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STATUTORY CROSS REFERENCES—THE "LOOSE CANNON" OF STATUTORY CONSTRUCTION IN FLORIDA

ERNEST E. MEANS*

I. INTRODUCTION

Considering the flood of legislation passed in recent years by state legislatures and Congress,¹ it is becoming less and less likely that the practitioner can ever afford to ignore statutory materials in researching a legal problem. But once the Florida practitioner turns to the Florida Statutes, the likelihood is that he will encounter, in the text of the law consulted, at least one specific reference to some other provision of Florida law. Of the approximately 16,000 sections making up the Florida Statutes, some 5,500 contain such references. In all, there are about 13,000 specific references to other provisions of the Florida Statutes.²

Statutory cross referencing is by no means peculiar to Florida or modern times. It appeared in legislation of the English Parliament as early as the thirteenth century and was commonly utilized in the early years of the Canadian provinces and the American colonies.³ At the present time, other states apparently rely on statutory cross references to about the same extent as Florida.⁴

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2. Fla. HB 2329 (1977). These estimates, contained in the “whereas clauses” of the cited bill, were assembled by the Statutory Revision Division of the Joint Legislative Management Committee under the author’s supervision. They were based on extensive electronic searching of the 1975 edition of the Florida Statutes and also the direct “eyeballing” of that edition by the division’s staff.


4. In response to a questionnaire stating the extent of Florida usage of statutory cross referencing, the revisers of statutes for Oregon and Texas reported that usage of the device in their respective states was about the same as in Florida. The reviser for North Dakota reported that “there are approximately 8,012 specific statutory references contained in approximately 6,740 sections out of approximately 21,127 sections contained in the North Da-
There is no intention of discussing extensively the advantages and disadvantages of so-called reference statutes. In fact, it is impossible to imagine published statute law without them. The universality of the practice strongly suggests that their use is inevitable. Two states—New York and New Jersey—went so far as to attempt to prohibit the practice by seemingly unambiguous constitutional provisions. In both states, the courts have refused to give literal effect to their respective constitutional provisions. Rather, they distinguish between references to substantive law and references to procedural provisions, and permit the latter in spite of the constitutional prohibitions.

This article accepts the widespread use of statutory cross references as a fact of life and leaves to others the question of whether the device is abused through overuse. The focus will be upon a particularly troublesome problem that confronts the user of the Florida Statutes when he encounters a specific cross reference to another provision of Florida statutory law. Since the consequence of a cross reference to a statutory provision is to incorporate that provision into the adopting statute, it follows that the meaning of the reference within the adopting statute can only be ascertained by finding and analyzing the incorporated provision. Suppose, however, that the referenced provision has been amended one or more times, with a corresponding number of different versions. Which version should be consulted? The one that was originally enacted? The one that existed when the cross reference was enacted? The one that exists at the time the law is being consulted? As this article shall demonstrate, the danger that the user of the statutes will consult the wrong version of the referenced provi-

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5. N.J. CONST. art. IV, § 7, ¶ 5 provides in part, "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act." N.Y. CONST. art. 3, § 16 is substantially identical to the New Jersey provision just quoted.


7. The problem of incorporation by reference assumes special dimensions with references to statutory materials because they are subject to amendment in a way that other materials are not. Wills, contracts, specifications, and the like may be amended, but they are not subject to regular and systematic amendment as are statutes. Usually, only two or a few parties are affected who have negotiated the amendments in the first place and are therefore fully aware of them. On the other hand, the Florida Legislature meets for at least 60 days each year and normally enacts some 400 general laws, most of which constitute amendments to existing statutory law.
sion—with potentially disastrous consequences—is a very real one.

II. The Common Law Doctrines

As long as the reference is to the law of the same lawmaking authority it is a matter of legislative intent whether the incorporation by reference includes subsequent changes to the referenced provision. However, legislative bodies seldom express their intention on this issue, so common law rules were developed to assist in inferring legislative intent.

From a very early time, it has been generally agreed that the legal effect of a specific statutory cross reference is to incorporate the language of the referenced statute into the adopting statute as though set out verbatim, and that in the absence of express legislative intent to the contrary, the legislature intends that the incorporation by reference shall not be affected by a subsequent change to the referenced law—even its repeal. In other words, each referenced provision has two separate existences—as a substantive provision and as an incorporation by reference—and neither is thereafter affected by anything that happens to the other.

An early qualification to the general doctrine, often attributed to the Florida case of Jones v. Dexter, became equally accepted. This was—again in the absence of express legislative intent to the contrary—that when the reference is not to a specific statute, but to the law in general as it applies to a specified subject, the reference takes the law as it exists at the time the law is applied. Thus, in the case of general references, the incorporation does include subsequent changes to the referenced law.

In general, this is the common law formula that purports to guide the practitioner in his interpretation of the many statutory cross references that he will encounter in his research. As a formula, it seems basically clear and straightforward; incorporations by specific reference are not affected by later changes to the referenced law, but incorporations by general reference are so
affected.

This seems a reasonable formula for inferring legislative intentions concerning later amendments to the referenced material. When the cross reference is specific, the enacting legislators are consciously incorporating an existing statutory provision into the new legislation. Considering the specificity of their intent, there is little basis for assuming that they also intended to embrace the perhaps dangerous uncertainty of possible future amendments to the referenced provision. But when the cross reference is in general terms, it seems equally apparent that they have nothing very precise in mind. True, it is intended that incorporation by reference will take place from time to time as the adopting law is consulted. However, the degree of certainty that would warrant the exclusion from a reference of future amendments to the law governing the specified subject matter is not present in general references.

Courts are prone to accept this formula at face value and to apply it in a mechanistic manner without a reasoned analysis of the cross reference problem. When confronted with a need to construe a cross reference, an appellate court will usually be satisfied to recite the opposing rules concerning specific and general references, state whether the reference in question is specific or general, and announce a result accordingly.

Notwithstanding the comfortable certainty of such well settled doctrines, formidable problems await the users of statutes in dealing with statutory cross references. Even assuming the adequacy of the doctrines, there are traps for the unwary in applying them. But the doctrines are themselves flawed. There are circumstances in which the common law rule as to specific statutory cross references simply does not point to what is probably the most likely unexpressed intention of the legislature. Moreover, an unwarranted deviation from the common law rule as to general statutory cross references, peculiar to Florida, greatly adds to the confusion. Following a brief discussion of these problems, a statutory solution will be proposed that should greatly alleviate them.

III. THE PRACTITIONER'S PREDICAMENT

Even assuming the adequacy of the common law rules as guidelines for finding legislative intent when it has not been expressed,
the pitfalls awaiting the user of the Florida Statutes relative to statutory cross references are considerable.

A. Lack of Awareness

Before discussing the various technical problems likely to be encountered, it is appropriate to mention a threshold problem. Many—perhaps most—legal practitioners are apparently unaware that there is any reason to exercise caution in interpreting such references. In other words, when they encounter a specific reference to another provision of the Florida Statutes, they confidently turn to the current version of the referenced provision to ascertain its content. As we shall see, this can be a dangerous practice.

