

INTRODUCTION TO DRAFTING

I. REQUESTS FOR DRAFTING SERVICES.

Requests for bill drafting services may be made to the Office of Legislative Legal Services by any member of the General Assembly at any time, whether or not the General Assembly is in session, or by the Governor or the Governor's representative. (See section 2-3-505, C.R.S.) Drafting services may take the form of bills, resolutions, memorials, amendments, or conference committee reports. While the material in this section speaks in terms of bills, it also applies to the drafting of resolutions and memorials.

A. Duty of confidentiality.

The nature and subject matter of all bill requests are confidential. Section 2-3-505, C.R.S., provides that, prior to the introduction of a bill, no employee of the Office of Legislative Legal Services shall disclose to any person outside the Office the contents or nature of such bill, except with the consent of the person making the request. This requirement should be kept in mind and honored at all times during the bill drafting process.

However, an exception to the confidentiality rule is provided by section 2-3-505, C.R.S., which allows "the disclosure to the staff of any legislative service agency of such information concerning bills prior to introduction as is necessary to expedite the preparation of fiscal notes, as provided by the rules of the general assembly". Joint Rule No. 22 of the Senate and House of Representatives states in part that, "The Office of Legislative Legal Services shall furnish preliminary copies of each bill and concurrent resolution to the Legislative Council staff in order that it may commence its review of the fiscal impact of such measures in accordance with this rule, but the Legislative Council staff shall not reveal the contents or nature of such measures to any other person without the consent of the sponsor of the measure."

It should be noted that an attorney-client relationship may exist between the lawyers in the Office of Legislative Legal Services and the General Assembly as an organization or institution. See Rule 1.13 of the Colorado Rules of Professional Conduct. Thus, in addition to the statutory duty of confidentiality provided for bill drafting, the lawyers in the Office may owe a general duty of confidentiality to the General Assembly with respect to all information that relates to their representation of the General Assembly. See Rule 1.6 of the Colorado Rules of Professional Conduct.

B. Completing the bill request form.

At the time a request for a bill is made, a bill request form is completed by the Office of Legislative Legal Services. In addition to accepting requests from members who actually come into the Office of Legislative Legal Services, requests may be accepted by telephone, messenger, or e-mail.

The general subject matter of each request is designated by category on the request form. In most cases, the category is determined by the C.R.S. title number that the request primarily concerns. One of the following categories should be selected:

<u>Categories</u>	<u>C.R.S. Title No.</u>
Administrative Rule Review	(Rule review bill)
Agriculture	35
Aircraft and Airports	41
Appropriations	(None)
Children and Domestic Matters	14, 19
Consumer and Commercial Transactions	4-6
Corporations and Associations	7
Corrections	17
Courts	13
Criminal Law and Procedure	16, 18
District Attorneys	20
Education - Public Schools	22
Education - Universities and Colleges	23
Elections	1
Financial Institutions	11
General Assembly	2
Government - County	30
Government - Local	29
Government - Municipal	31
Government - Special Districts	32
Government - State	24
<p>Also included under this bill category are all laws without C.R.S. numbers (unless the subject properly belongs under a specific bill category), except proposed constitutional amendments, appropriations, and the administrative rule review bill.</p>	
Health and Environment	25
Health Care Policy and Financing	25.5
Human Services - Institutions	27
Human Services - Social Services	26
Insurance	10
Labor and Industry	8, 9
Military and Veterans	28

Motor Vehicles and Traffic Regulation 42
 Natural Resources 33, 34, 36
 Probate, Trusts, and Fiduciaries 15
 Professions and Occupations 12
 Property 38
 Public Utilities 40
 State Public Defender 21
 Statutes (Revisor's bills)
 Taxation 39
 Transportation 43
 United States 3
 Water and Irrigation 37
 HCR, SCR, HJR, SJR, HR, SR,
 HJM, SJM, HM, or SM (Resolutions and Memorials)

The specific subject of the request may be entered on the "SUBJECT" line of the request form. Subjects should be like "Personnel system - maximum salary", rather than like "Amend personnel laws to increase maximum salary". The details about what the measure will *do* should be entered in the area of the form headed "Drafting Instructions".

Usually the person making the request will be the prime sponsor of the bill, and such person's name should be entered on the appropriate line of the request form. Occasionally, a request will be made by someone other than the legislator who will introduce the bill. Under such circumstances, the name of the person who will introduce the bill should be entered on the sponsor line with the notation "(verify)", or the words "no name" should be entered on the sponsor line, with the appropriate information added in parentheses, such as "(Governor)", "(Sen. Smith)", "(Interim Committee on Public Education)", etc.

