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SUGGESTED GUIDE TO BILL DRAFTING

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Note: Page numbers cited in this outline are pages of the Hawaii Legislative Drafting Manual 9th Edition (1996) published by the Legislative Reference Bureau. The electronic version on the LRB website <http://hawaii.gov/lrb/> is identical to the printed version.

I. What are you doing?

- A. Put aside the drafting manual--you don't need it yet.
- B. Determine what policy changes you want to make, and goals you want to accomplish.
 1. Get your thoughts down on paper, whether in outline or essay form.
 2. Determine the Who, What, When, and How
 - a. *What* are you trying to accomplish?
 - b. *Who* is responsible to accomplish this?
 - c. *How* will this be accomplished?
 - d. *When* will this be happening (*i.e.*, what is the timetable in which things must occur?)
 3. Your determinations under 2. may require additional knowledge about state government, such as the jurisdiction and responsibilities of different agencies. For background reference, you may find the *Guide to Government in Hawaii* (an LRB publication) useful.
 4. If you have the time, it may also be useful to meet with other staffers in your department and other affected agencies both to develop your idea more fully, and to avert situations where you develop a proposal that solves your problem but creates other problems elsewhere.

5. It might also be a good idea to consult in advance with the deputy attorney general assigned to your agency to apprise you of potential problems (*e.g.*, constitutional) that might exist with your proposal, and any *suggestions* they might have on laws that ought to be changed when you draft your bill. The operative word in the last sentence is “suggestions”. Do not expect the attorney general, or anyone else for that matter, to do your research for you.

II. What is the existing law that has to be changed?

- A. Don’t use the drafting manual yet--you still don’t need it.
- B. Is the problem in the state constitution? In the state statutes? Common law (*i.e.*, court decision)? Identify all of the constitutional or statutory provisions, or both (at least to the best of your ability) that you figure you need to change to accomplish your goal. Anything you identify that contradicts what you are trying to accomplish will either have to be changed or otherwise gotten around (*e.g.*, excepted).
- C. Bodies of law that may need to be searched to ascertain needed changes:
 1. Constitution of the State of Hawaii;
 2. Hawaiian Homes Commission Act (a federal law that the State is authorized to amend subject to certain limitations);
 3. The *Hawaii Revised Statutes (HRS)*, both the bound volumes and cumulative supplements, which is a collection of the general and permanent laws of the State (for example, the budget acts are not included) organized by general subject areas;
 4. The Session Laws of Hawaii, which are collections of the enactments of the Legislature each year, organized in numerical order by Act--not arranged by subject area. Search the Session Laws if you seek either uncodified acts, or, if the most recent supplement to the *HRS* has not yet been published, for most recent amendments to a particular statutory section;
 5. If the Session Laws for the most recent session of the Legislature have not yet been published, it is necessary to review copies of individual acts enacted by the Legislature. You could check with your director’s or legislative liaison office to see whether your department maintains a file. If they do not, recommend that they do so. A more direct approach—check the Legislature’s website.

- D. So how do you search this stuff?
1. Start with the *HRS* index (and index supplement) and search for reasonable index entries. For example, if you want to change the name of an agency, at the very least, check all index entries relating to that agency in order to identify as many statutory provisions as possible that refer to that agency by its current name.
 2. There is an index relating specifically to the state constitution on pages 177-190 of volume 1 of the *HRS* (1993 replacement).
 3. Subject indexes are contained at the end of each volume of the Session Laws of Hawaii--although remember that they only relate to the laws enacted by the Legislature for that year. Each volume of the Session Laws also contains a Table of Disposition that shows whether a particular *HRS* section was amended or repealed.
 4. If you have some type of computerized online statutory search capability, this is a good place to start, but be careful. Searching for all references to the “department of human services” will get you any number of references--but it won’t get you *any* references to the director of human services, a term that will probably also be affected. It will also not identify any of the (probably) numerous sections where the terms “department” or “director” are used, having been previously defined to mean the department and director of human services, respectively. Finally, the computer will only identify specified words. It will not analyze and identify substantive provisions that must be changed.
- E. After completing your search to identify provisions that are likely to be affected:
1. Read through each of them to make sure they really need to be amended.
 2. And if you’ve ascertained that there’s absolutely nothing that needs to be changed, then you’re writing new material from whole cloth, and thereby write the substance of item I.B. in statutory language. Note, however, that when you add completely new provisions to statutory language, you may still need to make changes to some existing statutes to eliminate inconsistencies with your new material.

