thereby for any cause whatever, and it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of thirty days.

(7) The issuance and sale of such bonds, certificates of indebtedness, notes, or other evidence of debt by the district shall be subject to approval by the State Bond Commission.

(8) Such bonds, certificates of indebtedness, notes, or other evidence of debt shall have all the qualities of negotiable instruments under the commercial laws of the state of Louisiana.

§130.828. Securities

Bonds, certificates, or other evidence of indebtedness issued by the district under this Subpart are deemed to be securities of public entities within the meaning of Chapters 13 and 13-A of Title 39 of the Louisiana Revised Statutes of 1950, and shall be subject to defeasance in accordance with the provisions of Chapter 14 of Title 39 of the Louisiana Revised Statutes of 1950, and may be refunded in accordance with the provisions of Chapters 14-A and 15 of Title 39 of the Louisiana Revised Statutes of 1950, and may also be issued as short-term revenue notes of a public entity under Chapter 15-A of Title 39 of the Louisiana Revised Statutes of 1950.

§130.829. Exemption from taxation

The district and all properties at any time owned by the district and the income therefrom and all bonds, certificates, and other evidence of indebtedness issued by the district under this Subpart and the interest or income therefrom shall be exempt from all taxation by the state of Louisiana.

§130.830. General compliances; enhancement

A. No provision of this Subpart shall be construed so as to exempt the district from compliance with the provisions of Louisiana laws pertaining to open meetings, public records, fiscal agents, official journals, dual officeholding and employment, public bidding for the purchase of supplies and materials and construction of public works, the Code of Governmental Ethics, the Right to Property in Article I, Section 4 of the Constitution of Louisiana, and the Louisiana Election Code.

B. The district shall have the power and right to adopt a program or programs awarding contracts to, and establishing set-aside goals and preference procedures for the benefit of, businesses owned and operated by socially or economically disadvantaged persons in accordance with any of the provisions of R.S. 38:2233 and of Chapter 19 of Title 39 of the Louisiana Revised Statutes of 1950, entitled "Louisiana Minority and Women's Business Enterprise Act".

C. The financial records of the district shall be audited pursuant to R.S. 24:513.

CHAPTER 21. PROVISIONS FOR THE RAISING OF REVENUE

21.1 OVERVIEW: TAXING POWER OF THE LEGISLATURE

In order for a government to operate and serve its citizens, it must have the funding to build infrastructure and schools, hire employees and compensate public officials, and provide essential services, among other things. Three ways a government may generate revenue is by taxes, fees, and fines. These methods of raising revenue will be more fully discussed throughout this Chapter.

The constitution vests the power to tax solely with the legislature. Louisiana Constitution [Article VII, Section 1](#) provides that the power of taxation can only be exercised for public purposes and that power can never be surrendered, suspended, or contracted away. The power to tax may not be exercised by any court in the state, either by ordering the levy of a tax, an increase in an existing tax, or the repeal of an existing tax exemption or by ordering the legislature or any municipal or parish governing authority or any other political subdivision or governmental entity to do so. Alternatively, a fee or civil fine may be assessed by a political subdivision of the state, but only after approval of the legislature. It should be noted that although civil fines can generate revenue, they should not be created for that purpose.

21.2 CONSTITUTIONAL GUIDELINES

A. Authority to levy a tax or impose a fine or fee

The legislature must approve every new tax, increase in existing taxes, or repeal of existing taxes or exemptions by a two-thirds vote of the elected members of each house ([Const. Art. VII, §2.1\(A\)](#)).

Any new fee or civil fine or increase in an existing fee or civil fine imposed or assessed by the state or any board, department, or agency of the state shall require the enactment of a law by a two-thirds vote of the elected members of each house of the legislature ([Const. Art. VII, §2](#)).

B. Introduction of the bill

With respect to state taxes, instruments which levy or authorize a new tax, increase an existing tax, or provide for tax exemptions, exclusions, deductions or credits, may be introduced in the regular session of any odd-numbered year. The introduction of such measures in the regular session of an even-numbered year is prohibited ([Const. Art. III, §2\(A\)](#)).

There is an exception, however, for local bills. An instrument providing for taxes of local government may be introduced in any regular session (*Louisiana Mun. Ass'n v. State*, Sup.2000, 773 So.2d 663, 2000-0374 (La. 10/6/00)).

All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills ([Const. Art. III, §16\(B\)](#)).

C. Two-thirds vote requirement

Approval by two-thirds vote of both houses is required for the enactment of any law that: levies a new tax, increases an existing tax, or repeals an existing tax exemption ([Const. Art. VII, §2](#)).

Approval by two-thirds vote of the elected members of each house is also required for the enactment of any new fee or civil fine or increase in an existing fee or civil fine imposed or assessed by the state or any board, department, or agency of the state ([Const. Art. VII, §2.1\(A\)](#)).

D. Other constitutional limitations

The constitution prohibits the legislature from passing any local or special law exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; or refunding moneys legally paid into the treasury ([Const. Art. III, §12\(A\)\(5\)](#)).

Political subdivisions of the state are prohibited from levying a severance tax, income tax, inheritance tax, or tax on motor fuel. These types of taxes are only permitted to be levied on the state or federal levels ([Const. Art. VII, §4\(C\)](#)).

Although it is important for drafters to know the difference between a fee and a tax, as described in this Chapter, and the basic constitutional requirements regarding the methods of raising revenue, drafters may find it helpful to discuss inquiries regarding taxation and raising revenue with the House Fiscal Division.

21.3 TAX VERSUS FEE

It is important that a drafter determine whether a bill contains a "tax" or a "fee" because there are differing requirements for the filing of each bill, the votes for enactment, and the sessions during which each type of bill may be introduced.

Several Supreme Court cases have addressed the differences between a tax and a fee. The characteristic concerning the amount of revenues raised is the most important, since it would indicate whether the revenues were intended to support a regulatory function or to provide for the general benefit of society.

The Supreme Court has not found a distinction between words if the distinction nullifies a plain constitutional provision. In *Williams v. State*, 538 So.2d 193 (La.1989), the court ruled that a "handling fee" could not be charged in addition to the three dollars "license tax" previously required by [Constitution Article VII, Section 5](#). They held that the "handling fee" imposed by statute violated both the letter and spirit of the constitution inasmuch as it effectively raised the annual license tax on an automobile above the constitutional maximum. Calling the increased cost a "handling fee" does not mean that it is not, in fact, a tax.

The following characteristics are developed from language used by the court to help discern the nature of a revenue source:

A. Upon what or whom is the charge levied?

1) Fee

A fee is usually charged for either a license, which is a formal permission by a sovereign to engage in some business, or for the granting of a privilege under the control of government. The charge is levied upon the person getting the license or receiving the benefit, which benefits are not shared by other members of society. For instance, a fee is collected for a fishing license, which is beneficial to the licensee.

2) Tax

A tax is a charge on a benefit or right common to many persons for benefits which do not primarily or directly benefit the taxpayer, but which are shared by others besides the taxpayer like the public in general. For instance, there could be a tax on the public which is appropriated for a purpose from which all persons benefit, like a gasoline tax appropriated for highways.

B. What is the reason for the charge?

1) Fee

A fee is a charge which is regulatory in nature, levied under the state's police power. The charge is associated with the making of rules and regulations to promote public order, individual liberty, and general welfare.

2) Tax

A tax is a charge to raise revenue under the state's taxing power. Revenue is the primary purpose for the charge and any regulation is merely incidental.

C. What amounts of revenue are raised?

1) Fee

A fee generates money to cover the cost of regulation or the cost of conferring the grant or benefit. It is proper and reasonable to take into account not merely the expense of direct regulation, but also other incidental consequences that may be likely to subject the public to an expense related to the granting of a license or other specific benefit.

2) Tax

A tax is a charge that clearly and materially exceeds the cost of regulation or the conferring of special benefits on those assessed.

D. What is the effect of nonpayment?

1) Fee

Nonpayment of a fee usually results in a previously permitted action being illegal or the right or benefit being no longer granted.

2) Tax

Nonpayment of a tax usually leaves the state only a civil action for recovery.

21.4 FEES

Fees are basically charges which are assessed by a governmental entity for the purpose of defraying the costs of providing a governmental service or the costs of regulating a particular activity. A drafter should know that state departments that are headed by an elected officer are excluded from the two-thirds vote requirement to enact a law containing a new fee or fine. These officers include the attorney general, treasurer, commissioner of agriculture, commissioner of insurance, secretary of state, and lieutenant governor.

Another exception to this two-thirds vote requirement is those charges which are assessed for nongovernmental functions or products or for services not in the control of the governmental entity (La. Atty. Gen. Op. Nos. 96-353, 98-353, 98-373 and 99-92). Additionally, public institutions of higher education are statutorily authorized to increase tuition and mandatory fees under certain circumstances, without legislative approval.

Given the scope of this constitutional limitation, a drafter is encouraged to review the relevant case law or writings on legislative drafting so he is able to advise the bill's author of the potential for a two-thirds vote requirement.

21.5 TYPES OF TAXES

A. Sales and use tax

- 1) *Sales tax.* A sales tax is a tax paid to a governing body for the sales of certain goods and services. Sellers collect funds for the tax from the consumer at the point of purchase. The state general sales tax is payable by users, consumers, lessees, and persons receiving services taxable under the law.
- 2) *Use tax.* Louisiana, like other states that impose a sales tax, also taxes the use of property that is brought into the state untaxed when purchased. This is called a use tax. A use tax is assessed upon tangible personal property purchased by a resident of the assessing state for use, storage, or consumption in that state regardless of where the purchase took place.
- 3) *Exemptions and exclusions.* The drafter should keep in mind that there are a number of exclusions and exemptions from the sales tax. He may be asked to draft a bill to exempt or exclude any goods, tangible personal property, or services from sales or use taxes. [Constitution Article VI, Section 29\(D\)](#) authorizes the legislature to do so in the following circumstances:
 - a. Exemptions or exclusions uniformly applicable to the taxes of all local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state.
 - b. Exemptions or exclusions applicable to the taxes of the state or applicable to political subdivisions whose boundaries are coterminous with those of the state, or both.
 - c. Exemptions or exclusions uniformly applicable to the taxes of all the tax authorities in the state.

B. Severance taxes

Severance taxes are incurred when [nonrenewable natural resources](#) are extracted or severed within a taxing jurisdiction. Resources that typically incur severance taxes when extracted are [oil](#), [natural gas](#), [coal](#), [uranium](#), and [timber](#). Taxes may be levied on natural resources severed from the soil or water, and shall be paid proportionately by the owners of the natural resources

at the time of severance. Severance taxes may be predicated upon either the quantity or value of the products at the time and place of severance. The constitution prohibits additional taxes or licenses from being levied or imposed on oil, gas, or sulphur leases or rights. According to [Article VII, Section 4\(B\)](#) of the Constitution, severance tax is the only tax allowed on timber; however, standing timber is liable equally with the land on which it stands for ad valorem taxes levied on the land.

Additionally, [Article VII, Section 27\(A\)](#) of the Constitution provides that purchases of gasoline, diesel fuel, or special fuels which are subject to the excise tax on gasoline and special fuels shall be exempt from the state sales and use tax and any sales tax levied by a political subdivision.

C. Income taxes

An income tax is a government levy imposed on individuals or entities that varies with the income or profits of the taxpayer. [Constitution Article VII, Section 4\(A\)](#), authorizes the state to levy equal and uniform taxes on the net income of taxpayers. Furthermore, it authorizes income taxes to be graduated according to the amount of a taxpayer's net income; however, the state individual and joint income tax schedule of rates and brackets shall never exceed the rates and brackets set forth in Title 47 of the Revised Statutes on January 1, 2003. Lastly, federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

D. Motor vehicle licensing tax

An annual license tax is imposed on automobiles for private use based on the actual value of the vehicle. The amount of taxation on automobiles for private use is provided for in [R.S. 47:463](#). On other motor vehicles, an annual license tax is imposed based on the carrying capacity, horsepower, value, or weight of the vehicle.

E. Ad valorem taxes

Ad valorem taxes are local taxes imposed in the form of a percentage of the value of property. Property subject to ad valorem taxation is listed on parish assessment rolls at its assessed valuation which is a percentage of its fair market value. The percentage of fair market value is uniform throughout the state upon the same class of property. The constitution provides for five separate classifications of property and percentages of fair market value for each classification for purposes of determining the property's assessed valuation. Classifications include land, improvements for residential purposes, electric cooperative properties excluding land, public service properties excluding land, and other property. Bona fide agricultural, horticultural, marsh, and timber lands are assessed for ad valorem tax purposes at a certain percentage of its use value rather than fair market value ([Const. Art. VII, §18](#)).

The constitution provides for a homestead exemption from state, parish, and special ad valorem taxes to the extent of \$7,500 of the assessed valuation of a bona fide homestead with

a residence occupied by the property owner. For purposes of calculating the ad valorem taxes, this means that the first \$75,000 of a home's fair market value is exempt from property taxes ([Const. Art. VII, §20](#)).

In addition to the homestead exemption, [Article VII, Section 21](#) includes a specific list of property which is exempt from ad valorem taxes. Any request to exempt property not included on the list from ad valorem taxes would require a constitutional amendment.

21.6 DRAFTING TAXES

Virtually all legislation dealing with taxes, be it a levy, suspension, exemption, deduction, or credit, will require specificity about applicable tax periods.

A. Enacting a tax

When enacting a new tax, the drafter needs to name the tax, set the amount, and choose a taxing period. Yearly tax periods are typically used for income tax, and monthly or yearly periods may be used for sales and use tax.

B. Amending a tax

When amending a tax already in existence, the drafter should know the current tax period and effective date. As a rule, the provisions of a change in tax law should become applicable on the first day of the taxable period. For instance, if the author of a bill in the 2015 Regular Session requests a new credit against the income tax that will apply beginning in the 2016 tax year, then the following language **should be included within the statute itself**, rather than as a separate section of the Act.

The _____ (<i>tax imposed or credit, deduction, etc.</i>) provided for in this Section shall be applicable for taxable periods beginning on or after January 1, 2016.

The preceding example clearly states the taxable periods for which the new law applies and avoids any confusion about the effectiveness of the bill itself and how that affects the applicability of the provision of law.

C. Repealing a tax

If a member would like to repeal a tax, in addition to repealing the sections of law which provide for the tax, the bill should contain a separate section which details precisely when the tax is imposed and when it is not imposed.

CHAPTER 22. APPROPRIATION BILLS

22.1 OVERVIEW

The Constitution of Louisiana requires that all money received by the state or by any state board, agency, or commission be deposited immediately into the state treasury, with certain exceptions. To fund the operating expenses of the government, money has to be "appropriated", or paid, from the state treasury. The constitution prohibits money from being withdrawn from the state treasury without an appropriation, and the legislature has the sole authority to make those appropriations. The constitution requires that the governor submit a budget estimate for the next fiscal year to the legislature that sets forth all proposed state expenditures. This budget must include a recommendation for appropriations from the state general fund and from dedicated funds.

Money is withdrawn from the treasury by an appropriation bill, the different types of which will be discussed in this Chapter. According to Louisiana [Constitution Article III, Section 16](#), appropriations must be limited to one year, originate in the House of Representatives, and be for a specific purpose and amount.

Except for the funds bill, which may originate in the Senate, all bills for raising revenue or appropriating money originate in the House of Representatives. The Senate may propose or concur in amendments, as in other bills.

The following bills do not count against the five-bill limit on bill introductions after pre-filing for the authors of the bills ([La. Const. Art. III, §2\(A\)](#)):

- 1) The general appropriation bill.
- 2) The bill appropriating funds for the judicial branch.
- 3) The bill appropriating funds for the legislative branch.
- 4) The capital outlay bill.
- 5) The omnibus bond authorization bill.
- 6) Appropriation bills supplementing the General Appropriation Act.
- 7) The bill appropriating funds from the Revenue Sharing Fund ([Art. VII, §26](#)).
- 8) The bill establishing and reestablishing agency ancillary funds.

Appropriation bills are handled by the House Fiscal Division, so any requests regarding them should be directed to that division.

22.2 CONSTITUTIONAL AND JOINT RULE CONSIDERATIONS

For further reading on the authority of the legislature to appropriate, see [Article III, Section 16](#) of the Louisiana Constitution. To see the constitutional requirements relative to revenue and finance, including the votes required for the passage of the various fiscal bills, read [Article VII of the Louisiana Constitution](#). Finally, to read the rules of the House of Representatives and the Senate regarding the introduction of bills, appropriation bills, and exceptions, see [Joint Rule No. 18](#) and [19](#) of the Joint Rules of the Senate and House of Representatives.

22.3 GENERAL APPROPRIATION BILL

The General Appropriation bill provides for the ordinary operating expenses of state government for the next fiscal year. It is initially prepared by the division of administration and then sent electronically to House Fiscal Division staff for final drafting, proofing, and formatting prior to its introduction as House Bill No. 1.

House Bill No. 1 is customarily authored by the chairman of the House Committee on Appropriations.

22.4 ANCILLARY APPROPRIATION BILL

The Ancillary Appropriation bill provides for the ancillary agency operations administered agency to agency through internal service funds and enterprise operations for the next fiscal year. Like the General Appropriation bill, it is prepared by the division of administration and sent electronically to House Fiscal Division staff for final drafting, proofing, and formatting prior to introduction.

The ancillary appropriation bill is customarily authored by the chairman of the House Committee on Appropriations.

22.5 SUPPLEMENTAL APPROPRIATION BILL

Each year there is a supplemental appropriation bill proposed by the governor to provide for the current year operations of state government. The Supplemental Appropriation bill is a catch-all for appropriations, generally operating, but sometimes also capital outlay, to address financing needs before the close of the fiscal year. A supplemental appropriation bill contains new appropriations, amendments to existing appropriations, and transfers of monies into and between funds. House Fiscal Division staff prepares this bill from spreadsheets provided by the division of administration.

This supplemental appropriation bill is customarily authored by the chairman of the House Committee on Appropriations.