Only the prime sponsor's name should appear on the bill unless members also wishing to sponsor the measure personally notify the Office of their intent to be sponsors, or unless a staff member of the Office of Legislative Legal Services personally verifies with a legislator that such legislator wishes to be a sponsor. An exception to this rule is made for interim bills, for which the Legislative Council staff furnishes a list of sponsors. Cosponsor sheets are furnished to the prime sponsor at the time the bill is delivered. If, prior to the bill's introduction, the prime sponsor obtains on such sheet the initials or signature of those members also wishing to sponsor the bill, the names of such members will appear on the printed bill.

If a prepared draft of the proposed legislation accompanies the request, the person accepting the request should ask who prepared the draft and how to get in touch with such person since questions about the draft could arise. In order to comply with the statute on confidentiality, the person taking the request should also ask the sponsor if the Legislative Council staff may release copies of the bill to affected state agencies prior to introduction for the purpose of preparing the fiscal note on the bill.

After the bill request form is completed, a bill request number is assigned to and entered on the bill request form. This "LLS Number" will appear in the upper left-hand corner of each draft of the bill and every version of the bill after it is introduced.

II. PRELIMINARY DRAFTING CONSIDERATIONS.

A. Purpose and scope of legislation.

Before beginning to draft a bill, the drafter must determine exactly what the sponsor wants to accomplish. The drafter's function is to devise appropriate statutory language in proper form to carry out the sponsor's objectives. It is not the position of the drafter to supply the policy of any bill or to question the political strategy or the need for requested legislation. Obviously, the precise objective of the sponsor cannot be achieved if the drafter has only a vague impression of what the sponsor seeks to accomplish. Furthermore, if the drafter exercises unwarranted discretion in "filling in the details" without consulting with the sponsor, the legislation may produce results that the sponsor did not intend.

Thus, at the first opportunity to discuss the bill with the sponsor, the drafter should attempt to obtain specific instructions concerning the purpose of the bill. Initially, the drafter should ask questions necessary to determine the issue that the legislator wishes to resolve. To that end, the drafter may, as a matter of routine, ask the following questions:

- What is the issue in need of resolution?
- What are some examples of the issue?
- What is to be changed or accomplished by this legislation?

The answers to these questions will clarify areas of constitutional and statutory research that must be pursued before drafting. If a proposed bill appears to be unconstitutional or to have a more pervasive effect on the statutes than the sponsor anticipated, the sponsor must be so notified.

Additional background information that is important to discuss with the sponsor at the outset includes the following:

- Is a narrow title (to prevent substantial amendments) or a broad title (to allow amendments) preferable?
- When will the bill become effective? To whom or to what is the bill to apply?
- Is an appropriation necessary to implement the bill? If so, from what source?

- If the legislation creates a new program, what agency should administer the program? Are any changes needed in the administrative organization act? Does the administering agency need rule-making authority? How will the new program be funded? Does the new program or activity generate fees to be applied to its administration? Does the bill require an appropriation? If so, from what source? Which department/office/agency should receive the funding?
- Does the bill create or change the classification of a criminal offense?
- Do any other states have similar legislation?
- Is there a model or uniform act on the subject?
- Have bills been introduced on the subject in prior legislative sessions?

Frequently, because of the complexity of the subject matter, the sponsor cannot give explicit instructions, nor can the drafter anticipate every policy question that will arise in the course of drafting the bill. When the instructions are incomplete, the sponsor's objective and various means by which that objective can be accomplished must be analyzed. Then the drafter should check again with the sponsor on policy questions. As the drafting of the legislation proceeds, additional questions concerning policy may arise and subsequent conferences with the sponsor may be necessary.

The drafter should always request the name of any person that should be contacted in case questions arise during the drafting process. The sponsor may prefer that an aide, a lobbyist, a constituent, or another entity be contacted to field such questions. In light of the confidentiality of all requests, only authorized parties may be contacted regarding the bill draft. The drafter should also ask the sponsor whether consultation with the state agency responsible for administering a program proposed by the bill would be permitted prior to the bill's introduction.

B. Constitutional factors.

Ideally, neither the intent nor the effect of the bill will violate federal or state constitutional limitations. Keeping these limitations in mind during the bill drafting process may prevent future constitutional challenges and confusion concerning the validity of statutes.