III. Determine what general form your bill will take.

- A. Now open the drafting manual.
- B. For bills making statutory changes to the *Hawaii Revised Statutes*, see Example 2-1 on page 14.

- C. For bills creating statutory material that is *not* intended for publication in the *HRS* (*e.g.*, not intended to be *both* general and permanent in nature), see Examples 2-2 and 2-3 on pages 16 and 17.
- D. For bills proposing constitutional amendments, see Example 2-4 on page 18.
- E. Use these examples as guides. As a general rule, you will probably find it easier to follow these by sight than to hear an oral explanation. A potential gold mine of possible examples is any recent volume of the Session Laws.
- F. It's OK to mix the types of amendments in items B and C in the same bill--they are both statutory amendments, whether codified or not. Due to the state Supreme Court's decision in *Taomae*, it is *NOT* advisable to make constitutional and statutory amendments in the same bill.

IV. One last check. Go over pages 5 to 13 of the Drafting Manual. This is a general overview of items that are likely to appear in a bill (although some, such as the question for constitutional amendments and the consent of Congress for the Hawaiian Homes Commission Act apply only in those types of measures). Do any of the items in the list cause you to make alterations in your policy outline? If so, make those changes now. In response to those changes, determine whether or not there are any other statutory or constitutional provisions you need to identify for possible amendment.

V. Bill title and “enacting” clause. You have to have them. See page 5 of Drafting Manual. Avoid using conjunctions such as “and” and “or” in the title. This is inviting trouble.

VI. “Findings” or “purpose” section. Do you need one? See pp. 6-8 of Drafting Manual.

- A. Generally not needed if amendments are fairly self-explanatory.
- B. Best case for having one is where the need for the amendment (however important) is somewhat obscure, and not readily obvious from the face of the statutory changes being made.

VII. Lay out and organize the body of the bill.

- A. Don't worry about the Ramseyer stuff (*e.g.*, the prefatory language to sections of the bill) just yet.
- B. Are there any entire sections that will be completely new? Skip these for now and come back to them later.

- C. Take each statutory (or constitutional) section that you have identified as needing to be either amended or repealed. If you're using a computer and have access to the statutory databases, pull up the statutory sections (or subsections) that will be amended. If you aren't using a computer, make a photocopy of each, and tape it to a sheet of paper (one section per sheet).

In either case, be *sure* that your "cut and paste" version of each section includes all of the latest amendments to that section from the most recent *HRS* supplement and Session Laws.

- D. Group all the sections that need to be amended and organize them according to section number (lowest number first).
- E. Now do the same for the sections that need to be repealed in their entirety. Organize them according to section number (lowest first) and place them in a group *after* the sheets of sections to be amended.
- F. The purpose of this exercise is to develop the general structure of the bill which is:
1. New sections first;
 2. Followed by amended sections arranged in numerical order; and
 3. Repealed sections (in numerical order) last.

VIII. Now for the new sections. How do you write this statutory stuff?

- A. First and foremost--don't get wrapped around the axle on the details. The most important thing to accomplish is to state in clear and comprehensible English what you want the law to be. Unless using terms of art that have their own legal significance (*e.g.*, proximate cause, fiduciary duty) do your best to avoid the use of what a layperson would think of as "jargon".
- B. There are drafting and style conventions that you should make your best efforts to learn and to follow, but conventions are not gospel, and, barring highly unusual circumstances, failure to follow them will not render a bill defective.
- C. Items from the drafting manual to help you along in specific circumstances:
1. Establishment of board or commission--pp. 37 to 38.
 2. Employment of non-civil service personnel--p. 38.
 3. Rulemaking--pp. 34 to 35.
 4. Deposits to general fund--p. 35.
 5. Special or revolving funds--pp. 41 to 42.