22.6 CAPITOL OUTLAY BILL

The Capital Outlay bill provides for the five-year capital budget of the state, beginning with the next fiscal year. It is prepared by the division of administration and sent electronically to House Fiscal Division staff for final drafting, proofing, and formatting prior to its introduction as House Bill No. 2.

House Bill No. 2 is customarily authored by the chairman of the House Committee on Ways and Means.

22.7 OMNIBUS BOND BILL

The Omnibus Bond bill provides authorization for the sale of general obligation bonds of the state for the next fiscal year. It provides the funding authority for the appropriations contained in the Capital Outlay Bill. It is prepared by the division of administration and sent electronically to House Fiscal Division staff for final drafting, proofing, and formatting prior to its introduction as House Bill No. 3.

The bill is customarily authored by the chairman of the House Committee on Ways and Means.

22.8 LEGISLATIVE APPROPRIATION BILL

The Legislative Appropriation bill provides for expenses of the legislature for the next fiscal year. This includes funding for the House of Representatives, Senate, Louisiana State Law Institute, Legislative Auditor, Joint Legislative Committee on the Budget, Legislative Fiscal Office, and Budgetary Control Council. The original budget is approved by the Legislative Budgetary Control Council and the bill is prepared by House accounting staff and the office of the Speaker of the House.

The bill is customarily authored by the speaker of the House.

22.9 JUDICIAL APPROPRIATION BILL

The Judicial Appropriation bill provides for expenses of the judicial branch including the Supreme Court, appellate courts, district courts, and certain local courts for the next fiscal year.

The bill is prepared by the judicial administrator of the Supreme Court and is sent electronically to House Fiscal Division staff for final drafting, proofing, and formatting prior to introduction.

Generally, funding for any new judgeship may be proposed by amendment to this bill for those judgeships which were recommended for creation by the judicial council and contingent upon passage of legislation creating the new judgeship.

The bill is customarily authored by the chairman of the House Committee on Appropriations.

22.10 REVENUE SHARING BILL

Article VII, Section 26 of the Constitution requires at least \$90 million to be allocated annually from the state general fund to the revenue sharing fund. The Revenue Sharing bill provides for this annual allocation and the distribution of the funds to local taxing authorities. House Fiscal Division staff prepares the bill based on the Revenue Sharing bill of the prior year and by updating the information using data provided by the state treasurer's office.

Members may request the addition of new millages and other changes to their parish's allocation; and customarily, the requests that are supported by the entire delegation of the affected parish or other locality are included in the original bill.

The bill is customarily authored by the chairman of the House Committee on Appropriations.

22.11 OTHER APPROPRIATION BILLS

In addition to the appropriation bills previously discussed in this Chapter, there are other types of appropriation bills that may be requested. These are all drafted by the House Fiscal Division staff and include:

A. Funds bill

In past sessions a bill has been enacted that transfers monies between funds, creates new funds, and modifies existing funds as part of the governor's overall spending plan. The "funds bill" has historically originated in the House and been authored by the chairman of the House Committee on Appropriations, however it may originate in either the House of Representatives or the Senate.

The funds bill is considered a general bill, meaning it must be prefiled in odd-numbered years and counts as one of the author's five prefiled bills in odd-numbered years and is subject to the five-bill limitation for introductions after prefiling in even-numbered years.

B. Judgment appropriation bills

Most litigation against the state is handled through the Office of Risk Management, and judgment awards for most torts and workers' compensation cases are paid by that office from monies appropriated from the Self-Insurance Fund for such purpose. No legislation is required for the payment of those judgments.

There are some judgments, however, including but not limited to road hazard tort claims and civil rights matters which are usually not payable from the Self-Insurance Fund. In these cases, an appropriation is needed to provide for payment of the judgment.

Bills that appropriate payment for judgments against the state are not usually heard in committee but are most often added through an appropriation in either the General Appropriation bill (House Bill No. 1) or the Supplemental Appropriation bill.

C. Legal expenses of state employees or officials

The state indemnifies state employees and officials who are charged with a crime while acting in the course and scope of their duty as an agent of the state. [R.S. 13:5108](#) et seq. contains the specific requirements for coverage and the payment of attorney fees. The recommended way to effect the payment of attorney fees is through an appropriation to the agency with which the defendant is associated. However, nothing precludes appropriation directly to the defendant for reimbursement of payments made, or even to the attorney directly.

D. Board of Tax Appeals judgments

The state Board of Tax Appeals has authority to issue judgments of money awards to taxpayers making claims against the Department of Revenue. A Board of Tax Appeals judgment is a recommendation to the legislature for an appropriation to pay the amount awarded, but is not binding.

E. Appropriations to a specific department or agency

Occasionally, a "stand alone" appropriation bill is prepared to provide funding for a very specific purpose. There is a basic template for this type of bill in the LegiSuite system, but these bills have no particular special format.

CHAPTER 23. REVENUE DEDICATION AND SPECIAL TREASURY FUNDS

23.1 OVERVIEW

Regulatory programs and other statutory mandates will require funding prior to implementation. One way to meet this need is through the dedication of revenue in order to fund a particular program or other government action. “Revenue dedication” is the practice of earmarking, or committing, a portion of state revenue to a specific expenditure category. Legislation for the dedication of revenue will usually involve the creation of a special fund within the state treasury to retain and manage the dedicated revenue. Despite being a fiscal matter, dedications of monies or the creation of special treasury funds or accounts are part of the allowed subject matter in any regular session ([La. Const. Art. III, §2\(4\)\(b\)](#)).

In the development of legislation establishing a dedication of revenue or special treasury fund, there are several issues and options for design that the drafter should consider. These include the present "availability" of the revenue, potential constitutional limitations, and directions for use of the money in the future. In the case of a special fund, the drafter will also need to address the actual flow of money into the fund and mechanics of the fund operation. The following Sections will provide background, framework, and examples for establishing revenue dedications and special funds.

A drafter who receives a request to draft a bill containing the dedication of revenue or who determines that such a provision may be necessary, should contact the staff of the House Fiscal Division for assistance.

23.2 CONSTITUTIONAL LIMITATIONS AND CONSIDERATIONS

The constitution provides for several limitations on the legislature's authority to appropriate or otherwise dispose of monies received by the state. As provided in [Article VII, Section 9](#) of the Constitution of Louisiana, all money received by the state, with specific limited exceptions, shall be deposited immediately in the state treasury and credited to the Bond Security and Redemption Fund for the purpose of paying the state’s full faith and credit obligations:

§9. State Funds

Section 9.(A) Deposit in State Treasury. All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury, except that received:

(1) as a result of grants or donations or other forms of assistance when the terms and conditions thereof or of agreements pertaining thereto require otherwise;

(2) by trade or professional associations;

(3) by the employment security administration fund or its successor;

(4) by retirement system funds;

(5) by state agencies operating under authority of this constitution preponderantly from fees and charges for the shipment of goods in international maritime trade and commerce; and

(6) by a state board, agency, or commission, but pledged by it in connection with the issuance of revenue bonds as provided in Paragraph (C) of Section 6 of this Article, other than any surplus as may be defined in the law authorizing such revenue bonds.

(B) Bond Security and Redemption Fund. Subject to contractual obligations existing on the effective date of this constitution, all state money deposited in the state treasury shall be credited to a special fund designated as the Bond Security and Redemption Fund, except money received as the result of grants or donations or other forms of assistance when the terms and conditions thereof or of agreements pertaining thereto require otherwise. In each fiscal year an amount is allocated from the bond security and redemption fund sufficient to pay all obligations which are secured by the full faith and credit of the state and which become due and payable within the current fiscal year, including principal, interest, premiums, sinking or reserve fund, and other requirements. Thereafter, except as otherwise provided by law, money remaining in the fund shall be credited to the state general fund.

Following the satisfaction of this requirement, money remaining in that fund shall be credited to the state general fund, except as otherwise provided by law. It is this last phrase that authorizes the legislature to provide by law for the dedication of certain revenues for specific purposes and for the creation of special funds. See the example in [Section 23.6](#) where there is

a reference to the Bond Security and Redemption Fund in the disposition of monies prior to their being deposited into the new special treasury fund.

It is important to note that pursuant to the exception in [Article VII, Section 9](#), regulatory boards and commissions generally do not deposit their revenues into the state treasury. Consequently, in drafting legislation creating a new board or commission, there is no need to include special fund language unless the proposed entity will explicitly be identified as a budget unit of the state.

23.3 REVENUE SOURCES

Before drafting a provision to dedicate a certain stream of revenue, the drafter must first find a potential funding source and then determine if the revenue is recurring or nonrecurring. The nature of the revenues will affect the uses to which the monies may be appropriated.

A. Recurring revenue

Recurring revenue is the portion of the state's revenue that is highly likely to continue in the future. This is revenue that is predictable, stable, and can be counted on in the future with a high degree of certainty. Sources of recurring revenue include a recurring stream such as the proceeds from a tax or a fee or a recurring federal distribution.

B. Nonrecurring revenue

Nonrecurring revenue is the portion of the state's revenue that derives from an event that happens only once and is not repeated. Sources of nonrecurring revenue include asset sales or a one-time pool of money which the state will receive such as a federal grant or proceeds from a lawsuit settlement.

C. Revenue Estimating Conference and appropriating funds

[Article VII, Section 10](#) of the constitution provides that before state revenues can be appropriated, the Revenue Estimating Conference (REC) must recognize them as available for appropriation. The conference is also tasked with designating within the official forecast of revenues those monies which are "recurring" and those which are "nonrecurring" in nature.

[Article VII, Section 10](#) also restricts the appropriation of nonrecurring monies to the following specific purposes:

- ❖ Retiring or for the defeasance of bonds in advance or in addition to the existing amortization requirements of the state.

- ❖ Providing for payments against the unfunded accrued liability of the public retirement systems which are in addition to any payments required for the annual amortization of the unfunded accrued liability of the public retirement systems, as required by [Article X, Section 29\(E\)\(2\)\(c\)](#) of the constitution; however, any such payments to the public retirement systems shall not be used, directly or indirectly, to fund cost-of-living increases for such systems.
- ❖ Providing funding for capital outlay projects in the comprehensive state capital budget.
- ❖ Providing for allocation or appropriation for deposit into the Budget Stabilization Fund established in [Article VII, Section 10.3](#) of the constitution.
- ❖ Providing for allocation or appropriation for deposit into the Coastal Protection and Restoration Fund established in [Article VII, Section 10.2](#) of the constitution.
- ❖ Providing for new highway construction for which federal matching funds are available, without excluding highway projects otherwise eligible as capital projects under other provisions of the constitution.

If the author seeks to dedicate the use of monies which are nonrecurring for a purpose other than those listed in the constitution, a constitutional amendment will be needed to effect the change. The dedication of nonrecurring monies for a purpose which is authorized in the constitution could be accomplished through a statute.

D. Effective dates

The nature of the revenues may also dictate the start date for the dedication of revenues. Effective dates for special funds or implementation dates for dedications need to account for the fiscal year and any relevant revenue collection cycles. The establishment of a special fund usually coincides with the July first beginning of the state's fiscal year so that monies can be budgeted from that fund for the upcoming year. Occasionally, if the monies to be dedicated are currently being used for another purpose, the establishment of the fund may be delayed until the beginning of the following fiscal year.

23.4 SPECIAL TREASURY FUND VERSUS MANDATED APPROPRIATION

Once the drafter has identified a potential funding source and determined that it can be used for the proposed purpose, the drafter must then provide for the actual dedication of the revenues. The dedication of revenues can be accomplished in two general ways:

- ❖ Direct the deposit of certain monies into a special fund or account within an existing fund.

The use of a special treasury fund is the most common method, with the vast majority of those funds being established in statute. This allows for revision as time or circumstances may dictate.

Example of statutory language to create a special fund:

A. There is hereby created, as a special fund in the state treasury, the Department of Health and Hospitals' Facility Support Fund, hereinafter referred to as the "fund".

B.(1) Notwithstanding any other provision of law to the contrary, after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and Redemption Fund, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay an amount into the fund equal to the amount collected by the state attributable to the sale or lease of timber or fruit harvested from real property in the custody of the Department of Health and Hospitals. Prior to a sale or lease of timber or fruit authorized by this Paragraph, the commissioner of administration shall review the terms of the sale or lease to ascertain that the sale or lease amount constitutes fair market value or greater for the timber or fruit.

Example of statutory language to create a special account within an existing fund:

B. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special account, which is hereby created in the state treasury and designated as the Coastal Mitigation Account in the Wetlands Conservation and Restoration Fund, an amount equal to the total amount of funds paid into the treasury in lieu of compensatory mitigation. The monies in the account shall be invested by the state treasurer in the same manner as monies in the state general fund.

- ❖ Require the legislature, by statutory or constitutional provision, to appropriate certain monies for a specific purpose. **Note:** Mandated expenditures by statute without the dedication of monies into a fund are sometimes ignored by the legislature.

The reason for consideration of a potential constitutional provision regarding requirements for certain appropriations is that the constitution grants the legislature the plenary authority to appropriate state funds for any public purpose, in its discretion. Mandatory expenditures within the constitution have historically been very rare cases, due to the static nature of constitutional provisions and the resulting limitations on a future legislature's ability over time to enact budgets for the operation of the state. Examples of requirements for specific appropriations, which override the legislature's plenary authority, can be found in the

constitution for the minimum foundation program, state supplemental pay to police and firefighters, and the state revenue sharing program.

A. In addition to the compensation now paid by any municipality included in this Part or by the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, or the Tunica-Biloxi Tribe of Louisiana, hereinafter referred to as "tribe" or "tribal", to any police officer, every police officer employed by any municipality or tribe which employs one or more police officers who devotes his full working time to law enforcement, and for those hired after March 31, 1986, who have completed and passed a council-certified training program as provided in R.S. 40:2405, shall be paid by the state extra compensation in the amount of five hundred dollars per month for each full-time municipal or tribal law enforcement officer who has completed or who hereafter completes one year of service.

23.5 USE OF THE DEDICATED REVENUE

The drafter will also have to determine how the dedicated revenues will be distributed or the manner in which the revenues will be applied to accomplish the desired purpose.

It will be helpful to first obtain an understanding of the annual amount of revenues estimated to be available each year as compared to the purposes for which it will be expended. The drafter may request assistance from the House Fiscal Division staff in preparing a preliminary estimate of the amount of available revenues to assist in making decisions on the final draft.

The drafter will then have to determine if the monies will be distributed according to a formula and whether the formula already exists or needs to be developed. The drafter should check with the author to determine if there is a priority list of spending purposes that should be included in the proposed legislation.

The statutory language providing for the use of the revenues can be broad or specific regarding the authorized purposes for the expenditure of monies appropriated. However, a statutory requirement that monies be appropriated for a specific purpose would still be subject to legislative discretion. The legislature may provide in the appropriation that the money be used for purposes other than those required by law or may transfer monies out of a special fund. As stated in the preceding Section, the constitution affords plenary authority for the legislature to appropriate all monies available for appropriation. The only exceptions to this would be those very rare mandatory appropriations which are found in the constitution.

23.6 BASIC FRAMEWORK OF A SPECIAL TREASURY FUND

While an author may not initially be thinking in terms of establishing a special treasury fund, it is generally the best approach, since special funds or accounts are the clearest and most systematic way to provide for the myriad conditions surrounding receipt and disposition of specific revenues intended for specific uses.

In setting up a fund there are a number of critical considerations:

- ❖ **Timing.** When are the deposits to begin? This normally would be at the start of a fiscal year, taxable year, or taxable period.
- ❖ **Type of fund.** Will all monies in the fund be subject to appropriation, or would it be a trust fund with a certain amount required to remain in the fund?
- ❖ **Treatment of balances.** Will unexpended and unencumbered monies remaining in the fund at the end of the fiscal year remain to the credit of the fund or revert to the state general fund? Normal practice has been for unexpended or unencumbered monies to remain in the fund from year to year.
- ❖ **Investment and interest earnings.** With respect to the investment of fund balances, it is customary that these monies be invested in the same manner as the state general fund. With respect to the disposition of earnings, they may be credited either to the special fund or the state general fund.

When providing for the function of a special treasury fund, the law must be clear about the practical mechanics of getting the money into and out of the fund. Normally it is the state treasurer who is directed to deposit the monies into the fund upon receipt and after satisfying the requirements of the Bond Security and Redemption Fund. Sometimes only a portion of the revenues in a certain revenue stream will be deposited into the fund.

Example of statutory language to deposit a portion of a stream of revenue into a special fund:

A. There is hereby created, as a special fund in the state treasury, the State Highway Improvement Fund, hereinafter referred to as the "fund." The source of monies in this fund shall be registration and license fees and taxes on trucks and trailers collected by the state pursuant to R.S. 47:462, and as provided in R.S. 47:481. Beginning July 1, 2007, and each fiscal year thereafter, after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana, and after making the allocation for state highway fund No. 2, the treasurer shall deposit into the fund the following amounts:

- (1) For Fiscal Year 2007-2008, twenty-five percent of such collections.
- (2) For Fiscal Year 2008-2009, seventy-five percent of such collections.
- (3) For Fiscal Year 2009-2010 and thereafter, all of the collections.

B. The monies in the fund shall be subject to an annual appropriation by the legislature and only be used as provided in Subsection C of this Section. The monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund, and all interest earned shall be deposited and credited to the fund. All unexpended or unencumbered monies remaining in the fund at the end of the fiscal year shall remain to the credit of the fund.

C. Monies appropriated from the fund shall be used exclusively by the Department of Transportation and Development for funding projects for any road which is part of the state highway system but not part of the federal system and, thus, is ineligible for federal highway funding assistance. Such projects shall include but not be limited to design, preventive maintenance, rehabilitation, restoration, and improvement of the state-maintained system of roads. In addition, these funds may be used to complete all of the preconstruction activities such as planning, survey, design, engineering, right-of-way acquisition, and utility relocations association with such projects.