1. *United States Constitution.*

Article X of the U.S. Constitution contains a reservation of power to the states, which

reservation provides that all powers not delegated to the federal government or prohibited to the states are reserved to the states. Other provisions of the U.S. Constitution effectively limit this grant of power to state legislatures.

Article VI contains a provision known as the supremacy clause, which is stated as follows:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

This provision is perhaps the most important limitation on the power of state legislatures.

State legislative power is further limited by section 8 of article I of the U.S. Constitution, which reserves certain subject areas to regulation by Congress. Such areas include the regulation of interstate commerce, bankruptcy, and immigration. Section 4 of article I limits state control of elections for U.S. senators and representatives by requiring that state legislation be subject to regulations that are passed by Congress. Section 10 of article I imposes express limitations on state sovereignty by prohibiting activities ranging from entering treaties to passing laws that would have the effect of a bill of attainder, an ex post facto law, or a law impairing the obligation of contracts.

Section 1 of article IV requires that each state give full faith and credit to the laws and judicial proceedings of other states. Section 2 of article IV further requires that the citizens of each state have all privileges and immunities of citizens of other states.

Not only do certain articles of the U.S. Constitution limit state legislative power, a number of amendments also impose fundamental restrictions: A state legislature may not prohibit religious freedom; establish religion; restrict freedom of speech or of the press; deprive persons of equal protection of the law or of the right to life, liberty, or property without due process; deprive persons of the right of peaceable assembly, the right to bear arms, or the right to petition the government for redress of grievances; infringe on the right to vote based on race or sex; require, in time of peace, that a soldier be quartered in any house without the owner's consent; make persons subject to unreasonable searches and seizures; in criminal actions, compel the defendant to be a witness against himself or deny a defendant the right to a speedy trial by an impartial jury of his peers, the right to know the charges against him, the right to be confronted by witnesses against him and have witnesses testify for him, or the right to have assistance of counsel; impose excessive bail or inflict cruel and unusual punishment; deny the right of trial by jury in certain cases; or subject a person to double jeopardy.

2. *Colorado Constitution.*

Article V of the Colorado Constitution provides for the structure and function of the legislative department of the state government. The following provisions are of special importance to drafters:

- Section 17. No law passed but by bill -- amendments.
- Section 18. Enacting clause.
- Section 19. When laws take effect -- introduction of bills.
- Section 21. Bill to contain but one subject -- expressed in title.
- Section 24. Revival, amendment or extension of laws.
- Section 25. Special legislation prohibited.
- Section 31. Revenue bills must originate in House of Representatives.
- Section 32. Appropriation bills.
- Section 33. Disbursement of public money.
- Section 34. Appropriations to private institutions forbidden.

These provisions are discussed throughout this manual. Other provisions of the Colorado Constitution and the Enabling Act limit or affect legislative power in many areas, including property taxation, public indebtedness, taking property for public use, sale of public lands, public funding of certain health care services, funding of public education, and limitations on taxation and spending ("The Taxpayer's Bill of Rights", see the chapter of this manual titled "Article X, Section 20"). This list is far from exhaustive; and, given the scope of the state constitution, a drafter should research the subject of each bill so that the drafter is familiar with the state constitutional foundation.

C. Federal preemption.

Federal laws establishing standards for state welfare, health, education, highways, and other programs may serve as limits or place requirements on state policy and legislation in those areas. In recent sessions, bills concerning highways, billboards, water pollution, air pollution, and unemployment compensation are examples of bills that were based on federal legislation in order to assure that federal funds would be available to the state. After checking the federal laws and determining how the requirements of such laws will affect a

proposed bill, the drafter should ask the sponsor if such requirements conflict with the intended purpose of the bill.