There is little hard evidence of this lack of awareness, since this kind of misguided procedure seldom results in an adjudication that finds its way into the appellate reports. Consequently, the author's perception of this phase of the problem is based primarily upon subjective impressions resulting from numerous inquiries received during his service as reviser of statutes in Florida.14 Often, the caller would complain that a statutory provision had been rendered meaningless by the repeal of another provision referenced therein and then express surprise upon being informed of the well established doctrine that the repealed law still existed in its incorporated manifestation.15

Further evidence of the widespread unawareness of the common law doctrines concerning statutory cross references can be seen in the paucity of appellate court opinions that even mention the problem. Despite the considerable potential for polemical exploitation that resides in the statutory cross reference morass and the possible substantive importance of a particular reference, there have been fewer than a dozen appellate opinions in Florida that deal with the common law doctrines that have evolved in response to this problem.16 About half of these opinions grossly misapply these doctrines.17

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15. Commencing with the 1973 edition, a brief warning note was inserted in the Preface to the Florida Statutes. But who reads a preface?
16. State ex rel. City of Casselberry v. Mager, 356 So. 2d 267 (Fla. 1978); Reino v. State, 352 So. 2d 853 (Fla. 1977); Hecht v. Shaw, 151 So. 333 (Fla. 1933); Williams v. State ex rel. Murphy, 131 So. 864 (Fla. 1930); Kennedy v. Watson, 131 So. 866 (Fla. 1930); State v. Harlee, 131 So. 866 (Fla. 1930); Van Pelt v. Hilliard, 78 So. 693 (Fla. 1918); Bushnell v. Dennis, 13 Fla. 77 (1870); Jones v. Dexter, 8 Fla. 276 (1859); State ex rel. Springer v. Smith, 189 So. 2d 846 (Fla. 4th Dist. Ct. App. 1966).
17. See, e.g., Reino v. State, 352 So. 2d 853 (Fla. 1977) (court applied cross reference
Further compelling evidence of this widespread misapplication of cross reference doctrine can be seen in the ineptness with which it has on occasion been applied by Florida appellate courts. For example, in a recent case, the Fourth District Court of Appeal was confronted with an obvious statutory ambiguity. The principal statute provided for judicial review of annexation proceedings in the circuit court "pursuant to § 120.31," whereas the referenced section provided for review by certiorari in the district courts of appeal. One of the reasons that the court gave for finally opting in favor of review in the circuit court revealed its total unawareness of statutory cross reference doctrine. Said the court: "Another argument supporting jurisdiction for review in the circuit court is that Section 120.31 was repealed by the Legislature in 1974 . . . . Since Section 120.31 has been repealed, it is a nullity, and any reference to it in another statute that is still effective may properly be ignored." Of course, under the common law doctrine, the repeal of section 120.31 would not have affected its existence as an incorporation by reference in the municipal annexation law. The court's statement could not have been more contrary to the well established doctrines.

In the relatively recent case of Reino v. State, a state attorney's office and the justices of the Florida Supreme Court demonstrated that even when there is some awareness of cross reference doctrines, the knowledge may be so flawed as to be tantamount to unawareness. At issue was whether prosecution for a murder alleg-

document when there wasn't even a cross reference); Overstreet v. Blum 227 So. 2d 197 (Fla. 1969) (referenced statute held insulated from subsequent administrative interpretation); County of Seminole v. City of Lake Mary, 347 So. 2d 674 (Fla. 4th Dist. Ct. App. 1977) (referenced statute subsequently repealed held a nullity via a vis adopting statute).

20. County of Seminole v. City of Lake Mary, 347 So. 2d at 675. Shortly thereafter, the Florida Supreme Court was confronted by the same issue in the case of State ex rel. City of Casselberry v. Mager, 356 So. 2d 267 (Fla. 1978). The supreme court also decided in favor of review in the circuit court, although on the ground that this was required by the essentially local character of the annexation proceeding. Id. at 269. However, concerning the statutory reference to § 120.31, Justice England, writing for the court, showed that he was aware of the prevailing doctrine. He explained, at 268 n.3:

The fact that § 120.31 has been repealed, however, does not render its provisions ineffective for the purposes of § 171.081. We have held that the repeal of one statute which the legislature has by reference incorporated into another will not affect the referencing statute. (Citing Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918)).

21. 352 So. 2d 853 (Fla. 1977).
edly committed during the hiatus between the United States Supreme Court's holding in *Furman v. Georgia* (which invalidated the death penalty) and the effective date of the new death penalty statute enacted by the Florida Legislature was subject to the two-year statute of limitations.

The limitation statute provided that prosecution of an offense "punishable by death" could be commenced at any time, but that prosecution of an offense "not punishable by death" had to be commenced within two years after commission. The persons charged argued that since the alleged offense was, as a result of *Furman*, not punishable by death, it fell within the category of offenses barred by the two-year statute of limitations. The state argued, in part, that the various statutes designating capital crimes had been incorporated by reference into the limitations statute by virtue of the phrase "punishable by death" and, as incorporated, were, in accordance with the well-established doctrines relating to statutory cross references, unaffected by the subsequent holding of the U.S. Supreme Court in the *Furman* case.

Justice Sundberg, writing for the majority, took this attempted application of cross reference doctrine quite seriously, apparently failing to notice that it was facially flawed in at least two ways. For one, there was not even a statutory cross reference involved, in the sense that would have warranted invoking the doctrines relating to statutory cross references. At most, there was what might be

23. Ch. 72-72, 1972 Fla. Laws 241 (current version at Fla. Stat. § 921.141 (1979)).
25. *Id.* at § 932.465(1).
26. *Id.* at § 932.465(2).
27. 352 So. 2d at 855.
28. *Brief for Respondent at 8-10, 352 So. 2d 853 (Fla. 1977):*

The reason that murderers may be prosecuted at any time, even though their acts were committed during the post-*Furman*, pre-October 1, 1972, period, is because of the principle of statutory construction which is denominated "incorporated by reference." This principle is widely recognized . . . . ([citing 2 L.Ed. 2d 2048, 168 A.L.R. 627, and Van Pelt v. Hilliard, 78 So. 693 (Fla. 1918)].

. . . .

What this principle means in the instant case is that when the limitations statute incorporated the first degree murder statute by reference to "offenses punishable by death," the incorporation into the limitations statute was unaffected by the modification of the penalty provision of the first degree murder statute by the *Furman* decision.

29. 352 So. 2d at 858-60. Justice Sundberg devoted two pages of his opinion to the most thorough review of the history of cross reference doctrine ever attempted by a Florida appellate court. Justice Karl dissented without opinion.
termed an implied reference, in the sense that other statutes identified the offenses that were "punishable by death." References of this kind are even more remote than the so-called general references, in terms of the specificity of legislative intent that would justify application of the common law doctrines relating to specific references.30

The second way in which the attempted application of cross reference doctrine was facially defective was that it purported to insulate the incorporation by reference from the effect of a subsequent judicial opinion.31 Of course, the purpose of the common law doctrines is to assist in inferring legislative intent concerning the effect of subsequent legislative changes to the referenced law—not the effect of subsequent court opinions.32 As to the latter, the legislature has no legitimate discretion and therefore expresses no intent, by implication or otherwise. The Reino court would have been better advised had it simply ignored this phase of the respondent's argument or dismissed it as inappropriate under the facts of the case.

Another example of the judicial misuse of cross reference doctrines is the much-cited case of Overstreet v. Blum.33 There, the Florida Supreme Court rejected the argument that a tax statute providing that a tax on rooming accommodations was to be based on the same room count "as used by the hotel and restaurant commission in [section] 509.251,"34 constituted an unconstitutional delegation of legislative authority to the commission. The basis for the court's rejection was that since the reference to section 509.251 was specific, the common law rule concerning specific references required the room count to be the one in effect at the time of the reference, and therefore no discretion had been vested in the commission.35

Here again, the court seems to have forgotten the basic purpose of the doctrines it purported to apply. Since the referenced section 509.251 had not been amended since its incorporation by reference into section 205.251, these doctrines were not even involved in the

30. Id. at 859. This type of implied reference also occurs in the thousands of words and phrases that are encountered throughout the published statutes and are defined to some degree by a statutory provision other than the one in which they occur.
31. Id. at 858.
32. See text supra, accompanying notes 8-10.
33. 227 So. 2d 197 (Fla. 1969).
34. FLA. STAT. § 205.251(1) (1967), 227 So. 2d at 198.
35. Id. This argument had been suggested by the appellant Attorney General of Florida. Brief for Appellant at 13-16, Overstreet v. Blum, 227 So. 2d 197 (Fla. 1969).
first place. But even if a subsequent amendment to the referenced section had legitimized the court’s use of the cross reference doctrine, it would only have been relevant for the wording of the incorporation by reference—not for administrative actions that may have taken place pursuant to the referenced provision. In short, cross reference doctrine was quite irrelevant to the meaning of the tax statute involved.