Note: The language in the preceding example includes a reference to "state highway fund #2" in addition to the Bond Security and Redemption Fund as a "first draw" on the monies. This is because there is a specific constitutional requirement for use of those particular revenues. This is a good example of why the drafter should check to see if the revenues are currently dedicated for another purpose.

See also [R.S. 27:437](#) which establishes the Video Draw Poker Device Fund and provides for the disposition of revenues associated with regulation of video poker. This is an example of a complex and detailed "chain" of deposits, dedications, and disbursements.

Occasionally it is possible to set up an account within an existing fund rather than creating a new fund. When setting up an account the drafter must first determine if a proposed account structure is consistent with the existing fund. Also, contingent upon the author's approval, the

drafter should check with the state treasurer's office to see if there are any practical or legal problems with setting up such an account. Accounts within funds are relatively rare.

A. There is hereby created in the Conservation Fund an account to be known as the Public Oyster Seed Ground Development Account.

23.7 MODEL LANGUAGE FOR CREATING A SPECIAL TREASURY FUND

This Section will provide model language to assist the drafter in drafting legislation to create a special treasury fund.

A. Title

The following is basic, recommended language to be used in the bill's title when drafting a special treasury fund in statute:

...relative to *(subject of bill - - usually it is "special treasury funds")*, to create the *(name of fund)* as a special treasury fund; to provide for the deposit, use, and investment of monies in the fund; to provide for an effective date; and to provide for related matters.

...relative to special treasury funds; to create the Louisiana Sporting, Special Events, and Major Conventions Fund as a special treasury fund; to provide for the deposit, use, and investment of the monies in the fund; to authorize the promulgation of certain rules and regulations; to provide for the review and approval of such rules; to provide for an effective date; and to provide for related matters.

B. Body

The following is basic, recommended language to be used in the bill's body to create the special treasury fund in statute:

1) *Statutory designation, name, and purpose of fund*

§(§ no.). (name of fund)

- A. There shall be established in the state treasury the "(name of fund)", hereinafter referred to as the "fund", for the purpose of (purpose).

§1615. Archaeological Creation Fund; creation

- A. There is hereby created, as a special fund in the state treasury, the Archaeological Curation Fund, hereinafter referred to as the "fund", to implement the provisions of R.S. 41:1604.

2) *Deposit language*

There are generally two ways to approach the “deposit language”, depending upon the nature of the revenue:

a) *OPTION ONE - - revenue source is a continuing stream of money*

- B. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to placing monies into the state general fund, the treasurer shall pay an amount equal to the monies received by the state treasury from (*cite revenue source, such as “...from the avails of the tax imposed on X...” or “pursuant to the provisions of...”*) into the fund. Monies in the fund shall be available for appropriation in accordance with the provisions of Subsection C of this Section. Except as may otherwise be provided in this Section, all unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. Monies in the fund shall be invested in the same manner as monies in the state general fund, and interest earned on such investment shall be deposited into the fund (*or state general fund*).
- C. Subject to appropriation by the legislature, monies in the fund shall be used solely for (describe the purposes for which the money may be expended, this can be broad or specific.).

Note: It is not mandatory that the uses be listed, though most funds provide for specific uses. There may be no need for a Subsection C.

- B. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana, and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay an amount equal to the monies received by the state treasury pursuant to the provisions of R.S. 41:1608(B) into the Archaeological Curation Fund. All unexpended and unencumbered monies in the fund at the end of any fiscal year shall remain in the fund for use in subsequent fiscal years. Monies in the fund shall be invested by the state treasurer in the same manner as monies shall be credited to the fund after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana.
- C. Monies in the fund shall be withdrawn only pursuant to an appropriation by the legislature solely to implement the provisions of R.S. 41:1604.

b) OPTION TWO - - revenue source is legislative appropriation

- B. The source of monies deposited into the fund shall be legislative appropriation. Monies in the fund shall be available for appropriation in accordance with the provisions of Subsection C of this Section. Except as may otherwise be provided in this Section, all unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. Monies in the fund shall be invested in the same manner as monies in the state general fund, and interest earned on such investment shall be deposited into the state general fund *(or the fund)*.
- C. Subject to appropriation by the legislature, monies in the fund shall be used solely for *(describe the purposes for which the money may be expended, this can be broad or specific.)*.

Note: It is not mandatory that the uses be listed, though most funds provide for specific uses. There may be no need for a Subsection C.

A. The "Academic Improvement Fund", hereinafter referred to as the "fund", is hereby created within the state treasury. The source of monies deposited into the fund shall be legislative appropriation. Monies in the fund shall be subject to appropriation by the legislature and shall be available exclusively for programs which provide opportunities to students to acquire the skills to achieve academic success and become employable, productive, and responsible citizens.

B. All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. Such monies shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund, after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and Redemption Fund.

23.8 REQUIREMENTS FOR APPROPRIATIONS

Referring to or even requiring the appropriation of certain monies in a statute or the constitution will not effectuate an actual appropriation. [Article III, Section 16](#) of the constitution provides for the requirements of appropriation bills and prohibits such bills from containing non-appropriation substantive law provisions. A separate appropriation provided in an appropriation bill is necessary to make expenditures. For a detailed discussion on appropriation bills, see [Chapter 22, Appropriation Bills](#).

Usually the author will want to have monies appropriated in the upcoming fiscal year in accordance with the new dedication and special treasury fund. In this instance the drafter will need to speak with the Appropriations Committee staff regarding an amendment to an appropriation bill. Money may not be appropriated out of a fund until it is recognized as being available for appropriation by the REC. Sometimes, the REC will revise its forecast to incorporate funds based on legislation making its way through the legislative process; other times, the REC will not recognize funds as being available until the legislation is enacted.

23.9 REPEAL OF A FUND AND DISPOSITION OF THE FUND BALANCE

For the repeal of a special treasury fund, the state treasurer will need direction regarding any remaining unencumbered fund balances. The repeal of the section of law establishing the fund does not alone complete the abolishment of the fund. In a separate section of the bill, the drafter must provide for the abolishment of the fund and direct the treasurer to dispose of any fund balances for deposit into another fund. This separate section may have a later effective date to allow time for encumbered and appropriated monies to be withdrawn. For further discussion on repeal sections and effective dates, see [Chapter 7, Special Provisions](#).

Section 9. R.S. 17:354(C) and (D) and 3921.2 are hereby repealed in their entirety.

* * *

Section 15. Upon the effective date of this Section, the treasurer is authorized and directed to transfer any unexpended, unencumbered monies remaining in the Teachers Supplies Fund and the Classroom-based Technology Fund, which are repealed under the provisions of Section 8 of this Act, for deposit in and credit to the Academic Improvement Fund which is established under the provisions of Section 2 of this Act.

CHAPTER 24. RESOLUTIONS

24.1 OVERVIEW

Resolutions are legislative instruments that can be used by members to achieve a range of legislative actions other than amending, enacting, or repealing statutory law. These actions include but are not limited to expressing congratulations, commendations, or condolences or requesting some action by an agency official. Resolutions are legislative acts but usually do not have the effect of law. The exceptions to this general rule include joint resolutions to amend the constitution, suspensive resolutions, and resolutions to amend or repeal an administrative rule. For a discussion on joint resolutions, see [Chapter 15, Constitutional Amendments](#). For a discussion on other resolutions with the effect of law, see [Chapter 25, Resolutions with the Effect of Law](#).

Resolutions can be simple or concurrent. Simple resolutions require consideration and approval solely by the chamber of origin, while concurrent resolutions, like bills, require consideration and approval by both chambers.

Because most resolutions do not have the effect of law, the procedure for adoption and approval of a resolution is slightly different from that of a bill. While a bill is sent to the governor for approval upon enactment by the legislature, a resolution is not subject to gubernatorial veto, but is filed with the secretary of state's office.

Prior to drafting a resolution, a drafter will create the request for the resolution by performing the same steps as opening a bill request in Task Organizer. The "Request Type" will be either House Resolution for a simple resolution or House Concurrent Resolution for a concurrent resolution.

A drafter may receive a request to draft a resolution to be used by the member in the interim between regular legislative sessions. Such a resolution is known as an interim resolution and is offered on behalf of the member instead of the entire legislative body. While an interim resolution contains similar "Whereas" and "Be it resolved" clauses as a resolution to be filed for consideration during a legislative session, it is drafted in a different format and the drafter should consult his division director for guidance.

The screenshot shows the 'Instrument Request Card' window. At the top, there are 'Request Actions' (Clear, Relate, Submit, Draft, Exit) and 'Tabs'. Below this, the form fields are: Request ID: NEW, Submitted On: (empty), Status: (empty), Drafter: (empty). The main section contains: *Session: 2015 Regular Session, *Request Type: House Resolution (indicated by a red arrow), Draft Type: (empty). Below these are Keyword: (empty) and Author: (empty). At the bottom is the *Onliner: (empty) text area.

This screenshot is identical to the one above, but the *Request Type dropdown is now set to 'House Concurrent Resolution', also indicated by a red arrow.

The drafter should then choose the “Draft Type” that closely reflects the type of the resolution. For a discussion on the specific resolution types, see [Section 24.3](#) of this Chapter. The drafter will also choose the most appropriate keyword, select the author, and provide a oneliner statement. It is important that the drafter fill in all fields on the request card, with particular care taken to enter the author’s instructions with as much detail as possible as another staff person may need to rely on this information. The drafter should also relate and attach any accompanying information the author may provide or cite. For more information on opening a request in Task Organizer, see [Chapter 1, Steps in Drafting](#).

To begin drafting the resolution, the drafter should click "Draft" in Task Organizer. This action opens up a template for resolutions in WordPerfect. The template indicates where the drafter should fill in the necessary information for the title, "Whereas" and "Be it resolved" clauses in the body, and the digest. The template contains a prompt for the first "Whereas" and "Be it resolved" clauses and the drafter must manually add in the additional clauses as needed.

24.2 ELEMENTS OF A RESOLUTION

Resolutions contain the following elements:

- A. Heading of the resolution
- B. Title of the resolution
- C. Body of the resolution
- D. Digest of the resolution

A. Heading of the resolution

The heading of the resolution consists of the instrument version, session type and year, instrument type and number, author, keyword, and oneliner. The keyword and oneliner have the same function as for a bill. The keyword is chosen from the same HLS list of available keywords. The oneliner is a short statement summarizing the effect of the instrument.

CORRECTIONS: Commends DPS&C for transferring certain equipment to the La. Correctional Institute for Women to begin offering female inmates training programs for high-demand and high-wage jobs

SPECIAL DAY/WEEK/MONTH: Recognizes Thursday, March 13, 2014, as Human Resource Management Day

B. Title of the resolution

As with a bill, the title in a resolution must contain a brief summary of the action proposed and be confined to one subject.

A CONCURRENT RESOLUTION

To commend the Department of Public Safety and Corrections for moving the mobile welding unit from the Louisiana State Penitentiary to the Louisiana Correctional Institute for Women to begin offering female inmates education and training programs for nontraditional, high-demand, and high-wage jobs.

A RESOLUTION

To recognize Thursday, March 13, 2014, as Human Resource Management Day in Louisiana and to commend the members of the Louisiana Society for Human Resource Management.

C. Body of the resolution

The first part of the body of the resolution is made up of the “Whereas” clauses which establish the foundation and reasons for the intended legislative action. The drafter may want to start with a general, broad statement and then work towards more specific statements. It is also important for the drafter to avoid using overgeneralized statements, political statements, statements of personal opinion, and inflammatory language when drafting the resolution. The drafter should carefully analyze each statement and confirm that statements of fact can be corroborated.

Each “Whereas” clause, other than the final clause, ends in a semicolon and the word “and”. The final “Whereas” clause before the “Be it resolved” clause ends in a period.

WHEREAS, nationally, the wage gap between men and women improved slightly from 2011 to 2012 according to the latest United States census data with women now earning approximately seventy-eight cents on average to every dollar a man earns; and

WHEREAS, engaging women in nontraditional employment, which includes any occupation that employs far fewer women than men such as trades, crafts, technology, and science fields, offers several benefits that enable women to become economically self-sufficient, support their families, and build assets to obtain a home or pursue a higher education; and

WHEREAS, the Louisiana Correctional Institute for Women (LCIW) is the only female correctional facility operating at the state level, and as of October 2013, LCIW only offered its female inmates a job and life skills course and upholstery and culinary arts training; and

WHEREAS, until recently, the workforce development programs at LCIW did not train female inmates for high-demand careers in contrast to the job training provided at men's correctional facilities, which prepare males for more lucrative potential careers upon release; and

WHEREAS, the Department of Public Safety and Corrections announced that it will move the mobile welding unit from the Louisiana State Penitentiary to LCIW in April of 2014 to begin offering female inmates education and training programs in nontraditional, high-demand, and high-wage jobs.

WHEREAS, human resource management plays a vital role in maintaining the functionality of workforces in society, and organizations rely on human resource management for not only the hiring and training of employees but for the assessment and rewarding of employees as well; and

WHEREAS, the Louisiana Society for Human Resource Management acts as a source of information, communication, and networking to enhance knowledge and improve the services of human resource management professionals; and

WHEREAS, the Louisiana Society for Human Resource Management consists of ten local chapters and seven student chapters which effectively provide services to members across the entire state of Louisiana and promote awareness of and attention to the field of human resource management; and

WHEREAS, the Louisiana Society for Human Resource management serves as an important association in the state by providing a community for human resource professionals, building and sustaining partnerships, and proactively providing education and research to human resource professionals.

The second part of the body of the resolution is made up of the “Be it resolved” clauses which describe in detail the intended legislative action. The drafter must be careful to use the correct title when stating the action to be taken. If the resolution is simple, then the drafter should use “the House of Representatives of the Legislature of Louisiana”; if the resolution is concurrent, the drafter must use “the Legislature of Louisiana”. The initial “Be it resolved” clause that immediately follows the “Whereas” clauses begins with “Therefore, be it resolved” and the subsequent clauses start with “Be it further resolved”. Each “Be it resolved” clause ends in a period.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana, in conjunction with the Louisiana Legislative Women's Caucus and the Louisiana Women's Policy and Research Commission, does hereby commend the Department of Public Safety and Corrections for moving the welding unit from the Louisiana State Penitentiary to the Louisiana Correctional Institute for Women to begin offering female inmates education and training programs for nontraditional, high-demand, and high-wage jobs.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby recognize Thursday, March 13, 2014, as Human Resource Management Day in Louisiana and does hereby commend the members of the Louisiana Society for Human Resource Management for their significant contributions to the citizens of Louisiana.

The drafter may also include as the final “Be it resolved” clause, a list of any parties who should be sent a copy of the resolution.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the Louisiana Society for Human Resource Management.

D. Digest of the resolution

The digest of a resolution contains the following components:

- 1) Heading
- 2) Instrument summary

For further discussion on digests, see [Chapter 7, Digests](#).

24.3 SPECIFIC RESOLUTION TYPES

Resolutions can be used to accomplish different goals and objectives, including the following actions:

- A. Express congratulations, commendations, or condolences
- B. Declare or proclaim certain special days, weeks, months, years, or certain honorary titles or designations
- C. “Urge and request”, “direct”, or “authorize and direct” a specific action by an agency or official
- D. Memorialize congress to take action
- E. Express the views of a chamber or the legislature with respect to actions taken or to be taken by departments or officers of the state or federal government or members of congress
- F. Ratify an amendment to the United States Constitution
- G. Establish a committee of one chamber
- H. Create a special joint legislative committee or study commission
- I. Amend, adopt, or repeal the rules of one chamber or the Joint Rules of the Senate and House of Representatives
- J. Authorize a suit against the state
- K. Express "legislative intent"

A resolution must clearly set forth both the intended legislative action and the reasons for such action. Below are examples of language that may be used when drafting a resolution to perform the above-listed actions. The entire resolution for each example is available for review in [Section 24.5](#) of this Chapter.

A. Express congratulations, commendations, or condolences

Often a member will request a resolution to recognize a significant event in the life of a constituent. This may be to congratulate or commend the constituent on a recent achievement or honor; or it may be to offer condolences upon the death of a constituent, family member, or other individual. A resolution to express congratulations, commendations, or condolences may be either a simple resolution or a concurrent resolution. The “Whereas” clauses should provide anyone reading the resolution with details regarding the subject of the resolution and the event giving rise to the intended legislative action. For example, if the resolution is to commend a constituent upon retirement, the “Whereas” clauses should include details about the constituent’s early life, work history, and future plans.

A CONCURRENT RESOLUTION

To commend Jim Henderson upon his retirement as sports director for WWL-TV in New Orleans.

WHEREAS, a native of New York state, Mr. Henderson earned a bachelor's degree in English from the State University of New York and a master's degree in radio and television from Syracuse University; and

WHEREAS, after graduate school, Mr. Henderson served as a sports director for a station in Panama City, Florida, and then worked at a station in Atlanta before moving to New Orleans; and

WHEREAS, it was in 1982 that Mr. Henderson's duties expanded to include New Orleans Saints radio play-by-play, and countless Saints fans have experienced the highs and lows of Saints history via his legendary broadcasts; and

WHEREAS, though he has retired from WWL-TV, Mr. Henderson will continue to grace the airwaves as the play-by-play announcer for the Saints; and

For a resolution to offer condolences upon the death of an individual, the “Whereas” clauses should include significant details such as the constituent’s birth, marriage, work history, death, and surviving family members.

A RESOLUTION

To express sincere and heartfelt condolences upon the death of Frank Maddie of Simmesport.

