

# 2021 Legislative Drafting Seminar – Drafting Techniques

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# Drafting Techniques

- Determine whether to draft a bill or a resolution.
  - A bill is used to enact a law.
  - A resolution (other than one proposing a constitutional amendment) does not have the force of law. *State ex rel. Sanstead v. Freed*, 251 N.W.2d 898 (N.D. 1977).

# Drafting Techniques

- A resolution may be used to:
  - Amend the state constitution. (Art. IV, § 16, Constitution of North Dakota; North Dakota Century Code (NDCC) § 1-02-09; Sanstead; legislative rules)
  - Amend the Constitution of the United States. (Art. 5, United States Constitution; Sanstead; legislative rules)
  - Establish a legislative investigating committee. (NDCC § 54-03.2-03)
  - Authorize the Legislative Council to conduct a study. (NDCC § 54-35-02; legislative rules)
  - Request the Legislative Council to provide assistance during the interim or during the legislative session. (NDCC § 54-35-11)

# Drafting Techniques

- A resolution may be used to:
  - Fix the compensation of officers and employees of the Legislative Assembly. (NDCC § 54-03-10)
  - Commend a person or group recognized for an achievement that has brought national attention or recognition. (legislative rules)
  - Extend condolences. (legislative rules)
  - Require the Secretary of State to furnish copies of laws to the Legislative Assembly. (NDCC § 46-04-03)
  - Require the Secretary of State to perform certain duties. (NDCC § 54-09-02)

# Drafting Techniques

- A resolution may be used to:
  - Terminate a state of disaster or emergency declared by the Governor. (NDCC §§ 37-17.1-05, 37-17.1-11)
  - Approve the deposit of radioactive waste material brought into the state. (NDCC § 23-20.2-09)
  - Approve certain hydroelectric transmission facilities crossing any portion of the state. (NDCC § 49-22-09.1)

# Drafting Techniques

- Review existing provisions to determine whether the proposal is already in effect, whether existing provisions need to be amended or repealed, or whether new provisions need to be enacted.

# Drafting Techniques

- Review the North Dakota Century Code to determine if codified provisions exist concerning the proposal by:
  - Using the general index.
  - Using title, chapter, and section listings.

# Drafting Techniques

- If an applicable Century Code section is found:
  - Review provisions referenced in the section.
  - Consider the language of the section if that is to be used as a guide for a new section.
  - Check the notes under the provision.
    - Check the source notes to Century Code sections to determine whether other relevant sections were created or amended when the provision was created or amended.
    - Review cross-reference notes, which may cite to sections that are related to the section involved.
    - Review other notes that may identify special treatment of the section, e.g., different versions of that section may be in effect at different times.

# Drafting Techniques

- Review Session Laws for relevant noncodified provisions.
  - Appropriations
  - Bonding authorizations
  - Building authorizations or land sale authorizations
  - Temporary provisions or provisions with delayed effective dates

# Drafting Techniques

- Review previously introduced proposals that could provide a framework and reduce amount of background research.
- Review similar laws or proposals from other states.

# Drafting Techniques

- Use plain English – make your draft understandable to the average person and eliminate legalese.
- Avoid legislative intent, purpose, or findings statements.

# Drafting Techniques

- Edit horizontally.
  - **Check sequential numbering of clauses.** Check internal references to bill sections, code sections, and terms of art.
  - **Read for coherence to check the substance.**
  - **Check use of defined terms.** Is the appropriate term defined? Is a term defined for a chapter used consistently throughout the chapter?
  - **Check for grammar.** Are the sentences too long? Are the verb tenses correct? Do the pronouns agree with their antecedents?
  - **Read for consistency with the title.** Compare the North Dakota Century Code section numbers listed in the title, identified in the clauses, and the text itself. Are sections in the title and in the body in the correct sequence? Does the bill do what the title says it does? Are there any special clauses that should be mentioned in the title?

# Drafting Techniques

- Style considerations.
  - Avoid substance in definitions.
  - Use singular in definitions and throughout the bill
  - Be consistent.
  - Avoid lengthy, multiparagraph sections.
  - Avoid hortatory language.
  - Avoid redundant language.
  - Use correct, legal names. Be consistent in use of terminology.
  - Avoid minicaptions.
  - Review the definitions applicable to the North Dakota Century Code.

# Drafting Techniques

- Style considerations.
  - New material follows old material being overstruck.
  - Early effective dates require an emergency clause.
  - Do not rely on the caption to give substance to the text of the section.
  - Be careful creating unnumbered subsections that will be placed into existing sections.
  - Be careful creating new numbered provisions without recording them with the Code Revisor.

# Drafting Techniques

- Review draft to ensure the content accomplished the purpose of the bill.

# Drafting Techniques

- Contact Legislative Council if you have questions.