It would be an unwarranted digression from the main purpose of this paper to attempt to explain the pervasive misuse of cross reference doctrines illustrated by such cases as these as other than a probable symptom resulting from neglect of the law relating to legislative process by the law schools and the profession. In any event, the symptom itself is sufficiently serious to warrant immediate and radical treatment.

B. Expression of Legislative Intent

When a section of the Florida Statutes has been amended subsequent to its incorporation by reference into another section, the user of the statutes must inquire whether the legislature intended such an amendment to be included in the incorporation. The common law doctrines are intended to assist in inferring such intent only when it has not been expressed. The user must be alert to detect stated expressions of intent.

The intention that later amendments are to be included in the incorporation of referenced material is at times quite explicit. For example, section 123.32, Florida Statutes, which is part of the chapter on judicial retirement, provides: “Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.”

A procedure recently employed by the Florida Legislature was obviously intended to express an intention contrary to that which

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36. See text supra, accompanying notes 8-10.
39. FLA. STAT. § 123.43 (1979) is identically worded. Of course, to the extent that these sections purport to adopt as Florida law future changes to incorporated federal statutes, they are unconstitutional as an invalid delegation of legislative authority. State v. Rodriguez, 365 So. 2d 157 (Fla. 1978); Freimuth v. State, 272 So. 2d 473 (Fla. 1972); Florida Indus. Comm'n v. State, 21 So. 2d 599 (Fla. 1945).
would have been inferrable using the common law rule. The 1979 legislature amended section 409.266, Florida Statutes,\textsuperscript{40} which had been specifically referenced in section 409.345(10), Florida Statutes.\textsuperscript{41} Under the common law rule the 1979 amendment would not have applied to the adopting provision.\textsuperscript{42} In this instance, however, it was intended that the amendment would apply. The legislature expressed this intent by reenacting the adopting provision without change. The following explanation appeared in the directory wording of the reenacting section: "For the purpose of incorporating section 409.266, Florida Statutes, 1978 Supplement, as amended by this act, in the cross-reference thereto, subsection (10) of section 409.345, Florida Statutes, 1978 Supplement, is reenacted to read. . . ."\textsuperscript{43}

Technically, there is little question that this procedure effectively incorporated the amendment into the adopting statute. It is questionable, however, whether this was the best procedure to accomplish this purpose. The directory wording in which the legislature expressed its intent is routinely left uncodified. Therefore, only the careful researcher who is knowledgeable about the legislative process would learn of it. Of what value is an expression of legislative intent that does not come to the attention of the majority of users of the Florida Statutes? The more effective procedure would have been to add something similar to: "as amended by Committee Substitute for House Bill 506 (1979)," after the specific reference in the adopting statute.\textsuperscript{44}

\textbf{C. Specific Versus General References}

Viewed abstractly, the distinction between specific and general references seems too clear to admit of doubt. Unfortunately, there are pitfalls for the unwary researcher even in making this basic distinction.\textsuperscript{46}

The principal criterion by which specific references are distin-

\textsuperscript{40} (1978 Supp.)
\textsuperscript{41} Ch. 78-433, § 16, 1978 Fla. Laws 1433.
\textsuperscript{42} See text infra, accompanying note 97 for discussion suggesting that the common law fails to deal adequately with the kind of reference here involved and that it would be more reasonable to infer a legislative intent contrary to that indicated by the common law rule.
\textsuperscript{43} Ch. 79-382, § 2, 1979 Fla. Laws 1910.
\textsuperscript{44} The reviser could substitute the session law chapter number in the Florida Statutes version. However, the statutory rule of construction proposed at the end of the present paper, see text infra preceding note 103, would obviate the necessity of any expression of intention in the circumstance here described.
\textsuperscript{45} See generally Read, supra note 3, at 273-77.
guished from general references is the degree of certainty with which the referenced provisions can be identified. Yet, how should a reference to a specific chapter of the Florida Statutes be categorized? A reference to a numbered chapter would arguably be subject to the doctrine relating to specific references. But Florida Statutes chapters are organized by subject matter, with the result that each chapter constitutes "the law dealing with a specified subject." How would one distinguish for this purpose, therefore, between a reference to chapter 245, on the one hand, and the "law relating to disposition of dead bodies," on the other?

Even descriptive references may be sufficiently focused to be considered specific. An example is "[a]ll provisions of the election law pertaining to a contest of an election of constable" which was held to be a specific reference. On the other hand, the Supreme Court of Washington treated as general a reference to waiver of jury trial "as in civil cases in courts of record, in the manner prescribed by law," and therefore applied the law in force at the time of the proceedings.

Even when a reference is to the number of a particular section of statutory law, there is no absolute assurance that a court will treat it as a specific reference for the purpose of applying the common law doctrines. In a 1943 case, the Supreme Court of Wisconsin treated a statutory provision that certain village improvements should be made "pursuant to the provisions of subchapter XX of chapter 64bb of the statutes" as a general reference which included subsequent amendments to the referenced provisions. The court reasoned that the purpose of the reference had been to adopt "the whole scheme of procedure used in the cities" and concluded: "This being so, the fact that the law is referred to also in terms of the sections of the statutes in which it is to be found is not considered sufficient to make it an adoption of just one particular statute." Similarly, in a 1977 opinion, the United States Court of Appeals for the Seventh Circuit, by an extraordinarily complex line of reasoning, concluded that a statutory reference to "the pro-

46. See text, supra at note 11.
47. FLA. STAT. ch. 245 (1979).
50. George Williams College v. Village of Williams Bay, 7 N.W.2d 891 (Wis. 1943).
51. Id. at 893.
52. Id. at 894.
53. Director, Office of Workers' Comp. v. Peabody Coal Co., 554 F.2d 310 (7th Cir. 1977).
visions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended (other than the provisions contained in sections 1, 2, 3, 4, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof)." was actually "a general reference masquerading as a specific and descriptive reference," with the consequence that it was construed to include subsequent amendments to the referenced provision.

These are, of course, isolated cases, and the difficulty of distinguishing between specific and general references should not be overstated. Nevertheless, it is clear that the practitioner cannot afford to take even this phase of the statutory cross reference problem for granted.

IV. A Florida Aberration

The 1859 Florida case of Jones v. Dexter has been credited with originating the generally accepted exception to the original common law cross reference doctrine, to the effect that a general reference to the law regulating a given subject takes the law as it exists at the time it is applied—including any amendments subsequently enacted. It is ironic that although this principle is generally accepted in other jurisdictions, its authority in the state of its origin is very much in doubt. This unfortunate circumstance is the result of a pair of aberrational holdings in 1930 by the Florida Supreme Court and a 1977 opinion by the same court that apparently legitimized and revived the two earlier decisions.