WHEREAS, it is with deep regret and profound sorrow that the members of the House of Representatives of the Legislature of Louisiana have learned of the death of Frank Maddie on March 9, 2012; and

WHEREAS, Mr. Maddie owned Maddie's One Stop in Simmesport for more than forty-five years and was employed by Avoyelles Parish Schools as a bus driver for twenty-five years; and

WHEREAS, Mr. Maddie was a member of Christ the King Catholic Church and the American Legion-Bordelonville Unit, and he was active with the Boy Scouts of America for more than fifty years; and

WHEREAS, Mr. Maddie's contributions to Scouting included establishing the first Catholic Committee on Scouting in 1983 and developing the Religious Fellowship Committee in 1985; and

WHEREAS, Mr. Maddie received many honors throughout his lifetime, including both the Bronze Pelican and St. George awards from the Boy Scouts of America, the Vigil Honor from the Lodge Order of the Arrow in 1962, and having the dining hall at Camp Attakapas named in his honor; and

WHEREAS, Mr. Maddie is survived by his wife, Gladys; his sons, Samuel (Tommy) and wife Cindy, William (Bill) and wife Leslie; sisters, Annie Ducote and Rosie Collette; five grandchildren, Mary Allen Maddie, Shelby Maddie, Natalie Maddie, Lindsey Dauzat, and Brooke Martel; and one great-grandchild, Jordan Stout; and

The title and the “Be it resolved” clauses should clearly state what action is being taken, towards whom the action is being taken, and the occasion upon which the action is being taken.

WHEREAS, Jim Henderson is widely respected, admired, and beloved for his extraordinary gifts and talents, and he merits a sincere and heartfelt measure of commendation for his singular contributions and outstanding accomplishments.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby commend Jim Henderson upon his retirement as sports director for WWL-TV in New Orleans, does hereby express enduring appreciation for the tremendous honor he brings to the Crescent City, to the state of Louisiana, and to the Who Dat Nation, and does hereby extend best wishes for continued success and happiness in all of his future endeavors.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to Jim Henderson.

WHEREAS, although the death of Frank Maddie has left a tremendous void in his community, his memory shall live long in the hearts of all who knew and loved him.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby express sincere and heartfelt condolences upon the death of Frank Maddie of Simmesport and does hereby recognize and record his lifelong commitment to the devoted service of his family, friends, church, community, and country.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the family of Frank Maddie.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to the constituent, surviving family, or other appropriate parties.

B. Declare or proclaim certain special days, weeks, months, years, or certain honorary titles or designations

A drafter may receive a request to assist a member in acknowledging a person, group, or area in the member’s district, or a subject that is important to the member, beyond a commendation or congratulatory resolution. The drafter should advise the member that it is possible to file a resolution to proclaim a special day, week, month, year, or to provide an honorary title or designation. Such a resolution may be either a simple resolution or a

concurrent resolution, though they are usually concurrent to give the full force of the legislature to the declaration.

The “Whereas” clauses should provide anyone reading the resolution with details regarding the subject of the resolution and the specific declaration being made. For example, if the resolution is to proclaim a special day at the capitol, the “Whereas” clauses should include details about the subject of the special day, the reasons a special day is merited, and the actual date being proclaimed.

A CONCURRENT RESOLUTION

To recognize Tuesday, April 10, 2012, as Ponchatoula Strawberry Festival Day.

WHEREAS, the Ponchatoula Strawberry Festival Board was organized in 1971, and the first festival was held in April of 1972; and

WHEREAS, for more than thirty years, the Ponchatoula Strawberry Festival has provided a venue as a fundraiser for nonprofit and charitable organizations, and the festival prides itself as being one of the only festivals in which nonprofit organizations are the only vendors on the official festival grounds; and

WHEREAS, the 2012 Ponchatoula Strawberry Festival is being held on April 13, 2012, through April 15, 2012, in Ponchatoula, Louisiana; and

If the resolution is to bestow an honorary title or designation, then the “Whereas” clauses should include details about the subject receiving the honor, the honorary title or designation itself, and the circumstances giving rise to the honorary title or designation.

A CONCURRENT RESOLUTION

To designate the community of Thornwell in Jefferson Davis Parish as the Yellow Rail Capital of the World and to recognize the Yellow Rails and Rice Festival held in Thornwell, Louisiana.

WHEREAS, the Yellow Rails and Rice Festival will celebrate its sixth year in 2014, and it is a wonderful agritourism event that draws visitors to the state of Louisiana from various other states and countries; and

WHEREAS, Thornwell, Louisiana, is an excellent birdwatching destination where some of Louisiana's most impressive bird aggregations can be found throughout different times of the year; and

WHEREAS, Thornwell, Louisiana, represents the epicenter of Yellow Rail distribution in the southwestern rice fields; it is truly the Yellow Rail Capital of the World in terms of high numbers of Yellow Rail birds and in presenting a reliable opportunity for residents of the state of Louisiana and visitors alike to see these elusive Yellow Rail birds; and

The title and the “Be it resolved” clauses should clearly state what action is being taken, towards whom the action is being taken, and any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby recognize Tuesday, April 10, 2012, as Ponchatoula Strawberry Festival Day and does hereby celebrate the Ponchatoula Strawberry Festival as an integral part of the culture and history of the city of Ponchatoula and the state of Louisiana.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the Ponchatoula Strawberry Festival Board, Inc.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby designate the community of Thornwell in Jefferson Davis Parish as the Yellow Rail Capital of the World and hereby recognizes the sixth annual Yellow Rails and Rice Festival in the community of Thornwell.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the community of Thornwell, Louisiana, and the coordinators of the Yellow Rails and Rice Festival.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to the appropriate parties.

C. “Urge and request”, “direct”, or “authorize and direct” a specific action by an agency or official

A drafter may receive a request to draft a legislative instrument to express a member’s wish for a state agency or state government official to perform a specific action. The member may want to simply urge and request that the agency or official take an action; on the other hand, the member may want to be more firm and direct the agency or official to perform the action. There may even be a need for the legislature to authorize and direct the action be done. All of these legislative intents can be expressed through a resolution. Such a resolution may be either a simple resolution or a concurrent resolution, though it would be preferable to draft the resolution as concurrent to give the full force of the legislature to the declaration.

The “Whereas” clauses for a resolution requesting or directing action by a state agency or state government official should provide anyone reading the resolution with all details necessary to clearly set forth the reasons for the action requested as well as an explanation of the action itself. For example, if the resolution is meant to urge and request a state agency to exercise a discretionary power, the “Whereas” clauses should include details about the agency, the power to be exercised, and the circumstances giving rise to the need for such action.

A CONCURRENT RESOLUTION

To urge and request the commissioner of conservation to continue monitoring the health and sustainability of the Southern Hills Aquifer System and to use the results of simulations conducted by the U.S. Geological Survey on the fifteen hundred foot sand and the two thousand foot sand to develop management regimes for the health and sustainability of the Southern Hills Aquifer System.

WHEREAS, the Southern Hills Aquifer System is a system of several aquifers underlying the parishes of East and West Baton Rouge, Pointe Coupee, and East and West Feliciana with ten of those north of a fault line that bisects East Baton Rouge Parish; and

WHEREAS, there has long been concern about the viability, sustainability, and health of the Southern Hills Aquifer System; even as long ago as the early 1960s there were concerns about saltwater being drawn from the southern portions of the system below the fault line into the freshwater portions of the aquifer north of the fault line; and

WHEREAS, the concern about the sustainability of the aquifer system has been growing recently and has resulted in many activities, discussions, studies, and public hearings culminating in the July, 2013, release by the U.S. Geological Survey (USGS) of their "Simulation of Groundwater Flow in the '1,500-foot' Sand and the '2,000-foot' Sand and Movement of Saltwater in the '2,000-foot' Sand of the Baton Rouge Area, Louisiana" report (USGS report); and

The same details should be included in a resolution to direct or authorize and direct a state agency to perform an action.

A CONCURRENT RESOLUTION

To direct state agencies to consider certain provider impact issues and to issue certain provider impact statements prior to the adoption, amendment, or repeal of rules.

WHEREAS, the legislature has historically encouraged transparency in the policy development process; and

WHEREAS, the members of the legislature need to be aware of the fiscal impact of any proposed policy changes as they impact the state budget and the fiscal impact on their constituents, including providers of services; and

WHEREAS, the legislature needs information regarding the potential fiscal impact on the state budget, the general public, and providers of services funded by the state to make fully informed policy decisions regarding proposed policy changes, including those effectuated by the adoption, amendment, or repeal of rules, including emergency rules.

A CONCURRENT RESOLUTION

To authorize and direct the Louisiana State Law Institute to study and make recommendations to the Louisiana Legislature regarding the law of lesion beyond moiety, including but not limited to the restrictions and applicable time limitations for bringing such an action.

WHEREAS, Chapter 12 of Title VII in Book III of the Louisiana Civil Code, comprised of Civil Code Articles 2589 through 2600, provides the legal regime governing lesion beyond moiety; and

WHEREAS, the general principle that underlies lesion is that a party who sells an immovable for less than one-half of its fair market value can rescind the sale because he receives less than an equivalent commitment in exchange for his own promise to perform; and

WHEREAS, Louisiana's contemporary doctrine of lesion is very limited in scope in that it applies only in favor of a seller, only with respect to immovable property, and only upon a determination of a "fair market value" for the immovable; and

WHEREAS, a lesionary price on the face of the public records creates issues regarding the merchantability of title and the ability to issue title insurance, as well as can impede the ability of property to be efficiently put into commerce; and

The title and the "Be it resolved" clauses should clearly state what action is being requested, the party to whom the request is being made, and any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the commissioner of conservation to continue monitoring the health and sustainability of the Southern Hills Aquifer System and to use the results of simulations conducted by the U.S. Geological Survey on the fifteen hundred foot sand and the two thousand foot sand to develop management regimes for the health and sustainability of the Southern Hills Aquifer System.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the commissioner of conservation.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that prior to the adoption, amendment, or repeal of any rule, including an emergency rule, each state agency shall consider and state in writing the impact of the proposed rule on a provider prior to the adoption and implementation of the rule.

BE IT FURTHER RESOLVED that this written consideration of impact shall be known as the "provider impact statement" and shall contain the following considerations regarding the proposed rule:

(1) The effect on the staffing level requirements or qualifications required to provide the same level of service.

(2) The total direct and indirect effect on the cost to the provider to provide the same level of service.

(3) The overall effect on the ability of the provider to provide the same level of service.

BE IT FURTHER RESOLVED that the state agency shall include the provider impact statement in the notice required by R.S. 49:953(A)(1).

BE IT FURTHER RESOLVED that the state agency shall submit the provider impact statement on an emergency rule to the speaker of the House of Representatives and the president of the Senate at the same time in the same manner as the agency statement required by R.S. 49:953(A)(1)(a)(x).

BE IT FURTHER RESOLVED that if the state agency is reissuing an emergency rule previously published without revision, the state agency shall clearly indicate that the new publication is a reissue of a previously published rule and the date of the previous publication.

BE IT FURTHER RESOLVED that if the state agency is not materially or substantively revising an emergency rule previously published, the provider impact statement issued on the previously published rule shall suffice; however, if the emergency rule contains any material or substantive revisions from the previously published emergency rule, the agency shall revise the impact statement to reflect the revisions.

BE IT FURTHER RESOLVED that all provider impact statements shall be in writing and kept on file with the agency that adopted, amended, or repealed the rule and shall be available for inspection, copying, and reproduction in accordance with the Public Records Law.

BE IT FURTHER RESOLVED that for the purposes of this Resolution, "provider" means an organization that provides services for individuals with developmental disabilities, and "state agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof; any political subdivision, as defined in Article VI, Section 44 of Constitution of Louisiana and any board, commission, department, agency, officer, or other entity thereof; and the courts.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Office of the State Register in the division of administration.

BE IT FURTHER RESOLVED that the Office of State Register shall notify each state agency of the requirements of this Resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to study the legal issues surrounding lesion beyond moiety and to report and recommend any need for the revision of current law.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its findings and recommendations to the Legislature of Louisiana on or before January 1, 2016.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to each government agency or government official to whom the resolution is addressed.

D. Memorialize congress to take action

It is possible that a member may want to petition for or simply make a request that congress perform a specific action. This legislative intent can also be expressed through a resolution that memorializes congress to take that specific action. Such a resolution may be either a simple resolution or a concurrent resolution, though it would be preferable to draft the resolution as concurrent to give the full force of the legislature to the declaration.

The “Whereas” clauses for a resolution memorializing congress should provide anyone reading the resolution with all details necessary to clearly set forth the reasons for the action requested as well as an explanation of the action itself. For example, if the resolution is meant to memorialize congress to enact, amend, or repeal a particular provision of law, the “Whereas” clauses should include details about the particular law to be enacted, amended, or repealed and the circumstances giving rise to the need for such action.

A CONCURRENT RESOLUTION

To memorialize the United States Congress to take such actions as are necessary to pass the Helping Families in Mental Health Crisis Act of 2013.

WHEREAS, according to the Centers for Disease Control and Prevention, mental illness is defined as "health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress and/or impaired function"; and

WHEREAS, approximately sixty-one million five hundred thousand Americans experience mental illness in a given year; and

WHEREAS, Congressman Tim Murphy of Pennsylvania has introduced the Helping Families in Mental Health Crisis Act of 2013 as H.R. 3717; and

WHEREAS, the bill will create within the Department of Health and Human Services a new assistant secretary for mental health and substance-abuse disorders who would lead federal mental illness efforts, be responsible for promoting the medically oriented models of care adopted by the National Institute of Mental Health, and oversee the grant process while holding community centers accountable by ensuring they are meeting evidence-based standards; and

WHEREAS, H.R. 3717 would push states to efficiently allocate funds towards modernizing mental illness state laws and raise support for community mental health centers and hospital psychiatric care; and

The title and the "Be it resolved" clauses should clearly indicate the provision law which is the subject of the request and any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to pass the Helping Families in Mental Health Crisis Act of 2013.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to congress, including the members of the Louisiana congressional delegation.

A resolution to memorialize congress can also express the legislature's request that congress take an action other than enact, amend, or repeal a law. The "Whereas" clauses for a resolution memorializing congress to perform such an action must provide anyone reading the resolution with all details necessary to clearly set forth the reasons for the action requested as well as an explanation of the action itself.

A CONCURRENT RESOLUTION

To memorialize the United States Congress to take such actions as are necessary to prevent the deactivation of the 307th Red Horse Squadron, based at Barksdale Air Force Base in Bossier City, Louisiana.

WHEREAS, the Red Horse unit, officially known as the 307th Rapid Engineer Deployable Heavy Operational Repair Squadron Engineers, is a construction unit staffed with civil engineers, many of whom deployed to southwest Asia during the fall; and

WHEREAS, under the Defense Department's 2015 proposed spending plan, the 307th Red Horse Squadron would be deactivated as the Air Force Reserve's authorized strength would nationally decrease by almost five percent, to 61,700 airmen;

WHEREAS, the deactivation of the 307th Red Horse Squadron at Barksdale Air Force Base will have an adverse effect on not only the economy, but the community as well.

A CONCURRENT RESOLUTION

To memorialize the United States Congress to take such actions as are necessary to operate United States Postal Office motor vehicles with natural gas.

WHEREAS, since its founding in 1775, the United States Postal Service has been an indispensable part of the country's communication network; and

WHEREAS, the modern United States Postal Office has struggled to compete with the package delivery services of the Federal Express and the United Parcel Service; and

WHEREAS, one avenue that the United States Postal Office has not explored is the operation of the Postal Service motor vehicle fleet on natural gas; and

WHEREAS, on average natural gas costs one-third less than gasoline at the pump and natural gas is convenient and abundant; and

WHEREAS, the operation of the fleet of the United States Postal Service vehicles on natural gas would be an excellent way to save the United States Postal Service millions of dollars each year while making their vehicles safer and more efficient.

The title and the "Be it resolved" clauses should clearly state what action is being requested and any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to oppose the elimination of the 307th Red Horse Squadron based at Barksdale Air Force Base in Bossier City, Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to operate the fleet of the United States Postal Service vehicles on natural gas.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to congress, including the members of the Louisiana congressional delegation.

E. Express the views of a chamber or the legislature with respect to actions taken or to be taken by departments or officers of the state or federal government

A drafter may receive a request to draft a legislative instrument to express the views of one chamber or the whole legislature with respect to actions taken or to be taken by departments or officers of the state or federal government. Such an expression may be accomplished by either a simple resolution for expressions of one chamber or a concurrent resolution for expressions of the whole legislature.

The “Whereas” clauses for a resolution to express the views of one chamber or the whole legislature with respect to actions taken or to be taken by departments or officers of the state or federal government should provide anyone reading the resolution with all details necessary to clearly set the action to which the expression is directed as well as an explanation of the view itself.

A CONCURRENT RESOLUTION

To express the support of the Louisiana Legislature for the request by the secretary of the Department of Wildlife and Fisheries to the U.S. Secretary of Commerce and the administrator of the Small Business Administration to declare a fisheries disaster in the state of Louisiana as a result of the Mississippi River flooding and the opening of the Morganza and Bonnet Carre spillways.

WHEREAS, since 2005, South Louisiana, its residents, and its businesses have been devastated by a succession of natural and man-made disasters including Hurricanes Katrina and Rita in 2005 followed by Hurricanes Gustav and Ike in 2008 and then the area was confronted with hundreds of thousands of barrels of oil and gas released into the Gulf of Mexico after the explosion and sinking of Deepwater Horizon rig; and

WHEREAS, now South Louisiana and the fishing industry is faced with record-setting rising waters in the Mississippi River and its tributaries and distributaries, with water levels such that both the Bonnet Carre and the Morganza spillways have been opened, Morganza for the first time in thirty-eight years; and

WHEREAS, in anticipation of the impacts of the water levels and increased fresh water on oyster beds and marine nurseries in addition to the inability of fishermen to fish for the period of time that the water levels are at record-high levels, the secretary of the Department of Wildlife and Fisheries has requested that the Secretary of the United States Department of Commerce declare a commercial fisheries failure and requested support from the United States Department of Commerce's Economic Development Administration for commercial and recreational fishing and associated businesses; and

WHEREAS, the secretary of the Department of Wildlife and Fisheries has also requested of the administrator of the Small Business Administration that she ". . . begin the necessary step of activating all relevant federal disaster declaration clauses that would allow . . . assistance to our residents, our businesses, and our coastal communities" including temporary suspensions of loan repayments for those businesses which currently have SBA disaster and economic injury loans as a result of the previous disasters experienced by the residents of the state of Louisiana.