D. Approval or rejection of prior Colorado case law.

Drafters should be aware that there is a line of cases in Colorado where the courts have applied a presumption that the General Assembly is aware of judicial precedent in a particular area when it enacts or rewrites legislation in that area. The Colorado Supreme Court has held that "the general assembly is presumed to be cognizant of prior decisional law when enacting or amending statutes". See *Rauschenberger v. Radetsky*, 745 P.2d 620 (Colo. 1987) and *Semendinger v. Britain*, 770 P.2d 1270 (Colo. 1989). In applying that presumption, the court in *Rauschenberger* held that "When a statute is amended, the judicial construction previously placed upon the statute is deemed approved by the General Assembly to the extent that the provision remains unchanged." As a result, if there is a case construing the statute that is not specifically rejected in subsequent legislation, the General Assembly may inadvertently ratify or be viewed as ratifying or approving some previous statutory interpretation made by the courts. Practically speaking, drafters may not have time to research the case law every time they draft a bill that amends a statute. However, in drafting a bill that significantly revises or recodifies a statute, the drafter should at least conduct a cursory examination of the annotations to see if there are cases construing the particular statute to be amended. Alternatively, the drafter should question the contact persons as to whether they are aware of any significant decisions construing the statute that need to be considered in revising the law. The aim of these inquiries would be to identify any cases that might present a problem of interpretation if the statute is amended without revising that portion and the presumption is subsequently applied. If any such cases are identified, the drafter should talk to the sponsor about the possibility of such a presumption being applied in a way that might be contrary to the intent of the bill.

E. Colorado Revised Statutes - statutory construction.

The statutory sections that have the greatest effect on bill drafting are found in title 2 of the Colorado Revised Statutes. Title 2 sets forth certain rules of statutory construction and provides standard definitions for terms commonly used in legislation. The most pertinent statutes are discussed in more detail throughout this manual. Each drafter should have an in-depth working knowledge of title 2, C.R.S.

F. Rules of the General Assembly.

Rules of the General Assembly cover many procedural aspects of the bill drafting process, including the route a bill follows from introduction to adoption by the General Assembly. Drafters should become familiar with the legislative rules found in the Colorado

Legislator's Handbook issued by the Colorado Legislative Council.

Joint Rule No. 21 of the Senate and the House of Representatives provides the standard rules for drafting legislation that amends existing law. Drafters should also be familiar with the deadline schedule for the request, delivery, and introduction of bills as found in Joint Rule No. 23. No request for a bill subject to the deadline schedule will be accepted, and no work will be done on such a bill, after the deadline for requests has passed, unless a signed approval sheet has been received from the Committee on Delayed Bills of the house in which the bill is to be introduced. Concurrent resolutions, joint resolutions, resolutions, and memorials are exempt from the deadline schedule; except that Joint Rule No. 23 (g) prohibits the introduction of most resolutions and memorials during the last twenty days of any session unless permission is granted by the Committee on Delayed Bills.

Joint Rule No. 24 imposes a limitation on the number of bills that a legislator may introduce. Appropriation bills and resolutions are excluded from the bill limitations.

Joint Rule No. 24 (c) allows a sponsor to submit a bill request to the Office by subject only (SBSO). However, the sponsor must then provide the necessary information to enable the Office to draft the bill within five working days after making the request or within five working days after December 1, whichever is later, or the request will be considered to be withdrawn by the member.

III. SOURCES FOR RESEARCH.

A bill can be modeled on a law or bill that is similar to the one being prepared. Revision of a law or bill already prepared usually takes much less time than writing a new bill. Another benefit of using existing or model legislation is exposure to the views of someone else and to problems and solutions that might have been overlooked.

A. Colorado Revised Statutes.

A bill may be patterned on an existing Colorado statute, even if the existing statute is not on the same subject. For example, a bill creating a board to license a particular profession or occupation should be based on the standard provisions of the licensing laws set forth in title 12, C.R.S.

The language in an existing law often has been construed administratively or judicially. Using successfully "tried and tested" procedure or language is preferable to taking chances on new language. However, existing laws are not always perfect in form, style, or substance and may need to be adjusted to fit the needs of the bill being drafted. If permitted by the sponsor, the drafter should check with the appropriate state agency regarding the

"workability" of the existing law before using it as a basis for new legislation.

If statutory research requires going back to a codification of the Colorado Revised Statutes prior to 1973, the comparative table found in Volume 13, Colorado Revised Statutes, can be used to trace cites to their C.R.S. 1963 counterparts.

The following table shows a chronological list of publications of Colorado Statutes and the correct citation for each publication:

Revised Statutes of Colorado	(1868)	R.S. p. ____, § ____.
General Laws of Colorado	(1877)	G.L. § ____.
General Statutes of Colorado	(1883)	G.S. § ____.
Revised Statutes of Colorado	(1908)	R.S. 08, § ____.
Compiled Laws of Colorado	(1921)	C.L. § ____.
Colorado Statutes Annotated	(1935)	CSA, C. ____, § ____.
Colorado Revised Statutes 1953	(1953)	CRS 53, § ____.
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963, § ____.
Colorado Revised Statutes*	(1973)	C.R.S., § ____.