A. A Variation on the Theme of Jones v. Dexter

The opinions of the Florida Supreme Court in Williams v. State, and State v. Harllee, were handed down on the same date and directed to the same issue. The reference in the adopting statute in Williams provided that "the fees of Constables shall

54. Id. at 320 n.12.
55. Id. at 329.
56. 8 Fla. 276 (1859).
57. Id. at 288-89. See also Poldervaart, supra note 3, at 724; Read, supra note 3, at 272.
58. See note 11 supra.
59. Williams v. State, 131 So. 864 (Fla. 1930); State v. Harllee, 131 So. 866 (Fla. 1930).
60. Reino v. State, 352 So. 2d 853 (Fla. 1977).
61. 131 So. 864 (Fla. 1930).
62. 131 So. 866 (Fla. 1930).
63. They involved different statutes, however. In Williams, the court was reviewing a grant of mandamus, whereas in Harllee, a denial of mandamus was involved.
be the same as is [sic] allowed to Sheriffs of the counties for like services." The referenced statute in Harllee similarly provided that "[t]he fees of a justice of the peace shall be the same as those of the clerk of the circuit court for similar service." The fees for both the sheriffs and the clerks of the circuit court had been increased subsequent to the dates of the respective reference statutes. A constable and a justice of the peace each brought actions in mandamus to require their respective boards of county commissioners to pay them fees at the higher rates provided by the later laws. The question in both cases was whether the increased fees enacted by the subsequent amendments were included in the respective incorporations by reference. In other words, were the constables and justices of the peace entitled to the higher fees that prevailed at the time of their suits for mandamus, or were they limited to the lower fees that prevailed at the time the respective reference statutes were enacted?

Since both references were general in nature, the issue obviously fell within the rule of Jones v. Dexter, to the effect that a general reference includes subsequent changes to the referenced law. Justice Buford wrote an opinion for the court affirming the trial court's issuance of a peremptory writ in the Williams case, based squarely on the authority of Jones v. Dexter. Curiously, subsequent to the publication of Justice Buford's opinion, the court reconsidered the case on rehearing and published an opinion by Justice Whitfield taking the opposite view and reversing the judgment of the trial court.

In reversing its earlier position, the court continued to view the references as general, but held that the Jones v. Dexter exception to the common law rule did not apply when the referenced law appeared only in another section of the same statute as the cross reference itself. The court summarized its holding at the conclu-

64. Ch. 3106, § 4, 1879 Fla. Laws 45.
65. Section 1630(2) Rev. Stat. 1892. This specific reference provision appeared for the first time in the Revised Statutes 1892 and was not attributed to any specific act of the legislature. 131 So. at 867.
66. Ch. 7886, 1919 Fla. Laws 226 and ch. 10091, 1925 Fla. Laws 112 (sheriffs); ch. 11893, 1927 Fla. Laws 393 (clerks of the circuit court).
67. 8 Fla. 276 (1859); see text supra, at note 10.
68. Williams v. State, 125 So. 358, rev'd on rehearing, 131 So. 864 (Fla. 1930).
69. 131 So. 864 (Fla. 1930). In both Williams and Harllee, Justice Whitfield wrote the majority opinion, Chief Justice Terrell and Justices Strum and Brown concurred in the majority opinion, and Justice Buford, with Justice Ellis concurring, dissented with an opinion.
70. See text supra, at note 10.
sion of the *Harllee* opinion:

When one provision of a statute by general words of reference adopts provisions that appear only in another section of the same statute, future amendments of the adopted provisions are not to be regarded as included in the adoption unless an intent to include such future amendments in the adopting provision clearly appears.\(^{71}\)

The Florida Supreme Court’s decisions in the *Williams* and *Harllee* cases are subject to serious criticism on the ground that they exhibit confusion concerning the “single enactment” concept, they lack precedent, and they are illogical.

1. **Confusion concerning the “single enactment” concept.**

A decisive element in the court’s holding was the notion that the adopting and referenced provisions were both enacted as part of the same statute. It is evident, however, that the court was confusing two different concepts: (1) an act of the legislature; and (2) a codification of all of the general law of the state. This confusion is strongly suggested by the court’s opinion in the *Williams* case; it is conclusively exhibited in the *Harllee* opinion.

In *Williams*, the adopting and referenced provisions did indeed occur originally in the same act of the legislature.\(^{72}\) Yet, the opinion also makes much of the fact that these provisions were carried through successive codifications of Florida law, concluding:

> The Revised General Statutes of 1920 are one enactment; and section 2899 thereof refers to the fees “as are allowed” by the provisions of section 2891 of the same revision. Both sections being in the Revised General Statutes, section 2899, [sic] fixes the fees of constables to “be the same as are allowed sheriffs for like services,” meaning the fees that “are allowed” by the same general enactment and not by subsequent statutes.\(^{73}\)

As previously mentioned, the court’s confusion of a legislative act and a general codification of law appears with even greater certainty in the *Harllee* opinion. In the facts of that case, the reference provision made its first appearance, not as an act of the legis-

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71. 131 So. at 868.
72. Ch. 3106, §§ 4, 2, respectively, 1879 Fla. Laws 45.
73. 131 So. at 865.
lature, but as section 1630 of the Revised Statutes 1920. Moreover, the court’s explanation of its holding confirms that it is indeed using the word “enactment” in the codification sense.

In each case of enactment and re-enactment the section as to fees allowed justices of the peace referred to the provisions of a section in the same statute defining the fees allowed to clerks of the circuit courts. The Revised Statutes of 1892, the General Statutes of 1906, and the Revised General Statutes of 1920 each constitutes one enactment. Section 3084, Revised General Statutes, defines the fees of the clerks of the circuit courts. Section 5971, Revised General Statutes 1920, makes the fees of the clerks of the criminal courts of record “the same as the fees of the clerks of the circuit courts in like cases.” Section 3312, Revised General Statutes 1920, allows the clerks of the civil courts of record “the same fees as clerks of the circuit court receive for similar work.” Section 3384 Rev. Gen. Stats. 1920, makes the fees of a justice of the peace “the same as those of the clerk of the circuit court for similar services.” The last three sections refer to fees that are defined in section 3084, and all four of the sections are contained in one enactment, viz. the Revised General Statutes of 1920.74

It is true that enactment of a general codification into positive law does constitute a legislative reenactment of the contents of such codification for some purposes.75 But to treat it as constituting a single enactment in the context of the statutory cross reference problem is to nullify completely the Jones v. Dexter exception to the common law doctrines relating to specific references. After all, the Florida Statutes of this day constitute a single enactment in the same sense that the court employed in referring to the Revised Statutes, the General Statutes, and the Revised General Statutes. Those codifications were the product of bulk revisions,76 whereas the Florida Statutes are the product of a continuous revision program.77 But this difference is quite irrelevant here; both are enacted into positive law by an act of the legislature. If an incorporation by general reference does not include subsequent amendments to the referenced law simply because both are in the Florida Statutes, it is difficult to imagine any circumstance in

74. 131 So. at 867.
77. FLA. STAT. § 11.2421 (1979).
which the rule of Jones v. Dexter could ever apply.