The "Be it resolved" clauses should clearly state the view of the chamber or legislature being expressed and the action to which the expression is directed.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby express its support for the request by the secretary of the Department of Wildlife and Fisheries to the United States Secretary of Commerce and the administrator of the Small Business Administration to declare a fisheries disaster in the state of Louisiana as a result of the Mississippi River flooding and the opening of the Morganza and Bonnet Carre spillways.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the secretary of the Department of Wildlife and Fisheries, the United States Secretary of Commerce, the Administrator of the Small Business Administration, and the members of the Louisiana Congressional Delegation.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to each government agency or government official to whom the resolution is addressed.

F. Ratify an amendment to the United States Constitution

The authority to amend the Constitution of the United States is derived from Article V of the U.S. Constitution. Pursuant to Article V, an amendment may be proposed either by congress or by a constitutional convention called for by two-thirds of the State legislatures. If an amendment is proposed by congress, once it is adopted, the proposed amendment is submitted to the states for their consideration. A proposed amendment becomes part of the U.S. Constitution as soon as it is ratified by three-fourths of the States (38 of 50 States). The vehicle for presenting an amendment for consideration by the state legislature is a concurrent resolution.

The “Whereas” clauses for a resolution to ratify an amendment to the U.S. Constitution must clearly set forth the amendment proposed by congress and considered by the legislature and the reasons for approval by the state legislature.

A CONCURRENT RESOLUTION

To provide for ratification by the Legislature of the state of Louisiana of the amendment to the Constitution of the United States relative to equal rights for men and women and to memorialize congress, if necessary, to extend or eliminate the ratification time limit.

WHEREAS, the Ninety-second Congress of the United States of America at the second session, in both houses, by a constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women: Now, therefore be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years after the date of its submission for ratification:

"ARTICLE _____

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or 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"; and

WHEREAS, the restricting time limit for the Equal Rights Amendment ratification is in the resolving clause and is not a part of the amendment proposed by congress and already ratified by thirty-five states; and

WHEREAS, having passed a time extension for the Equal Rights Amendment on October 20, 1978, congress has demonstrated that a time limit in a resolving clause can be disregarded if it is not part of the proposed amendment; and

WHEREAS, if an amendment to the Constitution of the United States has been proposed by two-thirds of both houses of congress and ratified by three-fourths of the state legislatures, it is for congress under the principles of *Coleman v. Miller* to determine the validity of the state ratifications occurring after a time limit in the resolving clause, but not in the amendment itself; and

The title and the "Be it resolved" clauses should clearly state that the resolution is to provide for ratification of an amendment to the Constitution of the United States, a brief summary of the intent of the amendment, and any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED by the House of Representatives of the Louisiana Legislature, the Senate thereof concurring, that the Legislature of the state of Louisiana does hereby ratify the foregoing proposed amendment to the Constitution of the United States of America.

THEREFORE, BE IT FURTHER RESOLVED that the Louisiana Legislature does hereby memorialize the United States Congress, if it deems necessary, to extend or eliminate the currently expired ratification time limit on the Equal Rights Amendment, and upon ratification by three more states, add the amendment to the Constitution of the United States.

BE IT FURTHER RESOLVED that certified copies of this Resolution shall be forwarded to the administrator of General Services, Washington, D.C., and to the president of the Senate and the speaker of the House of Representatives of the Congress of the United States.

It is important for the drafter to include an instruction for a copy of the resolution to be transmitted to congress and the appropriate federal officials.

G. Establish a committee of one chamber

Occasionally, an issue may arise which a chamber of the legislature decides to study further. If the subject will require extensive research and review, the chamber may choose to establish a special or select committee to study and make recommendations regarding the issues. A special or select committee is similar to a standing committee; however, the special or select committee is established temporarily for a limited purpose. The mechanism for the creation of a special or select committee is a simple resolution by the chamber establishing the committee.

The “Whereas” clauses for a resolution to create a special or select committee must clearly set forth the specific issue or subject to be studied and the reasons why the chamber feels a select committee is necessary.

A RESOLUTION

To create a select committee on Health Care Services and Financing to review the delivery and cost of health care services in the state of Louisiana.

WHEREAS, monitoring the cost and delivery of health care services in the state is an essential step in evaluating the effectiveness of various health care programs and in developing health care policy for the future; and

WHEREAS, the state of Louisiana has one of the highest populations of children under the poverty level, creating a desperate need for child health care service; and

WHEREAS, the limited availability of primary care practitioners poses a significant problem in the delivery of health care services in the state; and

WHEREAS, Louisiana must address the health care professional shortage problem to meet the health care needs of its residents and reduce the burden on state hospitals; and

The title and the “Be it resolved” clauses should clearly establish the select committee by name, provide for the membership, powers, and duties of the committee, and include any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby create a select committee on Health Care Services and Financing to review the delivery and cost of health care services in the state of Louisiana to be composed of five members from the House Committee on Health and Welfare, five members from the House Committee on Appropriations, five members from the House Committee on Insurance, three members from the House Committee on Education, two members from the House Committee on Criminal Justice, two members from the House Committee on Civil Law, two members from the House Committee on Municipal, Parochial and Cultural Affairs, and one at-large member from the House of Representatives, all of whom are to be appointed by the speaker of the Louisiana House of Representatives.

BE IT FURTHER RESOLVED that the select committee on Health Care Services and Financing shall report its findings and recommendations to the House of Representatives prior to the convening of the 2001 Regular Session.

It is important for the drafter to include a deadline for the committee to report its findings and recommendations to the appropriate chamber.

H. Create a special joint legislative committee or study commission

Sometimes the legislature decides to study an issue in which both chambers are equally interested or that requires input and cooperation from stakeholders outside of the legislature. For issues such as these, the drafter will have to create a special joint legislative commission or a study commission. The mechanism for the creation of a special joint legislative committee is a concurrent resolution. A study commission may be created by either a simple resolution or a concurrent resolution; however, it is preferable to draft the resolution as concurrent to obtain the support of both chambers of the legislature.

The “Whereas” clauses for a resolution to create a special joint legislative committee or study commission should contain information similar to the “Whereas” clauses in a resolution to create a special committee of one chamber of the legislature. The clauses must clearly set forth the specific issue or subject to be studied and the reasons why the legislature feels a special joint legislative committee or study commission is necessary.

A CONCURRENT RESOLUTION

To authorize and request the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs to meet and function as a joint committee to study and make recommendations with respect to the advisability of requiring the Orleans Parish registrar of voters to serve for a term of office concurrent with the term of office of the members of the city council of the city of New Orleans.

WHEREAS, Article XI, Section 5 of the Constitution of Louisiana requires the governing authority of each parish to appoint a registrar of voters, whose powers and functions are provided by law; and

WHEREAS, the members of the city council of the city of New Orleans, which appoints the registrar of voters, serve for a fixed term of office, as do most public officials, but the registrar does not serve for a term; and

WHEREAS, Article XI, Section 5 of the Constitution of Louisiana provides that a registrar can be removed only for cause and prohibits the legislature from providing for the removal from office of a registrar by the appointing authority; and

WHEREAS, R.S. 18:53(A) provides that a registrar may be removed "by the State Board of Election Supervisors for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent public conduct prejudicial to the administration of the laws relative to the registration of voters that brings the office into disrepute, or conviction of a felony".

A CONCURRENT RESOLUTION

To create and establish the Constitutional Convention Study Commission to undertake all necessary study to examine the feasibility and advisability of calling a convention to revise the Constitution of Louisiana and, if a convention is found to be feasible and advisable, to make recommendations to the legislature for calling such a convention, including a plan for the conduct of an effective constitutional convention.

WHEREAS, various authorities have suggested the need for Louisiana to address a number of policy areas that would require constitutional change, including such matters as the state's tax structure and budgetary practices, dedication of state revenues and the resulting inability of the legislature to allocate tax resources where needed, as well as fiscal restraints on local governments that dramatically limit their authority to meet fiscal and budgetary demands; and

WHEREAS, as was the case in 1973, Louisiana once again faces the need for a serious analysis of its basic law, and it must determine whether a constitutional convention is needed and would be the most effective approach to: conducting a genuine examination of the state's critical needs, undertaking an in-depth discussion of reform concepts, crafting provisions that allow for flexibility and innovation in legislative solutions to problems of the present and the future, and challenging Louisiana's voters to accept constructive change; and

WHEREAS, prior to calling a constitutional convention, it would also be wise to undertake appropriate study and analysis to enable effective decisions concerning details of convention composition, organization, procedure, staffing, and other resources.

The title and the "Be it resolved" clauses should clearly establish the joint committee or study commission by name, provide for the membership, powers, and duties of the joint committee or study commission, and include any other facts necessary for the reader to easily comprehend the intent of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and request the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs to meet and function as a joint committee to study and make recommendations with respect to the advisability of requiring the Orleans Parish registrar of voters to serve for a term of office concurrent with the term of office of the members of the city council of the city of New Orleans.

BE IT FURTHER RESOLVED that the joint committee shall report its findings and recommendations to the legislature not later than sixty days prior to the convening of the 2015 Regular Session of the Legislature of Louisiana.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby create and establish the Constitutional Convention Study Commission to undertake all study and analysis necessary for a complete examination of the feasibility and advisability of calling a constitutional convention to revise the Constitution of Louisiana and, if a convention is found to be feasible and advisable, to make recommendations to the legislature for calling such a convention.

BE IT FURTHER RESOLVED that the commission shall be composed of fifteen members as follows:

(1) Two members of the Louisiana House of Representatives appointed by the speaker of the House of Representatives.

(2) Two members of the Louisiana Senate appointed by the president of the Senate.

(3) Two members appointed by the governor.

(4) Two members appointed by the chief justice of the Louisiana Supreme Court.

(5) A representative of the Louisiana State Law Institute appointed by the Louisiana State Law Institute.

(6)(a) Four members who shall include a representative of the law school or business school of each of the following four universities appointed as provided in this Paragraph; the appointing authorities shall consult with each other and make their appointments so as to provide that two of such members shall be representatives of law schools and two shall be representatives of business schools:

(i) A representative of the Louisiana State University Paul M. Hebert Law Center or the Louisiana State University E. J. Ourso College of Business appointed by the joint concurrence of the chancellor of the law center and the dean of the business college.

(ii) A representative of the Southern University Law Center or the Southern University College of Business appointed by the joint concurrence of the chancellor of the law center and the dean of the business college.

(iii) A representative of the Tulane University Law School or the Tulane University A. B. Freeman School of Business appointed by the joint concurrence of the dean of the law school and the dean of the business school.

(iv) A representative of the Loyola University New Orleans College of Law or the Loyola University New Orleans Joseph A. Butt, S. J., College of Business appointed by the joint concurrence of the dean of the college of law and the dean of the business college.

(b) If the appointing authorities do not make an appointment as provided in Subparagraph (a) of this Paragraph, the speaker of the House of Representatives and the president of the Senate shall make any appointment necessary to provide for such required membership, giving consideration to any recommendations of the appointing authorities.

(7) A representative of the Public Affairs Research Council of Louisiana appointed by the council.

(8) A representative of the Council for a Better Louisiana appointed by the council.

BE IT FURTHER RESOLVED that the commission shall hold its organizational meeting within sixty days after adjournment sine die of the 2011 Regular Session of the Legislature on the call of the speaker of the House of Representatives and the president of the Senate acting jointly and that at such organizational meeting the commission shall elect a chairman, a vice chairman, and such other officers as it finds necessary and shall adopt rules for its own procedure which shall be subject to later amendment by the commission.

BE IT FURTHER RESOLVED that the commission shall make such studies as it finds necessary or appropriate to determine the feasibility and advisability of calling a convention to revise the Constitution of Louisiana and, if a convention is found to be feasible and advisable, to make recommendations to the legislature on all matters relevant to the convening and conduct of a constitutional convention, including a plan for the conduct of an effective constitutional convention, which plan shall include but not be limited to:

(1) A policy agenda for the convention which shall include:

(a) Identification of significant policy areas that must be addressed in order to propose a constitution that will serve the state effectively.

(b) Materials explaining the proposed provisions on significant policy areas and the reasons therefor.

(c) Alternative proposals for provisions on significant policy areas, together with explanations and explanatory materials therefor, including multiple optional approaches and solutions as appropriate to facilitate the work of the convention in addressing issues.

(d) Pertinent background material and data relative to significant policy areas.

(2) Background and other materials that the committee determines will be useful to the work of the convention.

(3) Proposals for elimination of statutory materials from the constitution, together with recommendations for legislative action relative thereto.

(4) Recommendations for convention organization and deliberations, including the composition of the membership of the convention, officers and committees, and significant provisions for rules of procedure.

(5) Timetables for convening, for staff work, for completion of a draft constitution, for the election to submit the proposal to the voters of the state, and for effectiveness of the new constitution.

(6) An analysis of staffing and other resources needed and available to address policy issues and to skillfully draft constitutional language.

(7) Recommendations for budget needs for effective conduct of a convention.

(8) Recommendations for procedures for submission of alternative proposals to the voters and ballot structure.

BE IT FURTHER RESOLVED that the commission shall complete its study and determine its recommendations to the legislature no later than January 15, 2012, and shall submit to each member of the legislature and to the governor, no later than March 1, 2012, the complete results of its study and a report of its findings and its recommendations based thereon.

It is important for the drafter to include a deadline for the joint committee or study commission to report its findings and recommendations to the legislature.

I. Amend, adopt, or repeal the rules of one chamber or the Joint Rules of the Senate and House of Representatives

Just as statutory law must be updated, it becomes necessary, from time to time, to amend, adopt, or repeal the rules of one chamber or the Joint Rules of the Senate and House of Representatives. A resolution to amend, adopt, or repeal a legislative rule must contain a brief summary of the changes proposed and be confined to one subject. The drafter should be careful to clearly reference the legislative rule to be effected.

It is important to note that in a resolution to amend, adopt, or repeal a legislative rule, there are no “Whereas” clauses. There are only “Be it resolved” clauses which describe in detail the intended legislative action. The drafter must provide the actual text of the proposed changes. This is accomplished in a manner similar to the substantive portions of a bill to amend statutory law. The drafter must incorporate all proposed changes into the existing text of the affected administrative rule using the same coding and other drafting rules and procedure as in a bill.

A RESOLUTION

To amend and readopt House Rule 8.15(B) and (C) of the Rules of Order of the House of Representatives to provide for requirements for the consideration of the General Appropriation Bill.

BE IT RESOLVED by the House of Representatives of the Legislature of Louisiana that amend House Rule 8.15(B) and (C) of the Rules of Order of the House of Representatives are hereby amended and readopted to read as follows:

Rule 8.15. Consideration of the General Appropriation Bill

* * *

B. The Clerk shall cause an unofficial enrollment of the General Appropriation Bill and a summary thereof to be typed to include and reflect all amendments adopted upon final passage of the bill by the Senate within twenty-four hours of final passage by the Senate. The unofficial enrollment of the bill shall indicate or highlight in an appropriate manner any language being changed or added to the bill by the amendments adopted by the Senate. The summary shall include and indicate any language being removed from the bill by the amendments adopted by the Senate. Such unofficial enrollment and summary shall be presented to the House as least three calendar days prior to a vote by the House on concurrence of such amendments; however, a vote on concurrence shall occur no less than sixteen calendar days prior to the final day of the legislative session.

C. In addition to the provisions in House Rule 7.11 regarding conference committee reports, a vote on the report of the conference committee on the General Appropriation Bill shall occur no less than sixteen calendar days prior to the final day of the legislative session and shall not occur until no fewer than forty-eight hours have intervened after the report has been received by the House from the conference committee. The Clerk shall cause an unofficial enrollment of the bill and a summary thereof to be typed to include and reflect the conference committee report. The unofficial enrollment of the bill shall indicate or highlight in an appropriate manner any language being changed in or added to the bill by the conference committee report. The summary shall include and indicate any language being removed from the bill by the conference committee report. Such unofficial enrollment and summary shall be presented to the House at least twenty-four hours prior to a vote by the House on such conference committee report.

~~C. The requirements contained in Paragraph B may be waived by a majority vote of the elected members of the House.~~

BE IT FURTHER RESOLVED by the House of Representatives of the Legislature of Louisiana that the provisions of this Resolution shall become effective on June 7, 2013.

A CONCURRENT RESOLUTION

To adopt Joint Rule No. 9 and Joint Rule No. 20(A)(3)(b)(x) of the Joint Rules of the Senate and House of Representatives and to repeal Joint Rule No. 20(A)(1)(b)(iii) of the Joint Rules of the Senate and House of Representatives to provide procedures relative to legislative approval of the formula to fund the Minimum Foundation Program.

BE IT RESOLVED by the Legislature of Louisiana that Joint Rule No. 9 and Joint Rule No. 20(A)(3)(b)(x) of the Joint Rules of the Senate and House of Representatives are hereby adopted to read as follows:

Joint Rule No. 9. Approval of the Minimum Foundation Program formula

A.(1) Legislative approval of the formula annually developed and adopted by the State Board of Elementary and Secondary Education to determine the cost of a minimum foundation program of education pursuant to Article VIII, Section 13(B) of the Constitution of Louisiana shall be by means of adoption of a concurrent resolution.

(2) The concurrent resolution to effectuate legislative approval of the minimum foundation program formula shall only be adopted by the same vote and, except for gubernatorial veto, according to the same procedures and formalities required for the enactment of a bill.

B. The concurrent resolution to effectuate legislative approval shall contain the minimum foundation program formula developed and adopted by the State Board of Elementary and Secondary Education and submitted to the legislature pursuant to Article VIII, Section 13(B) of the Constitution of Louisiana.