* The 1973 publication was originally titled "Colorado Revised Statutes 1973", but is now titled "Colorado Revised Statutes".

B. Session Laws of Colorado.

After every session of a General Assembly, both regular and extraordinary, a "Session Laws of Colorado (year)" is published containing all laws of both a permanent and temporary nature enacted at that session, proposed constitutional amendments and laws referred by that particular session to the people, and those constitutional amendments and initiated laws adopted at the general election held prior to the printing of a particular volume of Session Laws. Session Laws also contain most joint resolutions and certain other resolutions and memorials. These can be of help in drafting similar resolutions and memorials for a current session. Each drafter should study several volumes of Session Laws to review the form of the acts included therein, the titles to the various acts, the content of the acts themselves and their arrangement, and the application of Joint Rule No. 21 of the Senate and House of Representatives (discussed later) in the chapter of this manual titled "Special Rules and Techniques of Drafting".

Session Laws are cited as follows: "Session Laws of Colorado 1987" or "Session Laws of Colorado 1986, Second Extraordinary Session".

C. Red Book.

The "Red Book" is a pamphlet with a red cover prepared by the Office of Legislative Legal Services after every regular session. The Red Book contains a list of all C.R.S. sections that have been repealed, amended, recreated, or added by laws enacted at the preceding regular session and at any extraordinary session held since the publication of the last Red Book. The Red Book also contains the tentative C.R.S. section number or numbers assigned to such new laws. The Red Book indicates the number and section of the bill in which the C.R.S. section was repealed, amended, recreated, or added, the effective date of the section, and the chapter of the session laws where the bill may be found. For example, through the use of the 1994 Red Book, it could be determined immediately which sections of C.R.S. were amended during the 1994 session, which sections were repealed, and which sections were added. The same information can be found in tables included in the annual volumes of Session Laws.

D. Bills from prior sessions.

A bill may be based on a similar bill prepared for a prior session. The Office of Legislative Legal Services maintains various subject indices and other finding aids that will facilitate research into bills drafted for prior sessions. In addition, a senior staff member may recall whether a similar measure was previously drafted.

If a bill is modeled on one prepared for a previous session, the drafter should check the member's bill request file for the old request sheet for additional information. The journals of the particular session or the Office materials containing bill histories should also be checked to ascertain whether the bill, even if not passed, was amended either by committee or on the floor. Before including any such amendments in the bill, the drafter should verify that they come within the current sponsor's purpose.

The drafter should *never use a bill prepared for an earlier session without making it current and checking it thoroughly for citations, dates, and so forth.* Usually some improvement in the style and even the substance of the former draft can be made. Do not assume that a bill is satisfactory in all respects simply because it was introduced at a prior session.

E. Bills of current session - duplicate bill requests.

Duplicate bill requests occur every session. Sorting through the issues involving duplicate bill requests requires diplomacy, tact, and confidentiality. The Office needs to balance the interests of preserving the legislators' resources (their 5 bills and the body's time) with the statutory requirements of protecting the confidentiality of bill requests. Members become frustrated when duplicate bills are not identified by the Office. Front office staff, team leaders, and drafters should all be on the alert to identify possible duplicate bills as we

go through the bill drafting season. Prior to the introduction of bills, these duplicates can be identified informally and through checks of the information in the CLICS system. In addition, once bills begin to be introduced, the staff should also look at the subject index to identify duplicates. One of the tricky issues is identifying whether bills truly are duplicates. Staff members need to consult with the drafters of the affected bill requests to determine whether the bills are identical, substantially similar, or include partial duplicates. The general presumption should be to err on the side of identifying the duplicate situation to the members.

If a duplicate exists between two bills, the process outlined below should be followed. Because of the delicate nature of the interests involved, it is important that the office treat all sponsors fairly and similarly and that the process is followed consistently. The steps for handling duplicate bill requests are:

- The staff needs to evaluate whether the bills are identical or substantially similar or include a partial duplicate. Care should be taken to ensure that the drafter knows the purpose of the bill requests before assuming that the bills truly are duplicates. If not, the drafter may inadvertently disclose a competing bill to another sponsor and violate confidentiality.
- After determining that the bills are duplicates or partial duplicates, the drafter needs to first contact the sponsor of the second duplicate bill request (i.e., the second request filed later in time), referred to in these steps as Member B.
- The drafter needs to tell Member B that the office believes that his or her request may be a duplicate of a bill request already filed with the Office. In this conversation, the drafter may disclose whether the request has come from a member of the same or opposite house and whether the sponsor is a member of the same party or not. At this point, the drafter **MAY NOT** disclose the name of the legislator who made the first request (Member A) because this would be a violation of the confidentiality requirements. (NOTE: If the bill is already introduced, the drafter can tell Member B about the existence of the introduced bill and ask whether the member wants to continue pursuing his or her bill request.)
- The drafter should ask Member B for his or her permission to disclose to Member A that Member B has filed a bill request that appears to be a duplicate bill.
- At this point, Member B has some options. One option is that Member B may decide to withdraw his or her request. The Office policy is that if a legislator withdraws or kills a bill request prior to the bill introduction deadlines due to filing a duplicate bill request, the legislator may submit another bill request, even if the deadline for requesting an early or regular bill request has passed. The new request needs to be filed as soon as possible. If the duplicate is not identified until right before the introduction deadlines, the member may need

to get delayed bill permission in order for our staff to have sufficient time to draft the replacement bill. Our Office will assist the member in attaining delayed bill authorization, if necessary. The other option is that Member B can give or not give permission to the drafter to contact the Member A.

- If Member B does not give permission to contact the other member and indicates that he or she wishes to continue with the bill request, the drafter or drafters should continue to work on both requests without divulging any more information to either member about the other member's request.
- If Member B gives the drafter permission to contact the other legislator and disclose Member B's name to Member A, then the staff member contacts Member A. The staff member should explain to Member A that Member B has requested what appears to be a duplicate bill request. Member A then has the option of withdrawing or killing his or her request or Member A may wish to talk with Member B. The drafter should then seek member A's permission to disclose to Member B that the potential duplicate request is Member A's. At this point, the drafter may have to engage in more than one conversation with the affected members in order to determine their desires about what they want to do with their bill requests. The drafter should be focused on disclosing what can and cannot be disclosed based on confidentiality restrictions or waivers of confidentiality by the members and identifying the members' options. Once the disclosure is made, the drafter should leave it up to the two affected members to consult with each other about what they want to do to resolve the duplicate bill situation. The goal of the drafter should be to let the two members decide what they want to do without assuming the role of an intermediary.
- In resolving the duplicate bill situation, Member B and Member A may wish to join efforts as prime sponsors in each house or they may decide that one would be a prime sponsor and the other would be a cosponsor or one of them might to decide to kill his or her bill request. Alternatively, they may both want to go forward with their bills and let it be worked out through the process.
- Sometimes Member B gives the staff member permission to let Member A know about the duplicate, but does not give permission to reveal Member B's identity unless Member A also gives permission to reveal Member A's identity. In that circumstance, the drafter needs to honor the request to protect the confidentiality of Member B's name and can only provide notice of the duplicate request.
- These steps may need to be modified in the case of a partial duplicate where one bill contains a portion of something that is contained in another bill. In that case, the drafter needs to take care not to disclose the other contents in the

bill that has a partial duplicate. In addition, the sponsors may need to work out which bill will contain that provision or whether it will be contained in both bills.

Any questions or circumstances that arise that are not covered by these steps should be directed to a team leader or senior staff member in the Office.

F. Laws and bills of other states.

The drafter should ask the bill's sponsor if similar legislation has been adopted by other states or check the codes of other states that may have enacted laws addressing the same issue. Legislative service agencies of other states usually furnish copies of bills promptly upon request. In addition, the drafter may research and obtain copies of bills and statutes of other states by using electronic databases available to the Office. In following a statute of another state, the drafter must change the form and terminology to conform to Colorado style and rules.

The constitutions of the various states, together with annotations and a subject matter index to their provisions, may be found in a compilation titled "Constitutions of the United States - National and State", issued by Columbia University, which is available in the Office.

Pursuant to section 2-3-506, C.R.S., staff members of the Office of Legislative Legal Services may use the facilities of the Supreme Court Library for their work. Special arrangements may be made for access to the library outside of working hours, and the copying machine may be used according to copy card policies.

G. Uniform and model acts.

In a few instances, the kind of bill desired has been prepared by the National Conference of Commissioners on Uniform State Laws, or a sponsor may specifically request a "uniform" bill. The Conference prepares uniform acts on a variety of subjects that are intended, for the most part, to be followed exactly. The text of any uniform law can usually be found in the annual reports of the Conference, which are available in the Office of Legislative Legal Services, after first checking their index to see whether a particular or similar bill has been prepared by them.