2. Lack of precedent.

The Florida Supreme Court made no real effort to support its holdings in Williams or Harllee by judicial precedent from Florida or any other jurisdictions. Insofar as a few cases from other jurisdictions had dealt with the matter of references to other provisions of the same statutes, they would have afforded the court no comfort. In general, those few cases merely confirmed the rule that incorporations by specific reference are not affected by subsequent changes to the referenced provision, even when the reference is to a provision of the same statute.\(^78\) In the Harllee opinion, the court did cite the Florida case of Van Pelt v. Hilliard\(^79\) and the U.S. Supreme Court’s opinion in Panama R.R. v. Johnson\(^80\) in a manner suggesting that these cases supported the conclusion that incorporations by general reference do not encompass subsequent changes to the referenced law when it is part of the same statute.\(^81\) However, since the applicability of subsequent amendments was not even an issue in either case, they did not provide any support.\(^82\)

3. Absence of logical support.

Perhaps the most telling criticism of the rule enunciated by the Florida Supreme Court in the Williams and Harllee cases is that it was completely illogical. The court made no effort to justify its holding in logical terms; it would have been difficult to do so since logic would have compelled an opposite conclusion. The question whether statutory cross references, general or specific, should include subsequent changes to the referenced law produces a near-standoff between two equally compelling considerations. On the one hand, the convenience and reasonable expectations of the users of the statutes—many of whom are apparently quite unaware

\(^79\) 78 So. 693 (Fla. 1918).
\(^80\) 264 U.S. 375 (1924).
\(^81\) 131 So. at 867-68.
\(^82\) In Panama R.R. v. Johnson, the U.S. Supreme Court expressly approved the incorporation by reference of “the Employers’ Liability Act of April 22, 1908, c. 149, 35 Stat. 65, and its amendments.” 264 U.S. at 391-92 (emphasis added). However, it does not appear from the published opinion whether the amendments referred to occurred prior to or subsequent to the enactment of the adopting statute.
of the exotic common law doctrines concerning statutory cross references—would obviously be best served by a rule that all references, specific as well as general, include subsequent amendments to the referenced provision. Such a rule would render harmless the propensity of most users simply to consult the current version of a referenced provision.

On the other hand, until recently, such a rule would also have meant that the legislature would be legislating blindly whenever it amended an existing law that had previously been cross referenced. It would not be reasonable to impose such a consequence upon any legislative body.

As to references to provisions of the same statute, however, logic clearly points in the opposite direction from that taken by the Florida Supreme Court in the Williams and Harilee cases. Since the normal expectation of the user that he can safely consult the current version of a referenced provision is more reasonable in this circumstance, the obligation of the legislature to conform to that expectation is correspondingly stronger. Also, and more important, since the legislature would probably be aware of cross references that were enacted by the same statute that created the provision currently being amended, the danger of blind legislation would be greatly reduced. Both circumstances compel a conclusion opposite to that reached by the court in the Williams and Harilee cases.

B. Resurrection of a Dormant Doctrine

Later users of statutes apparently recognized the lack of merit of the Williams and Harilee rationale. The rule set out by these cases was not used as precedent and was never relied upon in an appellate opinion. Indeed, were it not for its revival in the recent case of Reino v. State, there would be little justification for such attention to it in the present paper. The inapplicability of cross reference doctrine to the facts of the Reino case has already been discussed. The understanding of cross reference doctrines by Florida practitioners would have been better served if the Reino court had rejected or ignored as frivolous the state attorney’s effort to inject those doctrines into the case. That course would at least have left the rule of Williams and Harilee in the state of limbo it so richly

83. See text infra, preceding note 112.
84. 352 So. 2d 853 (Fla. 1977). See text supra, beginning at note 21.
85. See text supra, beginning at note 21.
86. See note 28 supra.
deserved. Similarly, confusion would have been minimized if the Reino court had recognized the defects of those cases and expressly repudiated them.

Unfortunately, the court followed neither of these alternatives. Once the court accepted the respondent's injection of the cross reference issue into the case, it sought to negate the argument by observing that it was based on the common law rule relating to specific references, whereas the reference in Reino was general.\(^8\) Apparently, while preparing a response to the respondent's argument, the court encountered the 1947 conclusion of an annotator that said the Florida cases, taken together, "do not seem to be in harmony with the . . . rule [as to general references]."\(^8\) If this meant that the usual rule as to general references did not apply at all in Florida, it would have been difficult to deal with the argument of respondent. As a result, the court undertook a general review of the Florida cases on the subject.

Although the court stated early in its review that closer scrutiny of the Florida cases led it to believe the annotator was in error,\(^8\) the Reino court nevertheless finally admitted that the 1930 cases had "engrafted a variation on the general rule where the adopted provision was enacted at the same time as and as another section of the same statute in which the adopting provision appears."\(^9\) Unfortunately, instead of analyzing the cases cited by the annotator—the principal one being Williams v. State\(^9\)—and rejecting them for their defects,\(^9\) the court chose simply to distinguish the reference before it as not being to a provision of the same statute.\(^9\)

Thus, the error of the 1930 cases\(^9\) was revived and given new life.

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87. 352 So. 2d at 858.
89. 352 So. 2d at 858.
90. Id. at 859.
91. See text supra, beginning at note 61.
92. See text supra, following note 71. It is strange, indeed, that the Reino court failed to detect the confusion in the 1930 opinions between codifications of general law and acts of the legislature. See text supra, accompanying note 71. The court's discussion of the Williams and Harlee cases makes clear that it was quite aware of the kind of "enactments" being referred to. Concerning the Williams opinion, it observed that the statutory provision "limited the constable to fees allowed sheriffs by the same general enactment (Rev.Gen.St.1920, §§ 2891, 2899) . . . ." 352 So. 2d at 859. Similarly, in its discussion of the Harlee opinion, the court commented that "adopting and adopted provisions were sections of the same general enactment (Rev.Gen.St.1920, §§ 3084, 3384) . . . ." Id. at 859.
93. 352 So. 2d at 859.
94. See text supra, following note 70.
V. DEPARTURES FROM THE COMMON LAW RULE

Even the practitioner who is relatively well acquainted with the case law concerning specific statutory cross references can become confused when attempting to use the common law rules as guidelines. This is because the case law does not accurately reflect the probable legislative intent concerning many—perhaps the vast majority—of the specific cross references that the practitioner is likely to encounter.

In view of the rather mechanistic manner in which appellate courts have tended to apply the common law rules, one would expect that the question concerning the applicability to incorporations by reference of subsequent changes to the referenced provisions would be easily answered. If the legislature has expressed its intention, follow it. If it hasn't, infer its intent according to whether the reference is specific or general.

Unfortunately, the rule does not function that smoothly. Indeed, there are many instances—a vast majority of them, in the author's opinion—in which the legislature simply could not have intended the outcome that would be inferrable on the basis of the common law principles. Because of some relationship between the adopting and referenced provisions, there is often no adequate reason for the legislature to deny to the user of the statutes the convenience of consulting the current version of a referenced provision. It is appropriate to identify at this point the several categories of specific references that apparently lie outside the common law rules.

A. Reciprocal Cross References

Occasionally, there will be two statutory provisions that specifically cross reference each other. For example, in the chapter of the Florida Statutes on injunctions, sections 60.05 and 60.06 provide procedures for the abatement of nuisances "as defined in s. 823.05." Section 823.05, on the other hand, defines what places may be declared nuisances and provides that such nuisances "shall be abated or enjoined as provided in ss. 60.05 and 60.06." With respect to provisions so related by reciprocal specific references, it would be futile to attempt to apply the common law rule that specific references take the referenced language as it exists at the time of the reference and are not affected by subsequent changes to the

95. See note 12 and accompanying text.
referenced provisions. It is apparent that any such subsequent amendment to either of the provisions that are so related would be fully operative as to both.

B. Cross References Having A Negative Implication

A more frequently encountered category of statutory cross references that apparently fall outside the common law doctrine is that in which the reference has an exemptive effect. This type of reference excludes the adopting provision from the effect of the referenced provision. Some examples from Florida Statutes 1979 follow:

1. Section 20.19(6)(f)2.: “All matters before the committee concerning abuse or deprivation of rights of an individual client . . . shall be closed to the public and exempt from the provisions of s. 119.07(1).”