C.(1) In order to be considered during a regular session convening in an even-numbered year, the concurrent resolution to effectuate legislative approval of the minimum foundation program formula developed and adopted by the State Board of Elementary and Secondary Education pursuant to Article VIII, Section 13(B) of the Constitution of Louisiana shall be introduced no later than six o'clock in the evening of the twenty-third calendar day of the session.

(2) In order to be introduced and considered during a regular session convening in an odd-numbered year, the concurrent resolution to effectuate legislative approval of the minimum foundation program formula developed and adopted by the State Board of Elementary and Secondary Education pursuant to Article VIII, Section 13(B) of the Constitution of Louisiana shall be prefiled no later than the deadline provided in Article III, Section 2(A)(2)(b).

* * *

Joint Rule No. 20. Odd-numbered year session bill limitations; amendment limitations

In order to place the restrictions and limitations of Article III, Section 2(A)(4)(b) of the Constitution of Louisiana into the rules, procedures, and practices of the Senate and the House of Representatives and to provide guidance to the members of the legislature through the application of Louisiana case law as well as the logical extrapolations which arise from such case law, the legislature does adopt this Joint Rule, as follows:

A. During any regular session convening in an odd-numbered year, no matter intended to have the effect of law, including any suspension of law, shall be introduced, considered, or adopted unless it meets one of the following criteria:

* * *

(3)(a) Its object is not within the subject matter restrictions provided in Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana or within the

exception provided by Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana, but it is prefiled no later than the deadline provided in Article III, Section 2(A) of the Constitution of Louisiana, provided that a member shall not prefile more than five such matters.

(b) Bills or resolutions which may be considered pursuant to this Subparagraph, including those which have applicability in a particular locale but which are not required to be advertised as provided by Article III, Section 13 of the Constitution of Louisiana which shall be considered only pursuant to this Subparagraph, shall include but shall not be limited to:

* * *

(x) The resolution to approve the formula to fund the Minimum Foundation Program.

* * *

BE IT FURTHER RESOLVED by the Legislature of Louisiana that Joint Rule No. 20(A)(1)(b)(iii) of the Joint Rules of the Senate and House of Representatives is hereby repealed in its entirety.

BE IT FURTHER RESOLVED by the Legislature of Louisiana that this concurrent resolution shall become effective on June 7, 2013.

J. Authorize a suit against the state

1) Suits against the state – generally

Article 12, Section 10 of the Constitution of Louisiana provides for suits against the state. Specifically, Section 10(B) provides that the legislature may authorize suits against the state, a state agency, or a political subdivision. The mechanism for such a waiver of immunity is a concurrent resolution authorizing a suit against the state.

While not required, any “Whereas” clauses included in a resolution authorizing a suit against the state should provide specific information regarding the proposed suit and supporting the legislature’s decision to waive immunity and authorize the suit against the state.

A CONCURRENT RESOLUTION

To authorize and provide with respect to a suit against the state.

WHEREAS, Gordon P. Jeansonne, Jr., Patio Lodge Nursing Home, Inc., and Fountain Lodge Nursing Home, Inc. have filed suit against the state of Louisiana, through the Department of Health and Hospitals, office of family security, in the Nineteenth Judicial District Court for the state of Louisiana for damages alleged under federal social security regulations, Medicaid law, and state law which applies thereto; and

WHEREAS, the court is holding the case pending legislative authority for such suit; and

WHEREAS, the legislature may waive the state's immunity from suit and liability pursuant to Article XII, Section 10 of the Constitution of Louisiana of 1974.

A CONCURRENT RESOLUTION

To authorize Meeks Land and Timber Company to file suit or to prosecute any suit now pending against the state of Louisiana through the division of administration, state land office, concerning a claim of ownership or possession, or both, of present or former water bottoms under or in the vicinity of the middle fork of Thompson Creek in West Feliciana Parish, and concerning the ownership of and the rights to the minerals associated with those water bottoms, and to provide for related matters.

WHEREAS, Meeks Land and Timber Company is currently involved in a dispute with the state of Louisiana concerning certain present and former water bottoms and the ownership of and the rights to the minerals associated with those water bottoms; and

WHEREAS, Meeks Land and Timber Company either has filed or intends to file a lawsuit to seek a judicial resolution of this dispute; and

WHEREAS, it appears that this matter does not fit within the waiver of immunity of the state from suit and liability in contract or tort provided in Article XII, Section 10 of the Constitution of Louisiana; and

WHEREAS, Article XII, Section 10 of the Constitution of Louisiana does authorize the legislature to waive the state's immunity from suit and liability in other matters.

The title and the "Be it resolved" clauses should clearly state the parties being given authorization to file suit, the details about the suit if already filed, the state agency against which the suit will be filed, and a clear statement waiving the immunity from suit and liability.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize Gordon P. Jeansonne, Jr., Patio Lodge Nursing Home, Inc., and Fountain Lodge Nursing Home, Inc. to file a suit or suits, to prosecute any suit or suits now pending, and to prosecute or defend any ancillary actions arising out of any suit or suits authorized by this Resolution against the state of Louisiana, through the Louisiana Department of Health and Hospitals, office of family security, or any other agency which may be a proper party defendant, on a claim or claims under federal social security regulations, Medicaid law, and state law which applies thereto.

BE IT FURTHER RESOLVED that the suit or suits herein authorized may be instituted before the Nineteenth Judicial District Court for East Baton Rouge Parish, Louisiana, and that, except as otherwise provided for herein, the proceedings in each suit or suits shall be as provided by laws governing suits against the state of Louisiana.

BE IT FURTHER RESOLVED that the state of Louisiana, through the Department of Health and Hospitals, and any other agency may be cited and served by citation and service on the secretary or chief executive officer of the other agency, and on the attorney general of Louisiana, and on the governor of the state of Louisiana.

BE IT FURTHER RESOLVED that the defendant in any suit shall not be entitled to assert any peremptory plea or defense based upon the ground of immunity of the state from suit or from liability, which immunities are hereby specifically waived insofar as the suit or suits herein authorized are concerned.

BE IT FURTHER RESOLVED that the officials upon whom citation and service are authorized to be served by this Resolution may compromise and settle the claims presented in any suit instituted or prosecuted under the authority of this Resolution, upon the advice and with the consent of the attorney general.

BE IT FURTHER RESOLVED that any judgment rendered against the state or any compromise reached in favor of any plaintiff, which arises out of any suit instituted or prosecuted under the authority of this Resolution, that requires the payment of funds shall be exigible, payable, and paid only out of funds appropriated therefor by the legislature.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that Meeks Land and Timber Company, LLC, a Louisiana Limited Liability Company, is hereby authorized to initiate and prosecute a suit or suits against the state of Louisiana, through the division of administration, state land office, concerning claims of ownership or possession, or both, of certain present or former water bottoms which are under or in the vicinity of the Middle Fork of Thompson Creek in West Feliciana Parish, and concerning the ownership of and the rights to the minerals associated with those water bottoms.

BE IT FURTHER RESOLVED that Meeks Land and Timber Company is authorized to prosecute any presently pending suit or suits arising out of the above-described dispute.

BE IT FURTHER RESOLVED that Meeks Land and Timber Company is authorized to initiate, prosecute, or defend any ancillary actions arising out of the above-described dispute.

BE IT FURTHER RESOLVED that immunity of the state from suit and liability in the above-described dispute is hereby waived.

BE IT FURTHER RESOLVED that service and citation for any and all suits authorized by this Resolution shall be made on the attorney general of the state of Louisiana and on the commissioner of administration.

BE IT FURTHER RESOLVED that any and all of the suits authorized by this Resolution must be brought in the Twentieth Judicial District Court.

BE IT FURTHER RESOLVED that except as is provided in this Resolution, the procedure to be followed in any suit filed or prosecuted under the authority of this Resolution shall be the same as in suits between private litigants.

BE IT FURTHER RESOLVED that the authorization of suit and the waiver of immunity from suit and liability effected by this Resolution shall not confer upon Meeks Land and Timber Company any different or greater right or cause of action than the rights and causes which existed prior to the adoption of this Resolution.

BE IT FURTHER RESOLVED that the commissioner of administration may compromise and settle any claim which is raised in any suit authorized by this Resolution. Any compromise or settlement shall require the advice and concurrence of the attorney general.

A CONCURRENT RESOLUTION

To authorize and provide with respect to a suit by Courtney Ray Dupuis and Geraldine Crader Dupuis against the state, Department of Transportation and Development.

BE IT RESOLVED by the Legislature of Louisiana that Courtney Ray Dupuis and Geraldine Crader Dupuis, residents of Estherwood, Acadia Parish, Louisiana, are hereby authorized to file suit, or to prosecute the suit now pending entitled Courtney Ray Dupuis, et ux. vs. Department of Transportation, State of Louisiana, et al., and bearing Civil Docket Number 65,593 in the Fifteenth Judicial District Court, and to prosecute or defend any ancillary actions arising out of any suit authorized hereby, against the state of Louisiana, Department of Transportation and Development and any other agency which may be a proper party, on a claim or claims of ownership of or other rights relating to certain property in Acadia Parish acquired by the Department of Transportation and Development in connection with State Project 3-09-25.

BE IT FURTHER RESOLVED that, if a new suit or suits are filed, the state of Louisiana, through the Department of Transportation and Development and any other agency, may be cited and served by service on the secretary of the department or the chief executive officer of any other agency and on the attorney general, and such suit or suits must be instituted in the Fifteenth Judicial District Court, parish of Acadia.

BE IT FURTHER RESOLVED that, except as otherwise provided herein, the procedure in the suit or suits herein authorized shall be as provided by laws governing suits against the state.

BE IT FURTHER RESOLVED that the defendant or defendants in such suit or suits shall not be entitled to assert any exception or defense based upon the ground of immunity of the state from suit or liability, which immunities are hereby specifically waived insofar as such suit or suits are concerned.

BE IT FURTHER RESOLVED that nothing herein shall be construed as conferring upon Courtney Ray Dupuis and Geraldine Crader Dupuis any different or greater claim or cause of action than they had prior to the adoption of this Resolution and that, except as otherwise provided herein, this authorization is nothing more than a waiver of immunity from suit and from liability for purposes of the suit or suits herein authorized.

BE IT FURTHER RESOLVED that any judgment rendered against the state or any compromise reached in favor of any plaintiff arising out of the suit or suits herein authorized that requires the payment of funds shall be exigible, payable, and paid only out of funds appropriated therefor by the legislature.

2) Suits for damages caused by negligence

[R.S. 24:152\(A\)](#) sets forth the legislative procedure for authorizing a suit against the state or a political subdivision based upon claims for damages caused by negligence, such as an auto accident. Pursuant to [R.S. 24: 152\(A\)](#), each individual suit is compiled into one universal bill or resolution by the chamber which approved it. [R.S. 24:152\(B\)](#) provides a template with sample language for drafting the omnibus resolution.

K. Express legislative intent

R.S. 24:177 authorizes a court to consider the intent of the legislature when the meaning of a law cannot be ascertained by the application of the provisions of Chapter 2 of the Preliminary Title of the Louisiana Civil Code and Chapter 1 of Title 1 of the Louisiana Revised Statutes of 1950. While the text of a law is the best evidence of legislative intent, pursuant to R.S. 24:177(B), the legislature may express the intended meaning of a law in a concurrent resolution which is subject to the same vote and, except for gubernatorial veto and time limitations for introduction, the same procedures and formalities required for enactment of that law.

The “Whereas” clauses for a resolution to express legislative intent should include details about the particular law or Act addressed by the expression of intent and the circumstances giving rise to the need for such action.

A CONCURRENT RESOLUTION

To express the intent of the legislature regarding Act No. 181 of the 2012 Regular Session of the Legislature.

WHEREAS, R.S. 24:177(B)(2)(b) provides that the "legislature may express the intended meaning of a law in a duly adopted concurrent resolution, by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law"; and

WHEREAS, during the 2012 Regular Session of the Legislature of Louisiana, Act No. 181 was enacted into law and authorized habitual offenders, in the custody of the Department of Public Safety and Corrections, who were not convicted of a crime of violence as defined in R.S. 14:2 or a sex offense as defined in R.S. 15:541, to earn additional good time for participation in certified treatment and rehabilitation programs; and

WHEREAS, Act No. 181 of the 2012 Regular Session of the Legislature, which took effect on August 1, 2012, does not specifically state whether the legislation may be applied to only those offenders who were sentenced as an habitual offender on or after August 1, 2012, or whether it also applies to any offender who was previously "sentenced as an habitual offender" and who was "in the custody of the Department of Public Safety and Corrections" on August 1, 2012, the date that Act No. 181 took effect.

A CONCURRENT RESOLUTION

To express the intent of the legislature regarding the meaning of certain laws within the jurisdiction of the Board of Ethics.

WHEREAS, R.S. 24:177(B)(2)(b) provides that the "legislature may express the intended meaning of a law in a duly adopted concurrent resolution, by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law"; and

WHEREAS, during the 2008 First Extraordinary Session of the Legislature of Louisiana the legislature enacted R.S. 42:1115.1(E) which contains the phrase "held in conjunction with"; and

WHEREAS, this phrase was utilized by the legislature in enacting R.S. 42:1115.1(E) because it is contained within R.S. 24:55(E) and R.S. 49:76(E); and

WHEREAS, it has become apparent that there is confusion about the legislature's intended meaning of the phrase.

The title and the "Be it resolved" clauses should cite the provision of law or Act which is the subject of the expression of legislative intent, clearly explain the legislative intent, and provide any other facts necessary for the reader to easily comprehend the meaning of the resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby express its intent regarding the application of Act No. 181 of the 2012 Regular Session of the Legislature to mean that those offenders sentenced as an habitual offender and ordered to the custody of the Department of Public Safety and Corrections on or after August 1, 2012, and also those offenders who were sentenced prior to August 1, 2012, and who were in the custody of the Department of Public Safety and Corrections on August 1, 2012, shall be eligible to earn additional good time for participation in certified treatment and rehabilitation programs pursuant to Act No. 181 of the 2012 Regular Session of the Legislature.

BE IT FURTHER RESOLVED that the legislature hereby authorizes the secretary of the Department of Public Safety and Corrections to establish and promulgate rules, regulations, and procedures for the implementation of Act No. 181 of the 2012 Regular Session of the Legislature consistent with the intent set forth in this House Concurrent Resolution.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby express its intent regarding the meaning of the phrase "held in conjunction with" as used in R.S. 42:1115.1(E), R.S. 24:55(E), and R.S. 49:76(E) as meaning for such purposes "occurrence together in time and space" so that as used in such provisions of law a single activity, occasion, reception, meal, or meeting held during the same time period and in the same general locale as a meeting of such an organization and to which some persons associated with the organization are invited, and a single activity, occasion, reception, meal, or meeting that is part of the scheduled activities of a meeting of such an organization and that is open to persons attending the meeting are all included within the meaning of those provisions.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to each member of the Board of Ethics, each member of the Ethics Adjudicatory Board, and the ethics administrator.

24.4 PREFILING, INTRODUCTION, AND OTHER LEGISLATIVE PROCESS REQUIREMENTS

A. Constitutional provision

Article III, Section 17(B) of the Constitution of Louisiana provides that “no joint, concurrent, or other resolution shall require the signature or other action of the governor to become effective”.

B. House Rules

House Rule 6.8(B) provides for the recommittal of “a resolution or a concurrent resolution which proposes that a committee or committees of the House or a joint committee of the House and Senate perform a study of any subject matter during the interim or a resolution or a concurrent resolution proposing any such study which either designates any member to serve thereon or provides that a member shall be an appointing official” to the Committee on House and Governmental Affairs.

House Rule 7.4 requires a resolution to have a brief title indicative of its subject and purpose.

House Rule 7.15 provides that a resolution “originating in the House of Representatives shall be presented by the Clerk to the Secretary of State immediately after signature by the President of the Senate or by the Speaker of the House when only the Speaker's signature is required”.

House Rule 8.11(A) provides for the introduction and referral of resolutions.

House Rule 8.11(C) requires a favorable vote from at least a majority of the elected members of the House of Representatives to adopt a concurrent resolution.

24.5 EXAMPLES OF RESOLUTIONS

A. Express congratulations, commendations, or condolences

[House Concurrent Resolution 4](#) [2012 Regular Session]
[House Resolution 4](#) [2012 Regular Session]

B. Declare or proclaim certain special days, weeks, months, years, or certain honorary titles or designations

[House Concurrent Resolution 20](#) [2012 Regular Session]
[House Concurrent Resolution 42](#) [2014 Regular Session]

C. “Urge and request”, “direct”, or “authorize and direct” a specific action by an agency or official

[House Concurrent Resolution 89](#) [2014 Regular Session]
[House Concurrent Resolution 170](#) [2014 Regular Session]
[House Concurrent Resolution 63](#) [2014 Regular Session]

D. Memorialize congress to take action

[House Concurrent Resolution 153](#) [2014 Regular Session]
[House Concurrent Resolution 41](#) [2014 Regular Session]
[House Concurrent Resolution 180](#) [2013 Regular Session]

E. Express the views of a chamber or the legislature with respect to actions taken or to be taken by departments or officers of the state or federal government or members of congress

[House Concurrent Resolution 102](#) [2011 Regular Session]

F. Ratify an amendment to the United States Constitution

[House Concurrent Resolution 4](#) [2007 Regular Session]

G. Establish a committee of one chamber

[House Resolution 55](#) [2000 Regular Session]

H. Create a special joint legislative committee or study commission

[House Concurrent Resolution 113](#) [2014 Regular Session]

[House Concurrent Resolution 3](#) [2011 Regular Session]

I. Amend, enact, or repeal the rules of one chamber or the Joint Rules of Order of the Senate and House of Representatives

[House Concurrent Resolution 14](#) [2013 Regular Session]

[House Resolution 1](#) [2013 Regular Session]

J. Authorize a suit against the state

[House Concurrent Resolution 9](#) [1999 Regular Session]

[House Concurrent Resolution 134](#) [1995 Regular Session]

[House Concurrent Resolution 4](#) [1995 Regular Session]

K. Express legislative intent

[House Concurrent Resolution 12](#) [2013 Regular Session]

[House Concurrent Resolution 7](#) [2009 Regular Session]

CHAPTER 25. RESOLUTIONS WITH THE EFFECT OF LAW

25.1 OVERVIEW

As discussed in [Chapter 24](#), resolutions are legislative instruments that usually do not have the effect of law. The exceptions to this general rule are joint resolutions to amend the constitution, suspensive resolutions, and resolutions to amend or repeal an administrative rule. For a discussion on joint resolutions, see [Chapter 15, Constitutional Amendments](#).