6. Exceptions for unique situations--p. 36.
 7. Application to a specific county (to get around the requirement that laws enacted be of “general applicability”)--p. 36.
 8. Penalties, criminal and civil--pp. 32 to 33.
 9. Proper names of departments and department heads--pp. 19 to 20.
- D. Statutory sections--organization and layout.
1. See Example 2-1 on pp. 14 to 15 for diagram of how a section is laid out, and the elements of organization contained therein. This takes on much greater importance in applying the Ramseyer format.
 2. See pp. 21 to 23 for numbering, headings, and cross-references both within the same section, as well as to other sections.
- E. Style, grammar, and word usage. For general conventions, see pp. 21 to 31. Some highlights:
1. Use gender neutral rather than gender specific terms--pp. 29 to 31.
 2. Don’t use acronyms, no matter how convenient they make things--pp. 31.
 3. General choice of words and phrases--pp. 26 to 28.
 4. Capitalization, especially the word “State”--p. 24. Be careful, this is tricky.
- F. Lay out the completely new sections.
- G. Now insert the sheets containing the new sections in front of the amended and repealed sections.

IX. So where are we now?

- A. You are now facing a stack of papers that contains:
1. Written out versions of new material (divided into proposed new statutory sections);
 2. Copies of all of the *HRS* sections that you at least believe will have to be amended, arranged in numerical order, lowest numbers first;
 3. Copies of all of the *HRS* sections that you believe will need to be repealed, also arranged in numerical order.
- B. This, for all intents and purposes, is the base upon which the “guts” of a typical bill are constructed.

- C. So how do you indicate the specific changes you want to make to each of the particular *HRS* sections that have been laid out? That is accomplished through the use of the “Ramseyer” format, which is discussed in section XI.

X. Structure and organization of the *Hawaii Revised Statutes*.

- A. Before attempting to apply the Ramseyer format, take a little time to become familiar with the structure and organization of the *HRS* if you have not already done so.
- B. As mentioned earlier, the *HRS* is a collection of the general and permanent laws of the State, organized along the lines of general subject areas (such as Taxation or Criminal Law).
- C. While all of the statutory law of the State is contained in a complete collection of Session Laws, the *HRS*, as the state code, is the place in which all of the enactments made over the years have been compiled and integrated, as well as organized by subject area.
- D. The general broad categories of subject areas in the *HRS* are the “titles”. Titles, in turn, are collections of “chapters”. Note that there are no independent chapters sitting outside of titles.
- E. Chapters, in turn, are collections of “sections”. A group of sections within a particular chapter may be organized into and designated as a “part”, but this is optional.
- F. For purposes of identifying any section within the entire *HRS*, it is necessary only to know the chapter in which it is contained, and its number within that chapter. Therefore, a reference to section 269-1 is (barring unusual circumstances) the first section within chapter 269.
- G. See section VIII.D. for a discussion of the organization of a statutory section and its subunits of organization (*i.e.*, subsections, paragraphs, subparagraphs, and clauses).

XI. The Ramseyer Format. (See generally Chapter 5 of Drafting Manual for requirements and Chapter 6 for common recurring errors).

- A. The Ramseyer format is the means by which the bill drafter shows the reader the changes being made to the existing law. This is accomplished in three ways:
 - 1. The use of prefatory language indicating whether something is being amended, repealed, or added as new material.
 - 2. Bracketing and striking through the material being deleted.