2. Section 201.02(4): “The tax . . . shall also be payable upon documents which convey or transfer . . . any beneficial interest in lands, tenements, or other realty . . . even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071(4).”

3. Section 320.20: “The revenues derived from the licensing of motor vehicles, excluding those collected and distributed under the provisions of s. 320.081, shall be distributed monthly . . . to the following funds.”

4. Section 403.813(2): “No permit under . . . chapter 373 . . . shall be required for activities associated with the following types of projects . . . .”

In each of these examples, the adopting provision is effectively excluded from the effect of the referenced provision by being exempted in some manner. In such instances, it is only in a very technical sense that the common law rule as to specific references could possibly be applied. Thus, in the first of the examples listed, it could be asserted that such matters before the committee were not exempt from any provisions of s. 119.07(1) that had been added by subsequent amendment. It is not reasonable, however, to attribute such an unlikely intent to the legislature. It is more reasonable to infer the intent that the referenced provisions were intended to be taken as of the time of application—in other words, that subsequent changes be included in the incorporation by reference.
C. Use of Cross References for Directory Purposes

Cross references frequently contribute little or nothing to the meaning and thrust of the adopting provision, but are apparently included merely to direct the reader's attention to the external provision so he can determine some status or relationship referred to. An appropriate test for determining whether a specific reference is of this category is to ascertain whether the meaning of the adopting provision would be materially altered by the deletion of the words constituting the reference. Consider, for example, whether deletion of the bracketed portions of the following examples from the 1979 Florida Statutes would substantially alter the meanings of the respective provisions:

1. Section 400.23(2)(a): "The department shall enforce the applicable uniform fire safety standards established by the State Fire Marshal [pursuant to s. 633.05(8)]."

2. Section 400.304(8): "The State Ombudsman Committee is authorized to call upon appropriate agencies . . . for such professional assistance as may be needed . . ., including assistance from any adult protective services programs of the department [as provided for under ss. 409.026 and 828.043]."

3. Section 659.15: "On filing any charters or other papers relative to banks or trust companies with the Department of State, fees [as prescribed in s. 607.361] shall be paid to the Department of State for the use of the state."

In each instance, application of the common law doctrine concerning specific references would lead to an absurd result that should not be attributed to the intention of the legislature. Suppose in the first example that s. 633.05(8) were subsequently amended to broaden the fire marshal's authority to establish fire safety standards. Literal application of the common law rule would require a conclusion that the department should not enforce standards established under the new authority. Such an absurd intention should not be attributed to the legislature. Similar horribles can be imagined for the other examples.

D. References to Provisions within the Same Statutory Scheme

The final category of specific references failing to comport with the common law rule includes numerous examples—perhaps the vast majority of specific references. These are specific references to provisions within the same statutory scheme. They are often to another sub-unit of the same Florida Statutes section or to another
section of the same chapter. Occasionally, such references are to a
section of a different chapter. Whichever pattern is followed, the
relationship between the adopting and referenced provisions is an
intimate one, within a common statutory scheme of regulation or
other statutory objective. In view of the closeness of the relation-
ship between the adopting and referenced provisions, it is simply
inconceivable that the legislature could tolerate—much less have
intended—an alteration between the two provisions resulting from
a subsequent amendment to the referenced provision.

An especially notable example of this are the hundreds of crimi-
nal penalty provisions located throughout the Florida Statutes.
There are approximately 1,200 sections of the Florida Statutes
that contain provisions making some act or failure to act a crime.
Such provisions normally designate the degree of misdemeanor or
felony that is involved, followed by a phrase indicating that the
particular crime is punishable as provided in a series of sections of
chapter 775. For example, section 228.091(1)(b)2, Florida Stat-
utes,97 provides that certain categories of persons who trespass on
school property are "guilty of a misdemeanor of the second degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

Section 775.082 provides penalties by death or imprisonment for
the various categories of felonies and misdemeanors. Section
775.083 provides for criminal penalty fines. Section 775.084 pro-
vides penalties for habitual offenders. All three sections have been
amended since their original enactment in 1971,98 although not in a
manner which raises serious questions of cross reference
construction.99

But suppose section 775.082, Florida Statutes, mentioned in the
preceding paragraph, were amended to alter the penalties pro-
vided. Would this create a cross reference problem as to the hun-
dreds of Florida Statutes sections in which it is specifically refer-
cenced? It probably would for the relatively few sophisticates who
were sufficiently acquainted with the common law doctrines. For
most practitioners, however, it would suffice that the amended sec-
tion was obviously intended to be referenced and that it was

99. Section 775.084 was amended by ch. 75-116, § 1, 1975 Fla. Laws 218 and ch. 75-298,
§ 2, 1975 Fla. Laws 1080 which provided penalties for habitual misdemeanor offenders. This
did not create a cross reference problem, however, since references to sec. 775.084 were ad-
ded to misdemeanor penalty provisions throughout the Florida Statutes only after the
amendments of 1975. Id.
closely related to the various adopting sections as part of a single statutory scheme, and no question would be raised. It would be interesting to conjecture whether the uncertainty that is implicit in this issue would raise a due process question in the context of a criminal penalty provision.

In the case of these references contained in the various criminal penalty provisions, it is particularly obvious that the two provisions are indeed part of the same statutory scheme. In each instance, the enactment of the cross reference and the referenced provision both occurred as part of the same massive legislative effort by the 1971 Florida Legislature to restructure all of the criminal penalties imposed by state law. In one of the longest bills ever considered by the Florida Legislature, every criminal penalty provision in the Florida Statutes was amended to the pattern quoted above\textsuperscript{100} and the referenced penalty provisions of chapter 775 were enacted.\textsuperscript{101}

The fact that the language of reference and the referenced provision were originally enacted as part of the same legislative act tends to support the conclusion that the two provisions are part of a single statutory scheme. The continuing relationship between the adopting and referenced provisions as part of the Florida Statutes is even stronger evidence. For example, section 228.091(1)(b)\textsubscript{2.}, referred to previously, makes certain behavior a misdemeanor of the second degree, while section 775.082 specifies that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding sixty days. The adopting provision specifies no penalty, and the referenced provision defines no crime. Both are required for an effective criminal penalty provision. Indeed, the only way section 775.082 can have any effect is to be referenced by some other provision.

This close of a relationship between adopting and referenced provisions should not be a prerequisite to a finding that the two provisions are part of a single statutory scheme for the purpose of inferring a legislative intention that subsequent amendments to the referenced provision should be included in the incorporation by reference. Based on personal observations, the author would estimate that about seventy-five percent or more of the approximately 13,000 specific cross references to be found in the Florida Statutes have a sufficiently close relationship. A few examples from

\textsuperscript{100} See text supra, accompanying note 97.
\textsuperscript{101} Ch. 71-136, 1971 Fla. Laws 552.
the 1979 Florida Statutes should suffice to illustrate this:

1. Concerning lands for which development rights have been conveyed to the county, section 193.501(3)(a) provides that when the covenant or conveyance is for ten years or more, the assessor shall consider no factors "other than those relative to its value for the present use . . . ." Paragraph (b) then provides that when the covenant or conveyance is for less than ten years, "the land shall be assessed under the provisions of s. 193.011 [containing the regular assessment procedures] . . . ." The statutory scheme has to do with property assessments. The purpose of the reference is merely to distinguish the different assessment procedures to be followed, depending on the length of the period of the covenant or conveyance. Assuming an alteration of the assessment procedures by amendment to s. 193.011, the legislature would doubtless intend such altered procedures to apply to lands described in paragraph (b).