The drafter should become familiar with an annual publication of the Council of State Governments titled "Suggested State Legislation". Copies are available in the office for current and past years. These reports contain so-called "model acts" that differ from "uniform acts" in that they can be used as guides for legislation in which uniformity is not required.

IV. PREPARING TO DRAFT.

A. Analyzing the kind of bill required.

After doing the necessary background research, the drafter is ready to begin making decisions about the bill itself. A bill can do one or more of the following things:

- Create new law;
- Amend existing law;
- Repeal existing law.

1. *Creating new law.*

If existing law cannot be amended or repealed to accomplish what is desired, the bill will take the form of an original enactment. New sub-subparagraphs, subparagraphs, paragraphs, subsections, sections, parts, and articles may be added so as to fit into C.R.S., however, new titles are rarely created. Exceptions to the rule that new material must fit into C.R.S. are allowed for appropriation bills and other bills whose applicability is strictly limited in time - probably less than one year. (An example of a bill having temporary applicability was H.B. 72-1133, which enacted special procedures for the 1972 general election. These procedures were necessitated by legislative reapportionment and would not be in effect for subsequent elections. The act appears in the 1972 Session Laws but was never published in C.R.S.; accordingly, it was not necessary to designate C.R.S. section numbers in the bill.)

2. *Amending or repealing existing law.*

If existing statutes deal with the subject covered by the request and a change in existing language, the addition of new language, or the repeal of existing language will accomplish the objective of the sponsor, the bill will take the form of an amendment or repeal. If an amendment is required, the drafter should harmonize the language and form with that used in the current law in order to avoid creating inconsistencies and conflicts with unamended portions of related law.

If any statutory subdivision is to be repealed, the drafter must remember to amend out any references to the repealed subdivision that are contained in other C.R.S. sections. Sections that refer to a subdivision to be repealed may be determined by performing a computer search of the statutes for references to the section that contains the repealed subdivision. However, this search will not provide you with sections that include references to the *subject* of the repealed subdivision. The drafter will have to find those references through a word search of the statutes. For example, if section 22-53-201, which creates the

commission on school finance, is being repealed, the drafter will need to search the statutes for references to 22-53-201 and to search the statutes for the phrase "commission on school finance".

B. Outlining the provisions of the bill.

A carefully prepared outline based on a sound analysis of the provisions that will be required in the bill is a good preliminary step before beginning actual drafting. Most often, a bill is structured so that the C.R.S. sections that form the core of the bill appear in numerical order. When a bill consists primarily of a new article, part, or sections added in a single place with the remainder composed of miscellaneous conforming amendments to existing statutory sections, the new material should be placed first, followed by the amendments.

1. *Suggested bill outline structure.*

The usual arrangement of the provisions of a bill is as follows:

- (1) Title;
- (2) Bill summary;
- (3) Enacting clause;
- (4) New material, if it constitutes the major portion of the bill;
- (5) Specific amendments to existing law;
- (6) Specific repeals;
- (7) Appropriation;
- (8) Applicability;
- (9) Effective date (the effective date and applicability section may be combined);
- (10) Safety clause or effective date clause.

2. *Suggested article outline structure.*

When a new article is added creating a new agency or establishing a new program, the following arrangement of provisions within the article is suggested:

- (1) Short title;
- (2) Legislative declaration;
- (3) Definitions;
- (4) Sections containing substance of the article, which cover:
 - (a) Main purpose;
 - (b) Administration;
 - (I) Administrative authority, i.e., powers and duties;
 - (II) Administrative procedure;
 - (c) Enforcement;
 - (d) Penalties.

The provisions of bills vary so much in character that no definite rules can be laid down for their order except to say that a logical arrangement of the provisions should be observed. It is also of great help to examine the existing statutes for the arrangement of laws similar to the bill being drafted. It may be helpful to break a new article into several parts to assist in organizing a lengthy bill.

C. Preparing bills from drafts originating outside the Office of Legislative Legal Services.

Frequently the office will receive a bill request that is accompanied by a prepared draft. As mentioned earlier, the person taking the request should ask who prepared the draft and note this information on the bill request form. In such cases, unless instructed otherwise, the drafter's function is to check the draft for accuracy and consistency with other laws, to make necessary changes and corrections where inconsistencies occur, and to check the draft as to form. Changes having no purpose other than to substitute one's own preference in expression should be avoided -- many times, editorial changes in language to suit a drafter's preference result in unintended but serious substantive changes. Clarity of expression is essential, and revisions may be made whenever they demonstrably improve the draft. When instructed to review a draft for *form only*, that fact should be indicated on the bill request form. In some cases, it might also be wise to contact the person who prepared the draft before *any* changes are made; this is true of bills drafted, for example, by bond attorneys in Denver who are especially versed in technical requirements of legislation pertaining to bond issues or refunding of bonds.