3. Underscoring the material being added.
 4. Some people immediately jump to the wrong conclusion that the Ramseyer format is not being used if they see no brackets and underscoring. The prefatory language, however, is a key component of the Ramseyer format, as there are instances (such as the enactment or repeal of entire chapters or parts) where the use of brackets, strikethrough, and underscoring are not required.
- B. New chapters, parts, sections, or definitions.
1. After the title and enactment clause of the bill, the first section of the bill is numbered “SECTION 1”. This will be the findings or purpose section if you think one necessary.
 2. If there is no findings or purpose, SECTION 1 will be the first of any new chapters, parts, or sections, if there are any.
 3. See pages 59 to 61 (New Material) for prefatory language to be used for new chapters, parts, sections, and definitions, and for examples.
 4. Note that the material in new chapters and parts need not be underscored. However, all material in a new section *must* be underscored. Apply this rule literally on the basis of form--it is purely arbitrary and has nothing to do with length. Therefore, a part consisting of two sections that are each one sentence long need not be underscored. One hundred new sections that are being added to a chapter that are not designated as one or more parts must all be underscored.
 5. Insert appropriate bill section (*e.g.*, SECTION 1, SECTION 2, etc.) numbers and prefatory language in front of the new material in your stack of pages.
- C. Amending sections and other material.
1. What needs to be set out? The “base” that must be set out is the section or subsection that is being amended.
 - a. If a section is divided into subsections and only a subsection is being amended, then only the subsection needs to be set out.
 - b. If a section is not divided into subsections, then the entire section must be set out, even though only a single minor change is being made.
 - c. However, if a section is being amended to add or delete an *entire* subsection, then the whole section must be set out.

- d. Definitions are easiest. If only a single definition is being amended, added, or repealed, then only the affected definition needs to be set out.
 2. Subsections--those are the things that are indicated by the lower case alphabets (a), (b), (c), etc. right? Not necessarily. They are occasionally indicated by (1), (2), (3)--which are normally paragraph designations.
 3. So how are we supposed to be able to tell whether something is *really* a subsection or not? There is a litmus paper test--the (a) or the (1) must come *immediately* after the period in the section title or heading. If there are any words between the period and the (a) or (1), they are *not* subsections. See example number 3 on p. 68.
 4. See pp. 53 to 59 for prefatory language to be used in amending various items, and examples of different types of amendments.
 5. When making changes to existing text, delete first, then add--in other words, the pattern should be “[~~deleted material~~] added material” in each case.
 6. Punctuation. Don’t add new text *in front* of the punctuation. Delete the punctuation, then add the new material. Don’t use the computer’s “Move” or “Insert” functions on any existing punctuation. See p. 53 (top), and examples 4a and 4c on pp. 68 to 69.
 7. Go back to the stack of papers and the sections you have identified as needing amendment.
 - a. You have set out the full text of sections you identified as needing amendment. Identify those in which only specific subsections need to be amended, and delete remaining statutory text that does not.
 - b. Make required changes to each section or subsection, showing changes with necessary bracketing, strikethrough, and underscoring.
 - c. Insert appropriate bill section numbers and prefatory language in front of the various amended sections, subsections, section titles, or definitions.
- D. Repealed chapters, parts, sections, and definitions.
1. Rules for repeals mirror the requirements for new chapters, parts, etc., except that bracketing and strikethrough are required instead of underscoring.
 2. Repealed chapters and parts need not be bracketed. Prefatory language is enough.

3. Repealed sections must be set out in entirety and bracketed and stricken.
 4. See pp. 63 to 66 for prefatory language and examples.
 5. Go back to the stack of papers.
 - a. Insert appropriate bill section numbers and prefatory language for chapters and parts being repealed.
 - b. Insert appropriate bill section numbers and prefatory language for sections being repealed, and bracket and strikethrough those sections.
- E. If the *only* amendments being made to a number of sections or subsections are virtually identical (*e.g.*, changing the name of an agency or the title of an official). There is a “shortcut” method of amendment that avoids having to set out the sections or subsections in their entirety. See item 6b on p. 66.