2. In the chapter concerning tax collections, section 197.0173(1) provides that certain penalties are to be imposed on any person "who willfully files information required under s. 197.0165 or s. 197.0169 which is incorrect." The adopting and referenced provisions are both part of the statutory scheme for tax collections. Suppose section 197.0165 were amended to require additional information and a person filed incorrect information under the new requirement. It is inconceivable that the legislature would not have intended such filing of incorrect information to be subject to the penalty of the adopting section.

3. Section 440.10(1) of the Workers' Compensation Law provides that every employer coming within the provisions of the chapter "shall be liable for . . . the payment to his employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16." Suppose one of the latter sections were amended to require additional payments. It is inconceivable that the legislature did not intend that the employer should be liable for such additional payments.

4. In the chapter concerning soil and water conservation, section 582.18(1) provides that the election of supervisors for each conservation district shall be held "at the time of the second primary election provided for by s. 100.091." But suppose the latter section were amended to change the date of the second primary. Could the legislature conceivably have intended that the supervisors would continue to be elected at the old time while the second primary
throughout the state was held at the new time? Such an absurd intent should not be attributed to the legislature.

In each of these examples, literal application of the common law rule for specific references would exclude from the incorporation any subsequent amendments of the referenced provisions. In each instance, however, this would lead to an absurd result that the legislature could not possibly have intended. It would appear, therefore, that in numerous cases, of which the foregoing are examples, the common law formula provides little assistance in divining the legislative intent.

VI. Conclusion

Statutory cross references are indeed the "loose cannon" of statutory construction in Florida. It is difficult to imagine any other apparently well settled area of the law in a more chaotic condition than the Florida law of statutory cross references. Consider the following: (1) Although a practitioner consulting the statutory law is likely to encounter one or more specific references to other provisions of Florida law, many members of the legal profession, including some judges, are apparently quite unaware that the legislature may not have intended subsequent amendments to the referenced law to be included in the incorporation by references. (2) Despite the fact that the common law rules relating to statutory cross references have a high potential for influencing the meaning of many statutes, these doctrines have been resorted to by the practicing bar so infrequently that fewer than a dozen appellate opinions in the history of the state have applied them. (3) Nearly half of the Florida appellate opinions that have dealt with the common law rules relating to statutory cross references grossly misapplied those rules in the cases before them. (4) Finally, even if they were not ignored or grossly misapplied, the common law rules relating to statutory cross references do not provide an adequate guide to the probable intent of the legislature in the vast majority of instances in which such specific references appear in the statutory law. Could it be more obvious that reform is long overdue?

A. The Statutory Solution

The difficulties with statutory cross references focus sharply on whether incorporations by reference include subsequent amendments to the referenced provisions. Since this is strictly a matter of legislative intent, it follows that the most forthright and effective
solution would be one that was initiated by the legislature. It is partly on this theory that the following statutory rule of construction is proposed:

1.05 Statutory construction; statutory cross references.—
(1) Unless expressly provided otherwise, a specific reference in any section of Florida Statutes to any other section or sections or portion of a section of the Florida Statutes shall be understood as referring to the referenced provision as it appears in the same edition of the Florida Statutes as that in which the cross reference appears.

(2) A general reference in any section of the Florida Statutes to the law of this state relating to a specified subject matter shall, notwithstanding that both the adopting provision and the referenced law may have been enacted or reenacted as part of the same statute, be understood as referring to the referenced law as it appears in the same edition of the Florida Statutes as that in which the cross reference appears.

(3) The legislative intent that a specific or general reference be understood as referring only to the referenced law as it exists at the time the cross reference is enacted, and that subsequent amendments to the referenced law are not to be understood as being included in the incorporation by reference, may be expressed by inserting after the cross reference a further reference to the then-current edition of the Florida Statutes, viz., "... as provided in s. 319.011, F.S. (1973)."

The approach to the solution of the statutory cross reference problem through adoption of a statutory rule of construction is not an untried innovation. Twelve states have already done so:102

102. COLO. REV. STAT. § 2-4-209 (1973): "A reference to any portion of a statute applies to all reenactments, revisions, or amendments thereof."
DEL. CODE ANN. tit. 1, § 307(b) (1974): "Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto."
HAWAII REV. STAT. § 1-25 (1976): "Whenever reference is made to any portion of the Hawaii Revised Statutes or of any other law of the State, the reference applies to all amendments thereto."
IOWA CODE § 4.3 (1979): "Any statute which adopts by reference the whole of a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed."
LA. REV. STAT. ANN. tit. 1 § 14 (West) (1973): "Whenever any reference is made to any portion of the Revised Statutes or to any other law, the reference applies to all amendments thereto hereafter made."
MINN. STAT. ANN. § 645.31, subd. 2 (1980): "When an act adopts the provisions of another law by reference it also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary."
deed, the Florida Legislature has already applied this device to a limited segment of the state's statutory law, and recently gave half-hearted consideration to a proposed statutory rule of construction similar to the one proposed here.

Strangely, although the repeal of referenced provisions is as much a source of the cross reference problem as their amendment, the construction statute of only one other state—Rhode Island—even refers expressly to repeals, and then only to express

N.D. CENT. CODE § 1-02-40 (1959): "A reference to any portion of a statute applies to all re-enactments, revisions, or amendments thereof."

OHIO REV. CODE ANN. § 1.55 (Page) (1977): "A reference to any portion of a statute of this state applies to all reenactments or amendments thereof."

OR. REV. STAT. § 174.060 (1979):

When one statute refers to another, either by general or by specific reference or designation, the reference shall extend to and include, in addition to the statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or the statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted.

R.I. GEN. LAWS § 43-4-13 (1956):

Wherever any statute not herein repealed refers to and adopts any statute or part of a statute which is herein repealed, or any provision or rule of law which is abrogated or modified by the general laws, such statute or part of a statute, or provision or rule of law, so referred to and adopted, shall not be deemed repealed by the provisions of this chapter, but shall be in force only so far as the same shall have been so adopted, and for no other purpose, and so far only as is not repugnant to or inconsistent with the provisions of the general laws.

TEX. [CIV.] CODE ANN. tit. 5429b-2, § 3.07 (Vernon) (1958): "Unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute."

WYO. STAT. § 8-1-103(a)(iii) (1977): "Reference to a numbered section, subsection, paragraph, subparagraph or other subdivision 'of the statutes' and the abbreviation 'W.S.' when used in conjunction with a statute section number or its designation or identification means the Wyoming Statutes in their most recently published form including amendments to original enactments."

103. See note 39 supra, and accompanying text.

104. While serving as revisor of statutes, the author drafted a proposed bill to enact a statutory rule of construction that would have had the same objective as the proposal made in the present article, see text infra, preceding note 102, and offered it to the leadership of both houses of the Florida Legislature. The operable working was as follows: "Unless expressly provided otherwise, a reference in any section of the Florida Statutes to any other section or sections or portion of a section shall be understood as including all subsequent amendments to the referenced section or sections or portion of a section."

This proposal was rejected by the Senate leadership, but was introduced as a committee bill by the House Judiciary Committee, Fla. HB 2329 (1977); Fla. H.R. Jour. 639 (1977), and subsequently passed in the House of Representatives by a unanimous vote one day prior to the end of the regular session. Fla. H.R. Jour. 1144 (1977). The Senate took no action on the bill.
the equivalent of the common law rule. One would expect such construction statutes to be construed as requiring that incorporations by reference also reflect the subsequent repeal of referenced provisions. In any event, by directing the user of the statutes to the current edition of the Florida Statutes for the operative text of a referenced provision, the proposed statute reaches both amendments and repeals of referenced provisions.

