

State Agency Bill Drafting Class



**MONTANA LEGISLATURE
LEGISLATIVE SERVICES DIVISION**

SEPTEMBER 16, 2022



Introductions & Administrative Matters



- **Introductions**
 - Instructor Contact Sheet
 - Agency Staff
- **Administrative Matters**
 - CLE Credits – Sign in sheet. 2.25 Credits
 - Zoom Attendees - Email Bar Number and Name to jaret.coles@legmt.gov
 - Facilities/Java/Sustenance
 - Handouts
 - ✦ Bill Drafting Manual!
 - ✦ Cheat sheets & additional information.
 - Evaluations

Training Topics



- The art and science of bill drafting
- Constitutional & legal considerations
- Overview of the legal review note process
- Bill drafting & technical rules
- The anatomy of a bill
- Drafting aids & tools of the trade and the bill drafting manual
- Bill drafting macros
- Tips for searching the Montana Code Annotated on Folio
- Legislative Branch Website (LAWS System)
- Agency bill drafting deadlines

Session Perspectives



Terrifying Great White Shark image from www.clker.com. Woodridge, IL, USA
-- Great White Shark Opening Mouth — Image by © Denis Scott/Corbis.

Image of beautiful golden retriever from Helen Thigpen, caretaker of Charlie Thigpen,
whose image is priceless.

The Art & Science of Bill Drafting



“Poorly drafted statutes are a burden upon the entire state. Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, the citizen with an earnest desire to conform is confused. Often, lack of artful draftsmanship results in failure of the statute to achieve its desired result. At times, totally unforeseen results follow. On other occasions, defects lead directly to litigation. Failure to comply with certain constitutional requisites may produce total invalidity.”

- LEGISLATIVE BILL DRAFTING BY ALBERT R. MENARD, JR. 26 ROCKY MT. L. REV. 368 (1954).

The Bill Drafting Process



- Drafting Law – The Purest Form of Practicing Law (according to Todd Everts)
- Creating the Perfect Law. Is it possible?
- Research, research, research
- Review existing law
- Organization
- Role of Legislative Services Division Staff and State Agency Staff in the Bill Drafting Process

A panda enters a cafe. He orders a sandwich, eats it, and then pulls out a squirt gun & starts shooting. When a waiter demands an explanation for the panda's unusual behavior (fortunately no one was hurt), the panda hands him a poorly punctuated wildlife guide booklet. The waiter is asked to look up the description of a panda.

It reads: "Panda. Large black-and-white bear-like mammal, native to China. Eats, shoots and leaves."



Constitutional & Legal Considerations



- Appendix R – Bill Drafter Checklist
 - **Conformity with state and federal constitutions considered?**
- U.S. Constitution
- Federal preemption – **Watch Out!**
- Montana Constitution
 - **Specific provisions related to bills**
 - **Other relevant provisions (everything)**
- Montana statutes (Title 5, ch. 4 Bills)
- Delegation of authority and rulemaking

“[Acts] of the State Legislatures . . . [that] interfere with, or are contrary to the laws of Congress [are to be invalidated because] [i]n every such case, the act of Congress . . . is supreme; and the law of State, though enacted in the exercise of powers not controverted, must yield to it.”

– Chief Justice John Marshall (1824).

Legal Review Note Process



“As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.”

Legal Review Note Process



“This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).”

-- Language from Montana Legislative Services “legal review note”.

Bill Drafting & Technical Rules



- **Style & Language**

- Word choice
- Tense
- Shall, must, may
- Voice
- Number
- Use of “that” or “which”
- Provisos

- **Form**

- Capitalization
- Punctuation
- Amending text
- Striking and adding text

- **Internal References**

- Citations to other MCA sections
- Changes to subsection references caused by renumbering



The Anatomy of Bill



Anatomy Defined

The art of separating the parts of an organism in order to ascertain their position, relations, structure, and function.

- Bill arrangement
- Mandatory v. non-mandatory provisions
- Codified v. non-codified provisions
- Effective dates
- Termination sections – ugh.
- Codification

Tools of the Trade & Drafting Aids



- Montana Bill Drafting Manual
- Existing statutes
- History and Final Status (introduced bills from past sessions).
- LAWS (displays bill draft requests by subject)
- Laws from other states (use caution!)
- Uniform and model acts (Uniform Law Commission)
- Consultation with subject matter experts
- Consultation with Legislative Services Division staff

Bill Drafting Macros



- **Overview of Word Bill Drafting Macros**
 - What are macros?
 - Where do I find the macros?
 - ✦ Stored Inside a Word Template
 - <https://leg.mt.gov/session/drafting-bills/>
 - Instructions and Template
 - For help contact SITSD, Department of Admin, 444-2000
- **Drafting a Bill Using the Macros**
 - Open new file using the template
 - Use Add-Ins → Menu to access macros

Searching the Montana Code Annotated



- **MCA and FolioViews**

- MCA stored like a database
- FolioViews used to view and search MCA

- ✦ Download and Install

- ✦ Future Upgrades include Montana Supreme Court Cases and Session Laws

- **Techniques for Effective Searches**



Legislative Automated Work Flow System



- What is LAWS?
- How can LAWS be useful to me?
- Looking up bills
- Finding hearings
- Finding minutes and archived audio
- What about amendments?
- Setting up a preference list

LAWS Look Up Bill Information Page

Montana Legislative Branch

Montana Legislature
Look Up Bill Information

2015 January Regular Session

Welcome! The 2015 Regular Legislative Session starts Monday, January 5th, 2015.

- View Detailed Bill Information for a Specific...
Bill Type and Number: (example: HJ0157)
- OR -
Bill Draft Number (LC#): (example: LC0064)
- OR -
Chapter Number: (example: 123)
NOTE: Chapter numbers exist only after [session law](#) is enacted during session.
- Basic Searching for Bills...
Select a Legislator...
 (Legislator not on list?)
- OR -
Select a Subject...

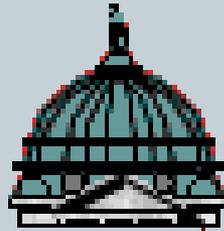
- AND/OR -
Select a Primary Sponsor...
 (Sponsor not on list?)
- List All Introduced and Unintroduced Bills
• Advanced Bill Searching
• Search the Text of Bills Using Keywords
• Directory Listing of Introduced Bills
• Directory Listing of Unintroduced Bill Drafts
- Establish a Preference Account [READ ME](#) before starting a new Account!
 - [Preference Account Login](#) (login to an already established preference account)

05/27/2014 01:00 PM Mountain Time
[Look Up Bill Information](#)	[Committee and Hearing Information](#)		
[House Agenda\(s\)](#)	[House Journals](#)	[Senate Agenda\(s\)](#)	[Senate Journals](#)
[Legislator Information](#)	[Reports](#)		
[Legislative Branch Home Page](#)	[Session Home Page](#)	[Session Information Page](#)	

Agency Bill Drafting Information



- Interim committee/agency bill draft requests
- Agency deadlines
- Bill request/introduction/transmittal dates



Questions?



THANK YOU FOR ATTENDING!

Please complete and return the class evaluation forms.