XII. Amendments to uncodified Session Laws (see generally Chapter 7 of Drafting Manual).

- A. Same rules for Ramseyer as discussed in section XI.
- B. Statutory “base” that must be set out.
 1. Not using *HRS* sections as base, because this is uncodified session law material.
 2. Therefore, use the bill sections (*e.g.*, SECTION 1, SECTION 2, etc.) and subsections contained therein, if any, as the equivalent of *HRS* sections.
- C. See pp. 74 to 79 for prefatory language and examples. Be careful not to “glom on” to an example too quickly, or apply any one too broadly, as the examples respond to about a dozen different scenarios.

XIII. Appropriations provisions (Whether as separate bills or components of bills doing other things). See generally pp. 80 to 96 for explanation and examples.

XIV. Transition provisions.

- A. It’s one thing to draft and pass a bill to change a law. It’s another thing for the world to respond to the change. Suffice it to say that one cannot usually expect things to happen instantaneously. Transition provisions may be required to tie up some of the “loose ends” that may result from the contemplated law changes.

- B. Transfer of officers and employees to another agency--pp. 38 to 39.
- C. Transfer of functions between agencies.
 - 1. Continuity of rules, policies, etc.--p. 39.
 - 2. Effect on deeds, contracts, permits, etc.--p. 39.
- D. Transfer of records and equipment between agencies--p. 39-40.
- E. Provision against impairment of federal funds and bonds--p. 40.
- F. Act contingent upon ratification of constitutional amendment--p. 41.
- G. Contracts; prevent impairment of ongoing--p. 41.
- H. Carryover of appropriated funds--p. 41.
- I. Lapsing or nonlapsing of appropriations--p. 35.
- J. Question on ballot for proposed constitutional amendment--p. 12.
- K. Severability--pp. 11 to 12.

XV. Ramseyer provision (effect of bracketing, strikethrough, and underscoring). See item 7 on p. 67.

XVI. Effective date--pp. 33-34.

XVII. “Drop dead” provisions.

- A. Drop dead provisions provide for the automatic repeal by operation of law of a portion of a measure or the entire measure. See item 18 on p. 40.
- B. This is easy and straightforward enough if a drop dead provision is made a part of a measure that enacts nothing but new language--that language will simply be repealed by operation of law on the drop dead date.
- C. Things can become considerably more complicated, however, when an *amendment* to an existing law is slated to drop dead. What is it that drops dead? Is it only the amendments? Or does the *entire underlying law go with it*? One way to make it absolutely clear that only the amendments die (*i.e.*, that the amendments are thus only temporary amendments) is to provide for the reenactment of the underlying law in the form in which it existed before the amendment took effect--see p. 44.
- D. For some insight on just how complicated this can become, see pp. 44 to 50.

- E. An alternative to adding a drop dead provision to a bill is to add new language to the text of an existing law providing a temporary alternative provision. *E.g.*, “provided that from July 1, 1997 to June 30, 2000, the application fee shall be \$1.”

XVIII. Some general observations and suggestions.

- A. This stuff looks worse (*i.e.*, harder) than it really is.
- B. You will probably make better progress by jumping in and trying it, rather than trying to learn everything first and keeping it in your head.
- C. Focus on the *substance* of how you want the law to read. People tend to place too much emphasis on peripheral structural issues such as whether something should be a new part as opposed to several new sections and amendments to some others. Also don’t worry too much about whether something should be in chapter X or chapter Y. Just make a reasonable choice and let the revisor of statutes take care of it.
- D. Department administrators--in terms of staff productivity, there is a “bigger bang for the buck” if the drafting is done by a few centralized individuals, rather than having many decentralized people trying to learn all this stuff on their own and reinvent the wheel separately.
- E. Supervisors and other reviewers--if the departmental administrators don’t buy into item D, don’t play “gotcha” on the structural and stylistic aspects of the bill. It will only make the drafters place too much emphasis on the inconsequential. Help the drafters by being clear on the desired and intended policy statements or changes, and by focusing on the substance of the changes proposed by the measure.
- F. Feel free to ask any of the researchers at the Legislative Reference Bureau for assistance (587-0666). You don’t have to ask for anyone by name. Just say you’d like to speak to a researcher about a bill drafting question.