The proposed statutory rule of construction effectively addresses all of the problems identified and discussed in the present article as follows:

1. **Lack of awareness of the rules regulating statutory cross references.**

   There is no reason to expect that sophisticated awareness of the statutory rule will be any more widespread than that which prevails under the common law rule. Since the proposed rule will satisfy the normal expectations of most practitioners, however, such lack of awareness will no longer matter greatly.

2. **The problem of implied intent.**

   The proposed statutory rule eliminates any need to infer an intent on the part of the legislature. Unless the legislature expresses its intent to the contrary, all statutory cross references are to the law as it appears in the current edition of the Florida Statutes.

3. **Specific versus general references.**

   Since specific and general references will be treated the same, the distinction loses its relevance.

4. **The precedent of the Williams and Harllee cases.**

   Subsection (2) of the proposed statutory rule of construction is intended to neutralize the irrational rule of the Williams and Harllee cases, as recently revived in Reino v. State.

5. **Confusion caused by inadequacy of the common law rule.**

   There are a number of circumstances in which the common law rule as to specific statutory cross references fails to reflect the likely unexpressed intention of the legislature. In situations in-

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105. See note 102 supra.

106. The author sent a questionnaire to the reviser of statutes in the following six states having such statutes as well as a constitutional provision forbidding amendment of a law by reference to its title only: Louisiana, North Dakota, Ohio, Oregon, Texas, and Wyoming. Of the three revisers that responded, two (Ohio and Texas) indicated that the respective statute did apply to the subsequent repeal of the referenced provision, and one (North Dakota) replied that it did not. It is indeed difficult to understand how repeals and amendments can be distinguished for the purpose of applying such a rule of construction.

107. See text supra, beginning at note 96.
volving what have been referred to as reciprocal cross references,\footnote{108} references having an exemptive effect,\footnote{109} references having only a directory purpose,\footnote{110} and references to provisions within the same statutory scheme,\footnote{111} the common law rule as to specific references led to results so absurd that they could not reasonably be attributed to legislative intent. Although experience shows that such references are rarely, if ever, the subject of judicial challenge, they are nevertheless a continuing source of confusion for the user of the statutes, especially one with a sophisticated awareness of the common law rules. By directing the user of the statutes to the current edition of the Florida Statutes for the text of referenced provisions, the proposed statutory rule of construction effectively eliminates this potent source of confusion.

The proposed statutory rule of construction is not, however, without problems. By requiring the legislature to take precautions to avoid legislating blindly whenever it amends an existing law that may have been referenced by another statute, the proposed solution would place a new and relatively heavy responsibility upon the Florida Legislature. Fortunately, as a result of recent technical developments, the Florida Legislature is well equipped to handle this added responsibility.

The technical development referred to is the ability of the Florida Legislature to search the text of the Florida Statutes electronically. Since 1973, the full text of the statutes has been in computer memory and subject to search by electronic procedures. A Florida Statutes section number constitutes a numeric word and can be instantly located wherever it appears in the text of the Florida Statutes with absolute accuracy. Presumably, then, if the legislature adopts the proposed rule of construction, it would also adopt procedures by which all references to sections being amended or repealed would be routinely located and analyzed. The purpose of this analysis would be to determine whether the amendment or repeal would have undesirable consequences in any of the sections in which the provision had previously been cross referenced. Also, since the proposed statutory rule of construction will apply to all existing specific cross references, it will be necessary to scrutinize all presently referenced provisions of the Florida Statutes to ascertain whether there have been amendments that are incompatible

\footnote{108} See text \textit{supra}, beginning at note 96. \footnote{109} See text \textit{supra}, following note 96. \footnote{110} See text \textit{supra}, following note 96. \footnote{111} See text \textit{supra}, accompanying note 97.
with the adopting provisions. A revisor’s bill could then be prepared to make the required corrective amendments.\textsuperscript{112}

Other problems have constitutional dimension. For example, on the relatively rare occasion when an amendment to a referenced provision is deemed incompatible with another section in which the amended provision is referenced, it is desirable that any required corrective amendment to the latter section be enacted as part of the same act that amends the referenced section. The reason is that this corrective amendment should be enacted only if the amendment to the referenced provision is enacted. Unfortunately, there is no assurance that the adopting and referenced sections will conform sufficiently in subject matter to satisfy the requirements of the single subject provision of the Florida Constitution.\textsuperscript{113}

There is, however, ample precedent for an authoritative ruling by the Florida Supreme Court that would effectively sidestep this difficulty. In the 1966 case of Jones v. Christina,\textsuperscript{114} the court exempted revisor’s bills from the same requirement. The late Justice Drew, writing for the court, explained: “[T]his provision is inapplicable to revisor’s bills where, necessarily, many subjects must be dealt with in one bill at regular intervals if the basic purpose of continuing revision is to be accomplished.”\textsuperscript{115} The need to join a corrective amendment with an amendment to a referenced provision is similarly necessary and can be justified on the same ground.

A similar exemption would be required from a second constitutional requirement, which is that “No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.”\textsuperscript{116} Florida cases have held that this prohibition does not apply to implied amendments,\textsuperscript{117} for the obvious reason that compliance at that level would be impossible, or to

\textsuperscript{112} Although this will be a massive task, it is not an insurmountable one. It was performed by the staff of the Statutory Revision Division of the Joint Legislative Management Committee on the occasion of the submission of a similar statutory rule of construction to the 1977 Legislature. See note 104 supra. However, the resulting reviser’s bill of 133 pages did not reach the stage of formal introduction.

\textsuperscript{113} FLA. CONSTR. art. III, § 6: “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

\textsuperscript{114} 184 So. 2d 181 (Fla. 1966).

\textsuperscript{115} Id. at 185.

\textsuperscript{116} FLA. CONSTR. art. III, § 6.

\textsuperscript{117} City of St. Petersburg v. English, 45 So. 483, 487 (Fla. 1907).
a reference in one statute to another statute,\textsuperscript{118} since that is not actually an amendment.

Unfortunately, neither precedent is available for the protection of the proposed statutory rule of construction. By its operation, every amendment of an existing provision of the Florida Statutes would also constitute an actual amendment—not an implied one—of each section in which the existing section had been previously adopted by reference. However, if one accepts the inevitability of the use of statutory cross references,\textsuperscript{119} as well as the universally held view that the inclusion of subsequent amendments to the referenced provision is strictly a matter for legislative intent,\textsuperscript{120} it becomes evident that the proposed rule could legitimately be exempted from the constitutional requirement on grounds of simple necessity.

Although there is no record of the question ever having been adjudicated, the same constitutional infirmity infects each existing section of the Florida Statutes for which the legislature has expressed its intention that an incorporated reference was to include later amendments to the referenced provision.\textsuperscript{121} In any event, should the issue arise in Florida, it is to be hoped that the Florida courts would exempt such amendments from the constitutional requirements on grounds of necessity.

By adopting the proposed statutory rule of construction which would conform usage to popular expectations in the manner described, the legislature would largely eliminate the high potential for misinterpretation that led the author to characterize statutory cross references as the "loose cannon" of statutory construction. Moreover, it would be doing this at a price it can well afford to pay.

\textsuperscript{118} Van Pelt v. Hilliard, 78 So. 693, 698 (Fla. 1918).
\textsuperscript{119} See text \textit{supra}, preceeding note 5.
\textsuperscript{120} See note 8 \textit{supra}.
\textsuperscript{121} Interestingly, the three respondents to the author's questionnaire, \textit{see} note 106 \textit{supra}, reported that this issue had never been adjudicated in their states either.