Suspensive resolutions are the mechanisms through which the legislature may suspend the effect of statutory law or an administrative rule promulgated by an executive branch agency. The legislature may also amend or repeal an administrative rule through a resolution. While [R.S. 49:969](#) authorizes the legislature to suspend, amend, or repeal an administrative rule, a resolution should only be deemed suspensive when the intent is to suspend the administrative rule. Resolutions with the effect of law are generally concurrent, requiring consideration by both the House of Representatives and the Senate.

Resolutions with the effect of law, other than joint resolutions, are drafted the same as other resolutions and contain the following elements:

- E. Heading of the resolution
- F. Title of the resolution
- G. Body of the resolution
- H. Digest of the resolution

One major difference between a bill and a resolution with the effect of law is the procedure for adoption and approval of the resolution. While a bill is sent to the governor for approval upon enactment by the legislature, a resolution is not subject to gubernatorial veto, but is filed with the secretary of state.

25.2 DRAFTING A RESOLUTION TO SUSPEND STATUTORY LAW

A. Constitutional authority

[Article III, Section 20](#) of the Louisiana Constitution contains the legislature's authority to suspend statutory law:

§20. Suspension of Laws

Section 20. Only the legislature may suspend a law, and then only by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law. After the effective date of this constitution, every resolution suspending a law shall fix the period of suspension, which shall not extend beyond the sixtieth day after final adjournment of the next regular session.

Article III, Section 20 appears to require a concurrent resolution to suspend statutory law because of the requirement that the legislature suspend a law “according to the same procedure and formalities required for enactment of a law”. As legislative instruments enacting law must be considered and passed by both the House and Senate, it is most likely that an instrument to suspend a law must follow the same path. Article III, Section 20 also requires the resolution to state a specific period during which the law will be suspended. This period cannot extend beyond the sixtieth day after final adjournment of the next regular session.

A drafter must be aware that a suspensive resolution does not create new law; it only suspends the effect of the law. Nor, pursuant to [Article III, Section 12\(B\)](#), can the legislature use a suspensive resolution to enact a special or local law by the partial repeal or suspension of a general law:

§12. Prohibited Local and Special Laws

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

B. Drafting the resolution

1) Heading of the resolution

The heading of the resolution consists of the instrument version, session type and year, instrument type and number, author, keyword, and oneliner. The keyword and oneliner have the same function as for a bill. The keyword is chosen from the same HLS list of available keywords. The oneliner is a short statement summarizing the effect of the instrument.

HEALTH/DHH: Suspends laws providing for the Direct Service Worker Registry

TAX/TOBACCO TAX: Suspends, from Aug. 10, 2010, through Aug. 13, 2010, the state excise tax on cigars and smoking tobacco given away by a dealer

2) *Title of the resolution*

As with a bill, the title in a resolution to suspend statutory law must contain a brief summary of the changes proposed and be confined to one subject. The drafter should be careful to clearly reference the provisions of law to be suspended and the time period for the suspension. As stated previously, [Article III, Section 20](#) of the constitution provides that this period cannot extend beyond the sixtieth day after final adjournment of the next regular session.

A CONCURRENT RESOLUTION

To suspend until sixty days after final adjournment of the 2015 Regular Session of the Legislature of Louisiana the provisions of Part II of Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950, relative to Direct Service Workers; and to urge the Department of Health and Hospitals to establish a stakeholder workgroup.

A CONCURRENT RESOLUTION

To suspend from 12:01 a.m. August 10, 2014, through 11:59 p.m. on August 13, 2014, the provisions of R.S. 47:841(A) and (C) as it relates to the excise tax collected on cigars and smoking tobacco by the state when a dealer gives away cigars or smoking tobacco for advertising or any other purpose whatsoever.

3) *Body of the resolution*

The first part of the body of the resolution is made up of the “Whereas” clauses which establish the foundation for the legislative intent to suspend the effect of statutory law. As with other resolutions, the drafter may want to start with a general, broad statement and then work towards more specific statements. It is also important for the drafter to avoid using overgeneralized statements, political statements, statements of personal opinion, and inflammatory language when drafting the resolution. The drafter should carefully analyze each statement and confirm that statements of fact can be corroborated. Each “Whereas” clause, other than the final clause, ends in a semicolon and the word “and”. The final “Whereas” clause before the “Be it resolved” clauses ends in a period.

WHEREAS, Act No. 306 of the 2005 Regular Session of the Legislature of Louisiana authorized the Department of Health and Hospitals (hereafter referred to as the department) to implement a Direct Service Worker Registry; and

WHEREAS, the registry has been plagued by delays in posting names to the registry, thereby compromising the main purpose of the registry which is to identify workers who are negligent, abusive, exploitive or have extorted funds from the persons they serve; and

WHEREAS, the state budget crisis has resulted in repeated cuts to providers necessitating the elimination of costly duplicative regulatory provisions and cost-prohibitive medication attendant training; and

WHEREAS, the purpose of this Resolution is to allow the Department of Health and Hospitals time to work with stakeholders to eliminate duplicative regulations and streamline the Direct Service Worker Registry process.

WHEREAS, according to the provisions of R.S. 47:841, the state imposes a tax upon the sale, use, consumption, handling, or distribution of all cigars, cigarettes, and smoking and smokeless tobacco according to certain classifications and rates; and

WHEREAS, beginning August 10 and ending on August 13, 2010, the city of New Orleans will be hosting a convention for the International Premium Cigar and Pipe Retailers Association wherein, according to the participation of the convention the city hosted in 2008, nearly two thousand nine hundred delegates and over two thousand three hundred exhibitors are expected to attend and participate in the convention; and

WHEREAS, this convention is considered a private professional meeting that is not open to the general public and is organized by tobacco businesses intended to promote new and innovative tobacco and tobacco products, including in many cases, providing delegates with a sample of a cigar or new smoking tobacco blend in order to promote sales and orders of their products; and

WHEREAS, the potential economic impact realized by the city of New Orleans and by the state of Louisiana from hosting this convention far exceeds the amount of excise tax that the state of Louisiana will forego collecting on cigars and smoking tobacco given away at this convention by the dealer as a result of this suspension of the tax from August 10 through August 13, 2010.

The second part of the body of the resolution is made up of the “Be it resolved” clauses that describe in detail the intended legislative action. As in the title, the drafter should be careful to clearly reference the provisions of law to be suspended and the time period for the suspension. Each “Be it resolved” clause ends in a period.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby suspend the provisions of Part II of Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950, relative to Direct Service Workers.

BE IT FURTHER RESOLVED that the suspension of Part II of Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950, relative to Direct Service Workers, shall become effective upon adoption of this Resolution and shall extend through the sixtieth day after final adjournment of the 2011 Regular Session of the Legislature of Louisiana.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby suspends the provisions of R.S. 47:841(A) and (C) as it relates to the excise tax collected on cigars and smoking tobacco by the state when a dealer gives away cigars or smoking tobacco for advertising or any other purpose whatsoever.

BE IT FURTHER RESOLVED that this suspension shall become effective at 12:01 a.m. August 10, 2010, and shall extend through 11:59 p.m. on August 13, 2010.

As in other resolutions, the drafter may also include as the final “Be it resolved” clause, a list of any parties who should be sent a copy of the resolution.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the secretary of the Department of Health and Hospitals.

4) Digest of the resolution

The digest of a resolution with the effect of law contains the following components:

- 1) Heading
- 2) Instrument summary
- 3) Citation line

For further discussion on digests, see [Chapter 9, Digests](#).

25.3 DRAFTING A RESOLUTION TO SUSPEND, AMEND, OR REPEAL AN ADMINISTRATIVE RULE

A. Statutory authority

The Administrative Procedure Act, through [La. R.S. 49:969](#), expressly grants authority to the legislature to suspend, amend, or repeal an administrative rule:

§969. Legislative veto, amendment, or suspension of rules, regulations, and fees

In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

R.S. 49:969 specifically requires the legislature to use a concurrent resolution to suspend, amend, or repeal an administrative rule, including actions involving fees. R.S. 49:969 also requires a summary of the adopted resolution to be published in the Louisiana Register not later than forty-five days after signing. There is, however, no limitation on the length of time the legislature may choose to suspend an administrative rule.

B. Drafting the resolution

1) Heading of the resolution

The heading of the resolution consists of the instrument version, session type and year, instrument type and number, author, keyword, and oneliner. The keyword and oneliner have the same function as for a bill. The keyword is chosen from the same HLS list of available keywords. The oneliner is a short statement summarizing the effect of the instrument.

SANITARY CODE: Suspends rules relative to the manufacturing and sale of cane syrup

ADMINISTRATIVE LAW: Amends portion of law relative to repossession agency apprentices

TRANSPORTATION DEPT: Amends and repeals DOTD administrative rules pertaining to access permits

2) *Title of the resolution*

As with a bill, the title in a resolution to suspend, amend, or repeal an administrative rule must contain a brief summary of the changes proposed and be confined to one subject. The drafter should be careful to clearly reference the provisions of administrative law to be affected. As stated previously, there is no statutory limitation on the length of time an administrative rule may be suspended.

A CONCURRENT RESOLUTION

To suspend until sixty days after final adjournment of the 2015 Regular Session of the Legislature the provisions of LAC 51:VI:103, 105, 109, and 151 and any other rules or regulations, promulgated pursuant to R.S. 40:4(A)(1)(a) as such provisions pertain to the manufacturing, processing, packing, holding, and sale of cane syrup made by traditional cane syrup makers.

A CONCURRENT RESOLUTION

To amend and reenact the Office of Financial Institutions rules, LAC 10:XV.1303(E)(3) and 1315(A)(4), which provide that a repossession agency is prohibited from sponsoring more than one apprentice for every two licensed repossession agents at any one time, which provide that an apprentice is prohibited from repossessing collateral without on site supervision of a repossession agent; and to direct the Office of the State Register to print the amendments in the Louisiana Administrative Code.

A CONCURRENT RESOLUTION

To amend the Department of Transportation and Development rules LAC 70:I.1501(C), 1515(D), (G), (H), (I), and (J), 1519(B), (C), and (D), 1521(A)(2) and (a)(introductory paragraph), (4), and (5), (B)(1), (4), and (5), and (E), 1529(C), 1531(B), (C), (D), and (E), 1533(E), 1535(B), and 1541(B), to enact LAC 70:I.1501(E), and to repeal LAC 70:I.1515(K) and 1531(F), which provide for requirements for access connection permits; to provide for access connection permit conditions and requirements; to provide for permit reapplication and modifications to existing commercial access connections; to provide for access connection design requirements; to provide for related matters; and to direct the Office of the State Register to print the amendments and enactments in the Louisiana Administrative Code.

3) Body of the resolution

The first part of the body of the resolution is made up of the “Whereas” clauses which establish the need for the legislative action to suspend, amend, or repeal an administrative rule. As with other resolutions, the drafter may want to start with a general, broad statement and then work towards more specific statements. It is also important for the drafter to avoid using overgeneralized statements, political statements, statements of personal opinion, and inflammatory language when drafting the resolution. The drafter should carefully analyze each statement and confirm that statements of fact can be corroborated. Each “Whereas” clause, other than the final clause, ends in a semicolon and the word “and”. The final “Whereas” clause before the “Be it resolved” clauses ends in a period.

WHEREAS, certain parish health officers have interpreted provisions of the administrative code relative to permits for the manufacturing, processing, packing, or holding of food within the state and other provisions promulgated by the Department in pursuant to R.S. 40:4(A)(1)(a) as prohibiting the processing and sale of cane syrup by syrup makers who do not have a permit or an approved structure for production of the syrup; and

WHEREAS, such interpretation prohibits the traditional cane syrup makers, both sorghum and sugarcane, from producing syrup in open facilities and in cast iron kettles or evaporators; and

WHEREAS, parish health officers for certain parishes have enforced this interpretation in a manner that forces traditional cane syrup makers to either stop production or incur the unnecessary and significant expense associated with the conversion of traditional open sided facilities to modern state of the art facilities.

WHEREAS, R.S. 6:966 requires any individual who physically obtains possession of collateral pursuant to Chapter 10-A of Title 6 of the Louisiana Revised Statutes of 1950 to first obtain a repossession agent license from the Office of Financial Institutions; and

WHEREAS, R.S. 6:966.1 authorizes the commissioner of financial institutions to promulgate rules and regulations in accordance with the Administrative Procedure Act with respect to the repossession of collateral; and

WHEREAS, LAC 10:XV.1303(E)(1) provides that a repossession agency may sponsor and apply for the licensing of a previously unlicensed individual as an apprentice by providing to the commissioner a letter of intent to sponsor and accept responsibility for the apprentice applicant; and

WHEREAS, a repossession agency is limited to sponsoring only one apprentice for every two licensed repossession agents at any one time; and

WHEREAS, LAC 10:XV.1315(A)(4) provides that an apprentice is prohibited from repossessing collateral without on site supervision of a repossession agent; and

WHEREAS, the direct supervision of an apprentice attempting to accrue two thousand hours of qualifying experience may create an undue hardship for the sponsoring repossession agency in terms of manpower; and

WHEREAS, the undue burden experienced by the sponsoring repossession agency may be relieved if the apprentice is permitted to physically obtain possession of collateral for a secured party, without the direct supervision and presence of a licensed repossession agent, if the apprentice has completed a minimum number of qualifying experience hours under the direction and supervision of the sponsor and the apprentice has received a designation as a certified recovery specialist from a recognized national certification program pursuant to LAC 10:XV.1303(D)(1)(e); and

WHEREAS, R.S. 49:969 provides that the legislature, by concurrent resolution, may suspend, amend, or repeal any rule adopted by a state department, agency, board, or commission.

WHEREAS, certain access connection permit requirements of the Department of Transportation and Development call for difficult processes to obtain access connections and costly traffic impact studies to be conducted at the cost of the applicants; and

WHEREAS, in order for the Department of Transportation and Development to consider granting these access connections, the traffic studies must show that the lack of requested access connections unreasonably negatively impacts traffic flow or that additional access connections will contribute to the overall improvement and safety of the roadways and transportation system; and

WHEREAS, the cost of these traffic impact studies is an overwhelming burden on applicants who are attempting to operate businesses in the state; and

WHEREAS, the lack of certain access connections can negatively affect a business in that it may cause potential customers to go elsewhere; and

WHEREAS, a number of these policies have changed, but the changes to the administrative rules are not yet implemented; and

WHEREAS, R.S. 49:969 provides that "the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations adopted by a state department, agency, board, or commission".

The second part of the body of the resolution is made up of the "Be it resolved" clauses which describe in detail the intended legislative action. For a suspensive resolution, the drafter should be careful to clearly reference the provisions of administrative law to be suspended and, if applicable, the time period for the suspension.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby suspends the provisions of LAC 51:VI:103, 105, 109 and 151 and any other rules or regulations, promulgated pursuant to R.S. 40:4(A)(1)(a) as such provisions pertain to the manufacturing, processing, packing, holding, and sale of cane syrup made by traditional cane syrup makers.

BE IT FURTHER RESOLVED that this suspension shall become effective upon the adoption of this Resolution and shall extend through the sixtieth day after final adjournment of the 2011 Regular Session of the Legislature of Louisiana.

For a resolution which amends administrative law provisions, the drafter must provide the actual text of the proposed changes. This is accomplished in a manner similar to the substantive portions of a bill to amend statutory law. The drafter must incorporate the proposed changes into the existing text of the effected administrative rule using the same coding and other drafting rules and procedure as in a bill.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC 10:XV.1303(E)(3) and 1315(A)(4) are hereby amended and reenacted to read as follows:

§1303. Licensing Requirements and Qualifications

* * *

E. Apprentice

* * *

3. No repossession agency shall sponsor more than one apprentice for every two licensed repossession agents at any one time. At the discretion of the sponsor, the apprentice may physically obtain possession of collateral for a secured party, without the direct supervision and presence of a licensed repossession agent, if the apprentice has completed a minimum of 250 hours of qualifying experience under the direction and supervision of the sponsor and satisfies the qualification requirements of §1303.(D)(1)(a), (b), (c), and (e).

* * *

§1315. Prohibitions

A. A repossession agent shall not:

* * *

4. allow an apprentice to repossess collateral without on-site supervision of a repossession agent, except as provided in LAC 10:XV.1303(E)(3);

* * *

For a resolution which repeals one or more administrative provisions, the drafter should be careful to clearly reference the provisions of administrative law to be repealed.

BE IT FURTHER RESOLVED that LAC 70:I.1515(K) and 1531(F) are hereby repealed in their entirety.

Each “Be it resolved” clause ends in a period. It is advisable for the drafter to include, at the end of the body of the resolution, a provision requiring the transmittal of a copy of the resolution in its final form to certain listed parties or a provision providing directions to the Office of the State Register to make the approved changes to the administrative rules or to provide the required summary of the resolution within the forty-five day period after signing.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Office of the State Register and the Office of Financial Institutions.

BE IT FURTHER RESOLVED that the Office of the State Register is hereby directed to have the amendments to LAC 10:XV.1303(E)(3) and 1315(A)(4) printed and incorporated into the Louisiana Administrative Code.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Office of the State Register.

BE IT FURTHER RESOLVED that the Office of the State Register is hereby directed to have the amendments to LAC 70:I.1501(C), 1515(D), (G), (H), (I), and (J), 1519(B), (C), and (D), 1521(A)(2) and (a)(introductory paragraph), (4), and (5), (B)(1), (4), and (5), and (E), 1529(C), 1531(B), (C), (D), and (E), 1533(E), 1535(B), and 1541(B) and the enactment of LAC 70:I.1501(E) printed and incorporated into the Louisiana Administrative Code.