V. WORKFLOW OF BILL PREPARATION.

Each drafter should become familiar with all of the steps involved in bill preparation by the Office of Legislative Legal Services, from the date a request for bill drafting is received through delivery to its House or Senate sponsor for introduction. These steps are summarized below.

BILL REQUEST: Bill requests are oral or written, and can be taken by telephone, messenger, e-mail, or in person. If submitted by persons other than sponsor, the bill is not considered "submitted by the legislator" until the legislator has notified the Office either orally or in writing that he or she will actually sponsor the bill request.

DOCKETING: Each bill request is assigned a LLS Number. A description of the bill is then logged on a "request card" kept for each member and entered into the Colorado Legislative Information and Communications System (CLICS). Every step of the bill's progress is tracked through CLICS so a bill draft can be tracked at all times. The bill request is assigned to a team and sent to the team leader for assignment to a staff attorney or legislative assistant.

DRAFTING: If a draft of the bill is submitted, a staff attorney or legislative assistant edits and "cleans up" the draft; otherwise, the legislator's idea is drafted into legal language and form.

LEGAL EDITING: A legislative assistant checks the drafter's work for errors, oversights, and deviations from standard form, checks the correctness of references to C.R.S., and proofs the bill draft against existing law if amended.

RE-TYPING: Editing changes made to the bill draft by the legislative assistant are made in the computer and the bill draft is printed out in proper bill form. Bills are stored in CLICS and identified by the Bill Request Number or "LLS Number".

PROOFREADING: The entire bill is proofread from draft to copy to detect typing or format problems. If the bill contains many errors, it may be re-typed again for corrections and re-proofed for errors before being given to the team leader.

TEAM LEADER'S REVISION: The team leader or the team leader's assistant reviews the bill for constitutional and other legal issues and checks the bill title and bill summary.

ASSEMBLING AND DELIVERING: Legislative assistants are responsible for making copies of each bill and assembling the original and copies with sponsor sheets and bill backs. Each bill is logged as "complete" and a bill count for each legislator is kept. Some bills are "prefiled" and delivered directly to the Secretary of the Senate or the Chief

Clerk of the House for introduction. Other bills are delivered to the sponsor and the sponsor submits the bill to the Secretary of the Senate or the Chief Clerk of the House for introduction. The bill is numbered by the Secretary or Clerk and assigned to a standing committee by the presiding officer.

VI. TRACKING A BILL THROUGH THE LEGISLATIVE PROCESS.

Upon introduction, a bill is advanced through the legislature to passage or defeat. House Rule No. 29 describes the course of a bill that is introduced in the House, and Senate Rule No. 25 sets forth the course of a Senate bill. For reference to these rules, see the Colorado Legislator's Handbook. Amendments to bills can be proposed by members when the bill is being considered by the standing committee to which a bill is referred or by members when the bill is being considered on second or third reading. For a discussion of procedure and responsibilities in amending a bill, see the chapter of this manual titled "Amendments to Bills".

Amendments made in the House are indicated in subsequent versions of a bill by the use of shading and amendments made in the Senate are indicated by double underlining.

Bills are identified at different stages of the legislative process by the following terms:

- (1) Printed bill. The bill as introduced before any amendments whatever are added.
- (2) Engrossed bill. The bill as passed on second reading in the house of origin, including any amendments adopted by that house on second reading. If no amendments are made to the printed bill, the printed bill is the engrossed bill.
- (3) Reengrossed bill. The bill as passed on third reading in the house of origin, including all amendments adopted by that house. The reengrossed bill is transmitted to the second house.
- (4) Revised bill. The bill as passed on second reading in the second house, including any amendments made to the bill on second reading by the second house.
- (5) Rerevised bill. The bill as passed on third reading, including any amendments made by the second house on third reading. The rerevised bill is then transmitted back to the house of origin for any further action that it may have to take on the bill, or for enrollment and transmittal to the Governor for action.
- (6) Enrolled act. The bill in final form as adopted by both houses for transmittal to the Governor.

See the glossary in Appendix I of this manual for a more detailed list of terms and

definitions.