4) *Digest of the resolution*

The digest of a resolution to suspend, amend, or repeal an administrative rule contains the same component parts as a digest of a bill. For further discussion on digests, see [Chapter 9. Digests](#).

25.4 PREFILING, INTRODUCTION, AND OTHER LEGISLATIVE PROCESS REQUIREMENTS

A. *Prefiling and Introduction Requirements -- Suspensive Resolutions*

1) *Odd-year Regular Session*

❖ Class 1 resolutions (fiscal):

Prefiling is not required by [Article III, Section 2\(A\)\(4\)\(b\)\(intro. para.\)](#) for Class 1 instruments, and prefiling is not needed to avoid the five-bill session introduction limit because the provisions of [Article III, Section 2\(A\)\(2\)](#) apply only to bills. Class 1 suspensive resolutions are also not subject to any introduction deadline, but the drafter should keep in mind the amount of time needed to move the instrument through the entire legislative process.

❖ Class 2 resolutions (local):

Class 2 suspensive resolutions are those for which advertising is required due to the local or special nature of the effect of the instrument. For a discussion on local and special bills, see [Chapter 16](#). Prefiling is not required by [Article III, Section 2\(A\)\(4\)\(b\)\(ii\)](#) for Class 2 instruments, and prefiling is not needed to avoid the five-bill session introduction limit because [Article III, Section 2\(A\)\(2\)](#) applies only to bills. Class 2 suspensive resolutions are also not subject to any introduction deadline, but the drafter should keep in mind the amount of time needed to move the instrument through the entire legislative process.

❖ Class 3 resolutions (general, including retirement):

Notwithstanding [Article III, Section 20](#), a Class 3 suspensive resolution must be prefiled as one of an author's five general bills because [Article III, Section 2\(A\)\(4\)\(b\)\(intro. para.\)](#) specifically mentions suspense resolutions as being subject to subject matter limitations and prefile requirements.

For a suspensive resolution affecting retirement laws, notice is required pursuant to [Article X, Section 29\(C\)](#).

2) Even-year Regular Session

Prefiling is not needed to avoid the five-bill session introduction limit because [Article III, Section 2\(A\)\(2\)](#) applies only to bills. Suspensive resolutions are also not subject to any introduction deadline, but the drafter should keep in mind the amount of time needed to move the instrument through the entire legislative process.

Suspensive resolutions which would be considered local may require notice prior to introduction pursuant to [Article III, Section 13](#). The drafter should advise the author that, if notice is required, introduction will have to wait for the required thirty days to run.

For a suspensive resolution affecting retirement laws, notice is required pursuant to [Article X, Section 29\(C\)](#).

3) Special Session

The subject matter of the suspensive resolution would have to be included in the call in order for the resolution to be filed and introduced. There are no introduction deadlines, other than practical considerations such as the amount of time needed to move the instrument through the entire legislative process, for instruments in a special session. Also, there is a presumption that no notice is required for a special session as notice was given in the call for the special session. For further discussion on notice requirements for local or special bills, see [Chapter 16](#).

B. Prefiling and Introduction Requirements – Nonsuspensive Resolutions

1) Odd-year Regular Session

❖ Class 1 resolutions (fiscal):

Prefiling is not required by [Article III, Section 2\(A\)\(4\)\(b\)\(intro. para.\)](#) for Class 1 instruments, and prefiling is not needed to avoid the five-bill session introduction limit because the provisions of [Article III, Section 2\(A\)\(2\)](#) apply only to bills. Nonsuspensive resolutions that have the effect of law must be introduced by the bill introduction deadline because [Article III, Section 2\(A\)\(4\)\(a\)](#) prohibits any matter intended to have the effect of law from being introduced after tenth calendar day of session.

❖ Class 2 resolutions (local):

A nonsuspensive resolution having local effect is extremely rare, and the drafter should check with the division director for assistance in determining the prefiling and introduction requirements for the resolution.

❖ Class 3 resolutions (general, including retirement):

Notwithstanding [Article III, Section 20](#), a Class 3 nonsuspensive resolution must be prefiled as one of the author's five general bills because [Article III, Section 2\(A\)\(4\)\(b\)\(intro. para.\)](#) specifically mentions "matters intended to have the effect of law" as being subject to the subject matter limitations and prefile requirements.

For a nonsuspensive resolution affecting retirement laws, notice is required pursuant to [Article X, Section 29\(C\)](#).

2) Even-year Regular Session

Prefiling is not needed to avoid the five-bill session introduction limit because [Article III, Section 2\(A\)\(2\)](#) applies only to bills. Nonsuspensive resolutions that have the effect of law must be introduced by the bill introduction deadline because [Article III, Section 2\(A\)\(3\)\(a\)](#) prohibits any matter intended to have the effect of law from being introduced after the twenty-third calendar day of session.

For a nonsuspensive resolution affecting retirement laws, notice is required pursuant to [Article X, Section 29\(C\)](#).

3) Special Session

The subject matter of the nonsuspensive resolution would have to be included in the call in order for the resolution to be filed and introduced. There are no introduction deadlines, other than practical considerations such as the amount of time needed to move the instrument through the entire legislative process, for instruments in a special session. Also, there is a presumption that no notice is required for a special session as notice was given in the call for the special session. For further discussion on notice requirements for local or special bills, see [Chapter 16](#).

C. Legislative Procedure Requirements

Resolutions with the effect of law follow the same procedural rules as bills. House Rule 8.11(B) specifically provides for resolutions suspending a law:

B. A resolution suspending a law in whole or in part shall only be adopted in accordance with the same procedures and formalities as are provided by the constitution, by law and by Rules 8.9, 8.10, 8.12, 8.13, 8.14, and 8.19 hereof for the passage of instruments having the force and effect of law and any such resolution shall fix the period of suspension, which period shall not extend beyond the sixtieth day after adjournment sine die of the next regular session after adoption thereof.

Further, because [Article III, Section 20](#) appears to require a concurrent resolution to suspend statutory law and [R.S. 49:969](#) specifically requires the legislature to use a concurrent resolution to suspend, amend, or repeal an administrative rule, resolutions with the effect of law require a majority vote for passage pursuant to [House Rule 8.11\(C\)](#):

C. Except as otherwise provided in Paragraph B of this Rule, a concurrent resolution shall only be adopted upon a favorable vote of at least a majority of the elected members of the House.

Unlike bills, resolutions with the effect of law are not presented to the governor for gubernatorial action after passage by the legislature. Upon signature of the speaker of the House of Representatives and the president of the Senate, the resolution is presented to the secretary of state for filing.

25.5 ADDITIONAL CONSIDERATIONS

It can be argued that there are other resolutions with the effect of law. These possibly include some of the following:

- ❖ Resolutions to authorize a retirement system to grant a cost-of-living adjustment.
- ❖ Resolutions required by statute as a way for the legislature to approve programs or expenditures
- ❖ Resolutions to express legislative intent
NOTE: While there is no definitive ruling by the Louisiana Supreme Court on whether a resolution that expresses legislative intent has the effect of law, a drafter should be aware that any future decision by the state supreme court could affect the procedure for requesting and filing such a resolution.
- ❖ The concurrent resolution to approve the formula to fund the Minimum Foundation Program pursuant to [Joint Rule No. 9](#) of the Joint Rules of the Senate and House of Representatives

A drafter who receives a request for a specialized resolution should check with his division director for guidance on the drafting and procedural requirements for the requested resolution.

25.6 EXAMPLES OF RESOLUTIONS WITH THE EFFECT OF LAW

A. Suspends statutory law

[House Concurrent Resolution 94](#) [2010 Regular Session]

[House Concurrent Resolution 216](#) [2010 Regular Session]

B. Suspends administrative rules

[House Concurrent Resolution 2](#) [2011 Regular Session]

C. Amends administrative rules

[House Concurrent Resolution 3](#) [2014 Regular Session]

D. Amends and repeals administrative rules

[House Concurrent Resolution 9](#) [2013 Regular Session]

CHAPTER 26. STUDY REQUESTS

26.1 OVERVIEW

During a legislative session, a House member may decide that he would like a committee to study a particular issue during the interim. When a proposed bill lacks sufficient support or time to move successfully through the legislative process, a member may opt for a committee study. A member may also request a study to help educate committee members on certain issues for which legislation may be proposed in the next session. In order to achieve these goals, the House member may request to file a "House Study Request", a study conducted by only a House standing committee, or a "House Concurrent Study Request", a study conducted by joint committee of standing committees.

As discussed in [Chapter 24, Resolutions](#), other requests for interim studies are filed in simple resolution or concurrent resolution form and are processed according to the general procedures of the House and Senate. Typically, resolutions are used when a special committee is created to conduct the study, when the request includes a provision creating an advisory panel to the standing committee or committees for the purpose of the study, or when additional members are included.

26.2 STARTING THE STUDY REQUEST

The drafter will want to use the following procedure to draft the study request:

- 1) When a member requests that a study be conducted:
 - a) Determine that there is sufficient time to request a study. A study request can only be made during a legislative session and only when sufficient days remain in a session to permit circulation of the study request list by the clerk. Thus, no study request can be made on the last two days of a session, or the last four days of a session if a concurrent study request. Therefore, if time is a factor, the drafter may need to advise the member to introduce a resolution.
 - b) Establish whether it is a simple or concurrent study.
 - c) Determine carefully the committees which are to do the study. It may be necessary to review the rules concerning committee jurisdiction and advise the member to which committee the study should be addressed. It is sometimes helpful to

determine to which committee a bill on this issue would be referred to decide which committee should receive the study request.

- 2) Once this determination has been made, the drafter should open a new Instrument Request in Task Organizer and select either House Study Request or House Concurrent Study Request, as appropriate, for the "Request" and "Draft type":

The screenshot shows the 'Instrument Request Card' window. At the top, there are 'Request Actions' and 'Tabs'. The toolbar includes 'Clear', 'Relate', 'Submit', 'Draft', and 'Exit'. The form fields are as follows:

Request ID: NEW	Status:	
Submitted On:	Drafter:	
*Session: 2014 Regular Session	*Request Type: House Study Request	Draft Type: House Study Request
Keyword:	Author:	
*Onliner:		

- 3) The drafter should include as much information as possible regarding the basis for the study request. If the request stems from a bill introduced during the session, it is helpful to include that information.
- 4) While there is a template for study requests, like resolutions, the drafter will need to write the appropriate "Whereas" clauses as to reasons for the study. The drafter should consult with the author regarding any particular instructions or reasons for the study. For more guidance, see [Chapter 24, Resolutions](#).
- 5) The drafter will need to include the names of parties who are to receive a copy of the study request. This may include stakeholders or interest groups who may be affected by the study or able to contribute to the goal of the study.
- 6) The drafter should be aware and also advise the author that a key difference between a study request and other legislative instruments is that a study request does not follow the customary procedure for filing, introduction, and placement on the internet. Study requests are not scheduled for committee hearing nor typically sent up for a vote on the House floor.

26.3 ELEMENTS OF A STUDY REQUEST

The elements of a Study Request are similar to those of a House bill and a resolution:

- A. Heading of the study request
- B. Title of the study request
- C. Body of the study request

A. Heading of the study request

Like most documents prepared by HLS, there is the basic heading for a Study Request. The heading consists of the HLS request number, instrument version, session type and year, instrument type and number, author, keyword, and oneliner.

HLS 13RS-3440	<u>ORIGINAL</u>
Regular Session, 2013	Approved 6-6-13
HOUSE STUDY REQUEST NO. 11	
BY REPRESENTATIVE BROSSETT	
LAW ENFORCE/OFFICERS: Requests a study of retention rates and salaries of police officers employed by the New Orleans Police Department	

HLS 12RS-3161	<u>ORIGINAL</u>
Regular Session, 2012	Approved 6-4-12
HOUSE CONCURRENT STUDY REQUEST NO. 2	
BY REPRESENTATIVE PYLANT	
ELECTIONS: Requests a study concerning provisions of law regulating political material and communications	

B. Title of the study request

In the title of a Study Request, the drafter must address the request to the appropriate standing committee. If the request is concurrent, the drafter will need to include the appropriate standing committees and request that those committees meet and function as a joint committee. The title must also sufficiently state the issue that the committee is being requested to study. The drafter should include a request that the study's findings be reported to the House of Representatives, if a simple study request or to the legislature, if a concurrent study request, along with a due date for such report. **[emphasis added]**

A STUDY REQUEST

To the **House Committee on Municipal, Parochial and Cultural Affairs** to study retention rates and salaries of police officers employed by the New Orleans Police Department in comparison with police officers employed by similarly sized municipal police departments in surrounding parishes and in other states and to report its findings to the House of Representatives prior to the convening of the 2014 Regular Session of the Legislature of Louisiana.

A CONCURRENT STUDY REQUEST

To the **House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs to meet and to function as a joint committee** to conduct a comprehensive study of provisions of law regulating political material and communications and to report the findings of the joint committee to the legislature prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

C. Body of the study request

- 1) As discussed in [Chapter 24, Resolutions](#), the "Whereas" clauses provide the support needed for the study request.

WHEREAS, the citizens in many areas of the state of Louisiana are enduring a spike in violent, deadly crime as in New Orleans which is faced with one of the highest per capita murder rates in the country; and

WHEREAS, members of the New Orleans Police Department provide a vital public service by playing an essential role in safeguarding the rights and freedoms of the city's citizens; and

WHEREAS, these brave individuals selflessly put themselves in harm's way to assure the safety of the lives and property of the citizens of New Orleans; and

WHEREAS, due to expanding law enforcement responsibilities and decreasing resources, maintaining a highly qualified and motivated police workforce has become one of the greatest challenges facing law enforcement agencies today; and

WHEREAS, providing a competitive level of compensation is essential for the long-term viability of the New Orleans Police Department as this will allow the department to attract qualified people, get them to stay, and motivate them to higher levels of performance; and

WHEREAS, the New Orleans Police Department and the United States Justice Department are currently engaged in court proceedings regarding a consent decree which will require the police department to overhaul its policies and procedures for use of force, training, interrogations, searches and arrests, recruitment, and supervision; and

WHEREAS, it is imperative that the New Orleans Police Department employ and retain highly qualified and motivated police officers as the city of New Orleans attracts conventioners and tourists from all over the world, and the city is a major driver of the state's economy and the state's national reputation; and

WHEREAS, many similarly sized municipal police departments in surrounding parishes and in other states are able to offer more competitive compensation packages to their officers which in turn makes it more difficult for the New Orleans Police Department to attract and retain highly qualified officers.

2) The "request" clauses can serve a number of purposes. The clause must state the request that is being made to the committee(s). In a simple request, the request is made on behalf of the House of Representatives. In a concurrent request, the request is made on behalf of the Legislature of Louisiana. **[emphasis added]**

THEREFORE, the House of Representatives of the Legislature of Louisiana requests the House Committee on Municipal, Parochial and Cultural Affairs to study retention rates and salaries of police officers employed by the New Orleans Police Department in comparison with police officers employed by similarly sized municipal police departments in surrounding parishes and in other states and to report its findings to the House of Representatives prior to the convening of the 2014 Regular Session of the Legislature of

THEREFORE, the Legislature of Louisiana requests the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs to meet and to function as a joint committee to conduct a comprehensive study of provisions of law regulating political material and communications and to report the findings of the joint committee to the legislature prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

The request clause may also be used to identify interested parties or stakeholders from whom the study committee may seek input or information. This information can also be included in a "Whereas" clause.

THEREFORE, the Legislature of Louisiana further requests that the joint committee specifically solicit input, recommendations, and advice from the following:

- (1) The attorney general.
- (2) The secretary of state.
- (3) The Board of Ethics.
- (4) The Louisiana District Attorneys Association.

WHEREAS, the House Committee on Health and Welfare may seek input from interested stakeholders, including but not limited to the Department of Health and Hospitals, the Louisiana Board of Pharmacy, the Louisiana District Attorneys Association, the Louisiana Public Defender Board, the Louisiana Sheriffs' Association, the Louisiana State Police, the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice, the Louisiana Public Defenders Association, the Louisiana Association of Criminal Defense Lawyers, and the office of the attorney general.

- 3) If necessary, the study request may be transmitted to third parties, usually those named as parties to provide input or information. This paragraph is optional.

A copy of this Study Request shall be transmitted to the New Orleans City Council.

26.4 PROCEDURE FOR FILING AND APPROVAL

[Joint Rule No. 13](#) of the Joint Rules of the Senate and House of Representatives provides the procedure for drafting and filing a study request:

- 1) As stated in [Section 26.3](#), study requests are not introduced in the same manner as other instruments. When a study request is filed with the clerk's office, the author is given a copy along with a transmittal message. The drafter should advise the author that the clerk will distribute a list of proposed study requests to the House and that, unless one-third of the House membership objects to the request within two calendar days after the list is sent, the request will automatically be issued by the Clerk's office, or sent to the Senate if a concurrent request, without any further action by the member.
- 2) If one-third or more of the membership files a timely objection to the study request, the request is not considered approved. However the author may make a motion on the House floor for approval and the question is decided by a majority vote of the members present and voting.
- 3) The speaker can substitute the proper committee of jurisdiction if he determines that the request names the improper committee.
- 4) Once approved, the final form is prepared and copies are transmitted to the author and to the chairman and staff of the committee named in the request. The study request is also transmitted to any parties named in the request.

26.5 EXAMPLES OF STUDY REQUESTS

The following list provides various examples of study requests:

A. *Requests a study concerning provisions of law*

[House Concurrent Study Request No. 2](#) [2012 Regular Session]

B. *Requests a study of feasibility and practicality*

[House Study Request No. 6](#) [2013 Regular Session]

C. *Requests a study of retention rates and salaries*

[House Study Request No. 11](#) [2013 Regular Session]