

This is Chris Micheli, with the Sacramento governmental relations firm of Aprea & Micheli. Today's topic "Is the Legislature complying with Prop. 25 and the State Constitution when it adopts budget bills junior and trailer bills well after the State Budget was enacted in June?"

Most recently, in September 2017, there was a lot of talk around the State Capitol about whether it was proper, or even lawful, for lawmakers to adopt two budget bills junior as well as a multiple number of trailer bills. This of course, was three months after the state budget had taken effect.

What are budget bill juniors, and what are trailer bills? The State Constitution talks about *the* budget bill, which is generally a massive document - hundreds of pages, a multitude of spending priorities for the state of California. But often times in that large document, with all of the spending, with 200+ state agencies and departments, there are mistakes made. Or there are last minute decisions to up an appropriation or decrease an appropriation. Those are addressed in the budget bill junior. Sometimes there's more than one budget bill junior.

The trailer bills trail the main budget bill. The trailer bills contain statutory changes that are necessary in order to adopt some of the spending that is done in the state budget. So with that understanding, are adopting budget bills junior and trailer bills after the fact permissible?

The State Constitution, in Article IV, Section 12, which was most recently amended in 2010 by Prop. 25, prior to the adoption of Prop 25, California was one of only three states that required a super majority - that is a 2/3 vote of both the Senate and the Assembly - before the budget could be adopted and sent to the Governor for signature. In that regard, Prop 25 did two important things. First, it says if the Legislature doesn't pass the state budget by the June 15th deadline, prior to the start of California's fiscal year - which is July 1 to June 30 - if they fail to adopt it, they are denied their pay and it can't be recouped retroactively.

But the important revision of Prop 25 is that it required only a simple majority vote of the Legislature, thereby eliminating the 2/3 vote requirement. Under our state constitution, the annual state budget dance, if you will, begins after the Governor submits his or her spending plan which is due under the Constitution, by January 10th of each year.

The State Constitution - again in Article IV, Section 12 - specifically utilizes the term throughout: *the* [pauses] budget [pauses] bill. It requires introduction by January 10th and in each House of the Legislature, both the Senate and the Assembly, by the budget chairs. This year, those were introduced by Assembly Budget Committee Chair Phil Ting, a Democrat from San Francisco, and Senator Holly Mitchell, a Democrat from Los Angeles, the Chair of the Senate Budget Committee.

The State Constitution, as I mentioned, requires the Legislature to pass that budget bill by June 15th each year. Interestingly, it says that lawmakers cannot send to the

Governor any bills that appropriate funds until *the* budget bill has been enacted. You'll hear me throughout this brief presentation mention those three words: *the* budget bill. And we'll get to why that's important in just a minute. Finally, the State Constitution says that only one budget bill, *the* budget bill, may contain more than one item of appropriation or spending. There's only one bill that we are allowed - the Legislature is allowed - to have multiple items of appropriation. Again, that's that reference to *the* budget bill.

There doesn't appear to be any direct language in Section 12 to any additional bills beyond *the* budget bill, or necessarily trailer bills. So what happened in September? What happened in September, a full three months after the state Legislature had adopted by the Constitutional deadline of June 15th, *the* budget bill, and about two dozen trailer bills. What they did was is that they wanted to make a number of changes to the spending that occurred back in the June 15th budget that they adopted.

So they proposed not one, but two of these budget bills junior. Was that permissible, and just as importantly, were all of the resulting trailer bills lawful? In other words, did they comport with the State Constitution and the changes made to Article IV, Section 12 by Prop. 25?

Now keep in mind, the Legislature can consider any bill throughout its legislative session that makes an appropriation, but per the Constitution, only one item of appropriation is allowed in each bill, and normally it's subject to a 2/3 vote rather than a simple majority. Now, in Article IV, Section 12, subdivision D: appropriations bills are required to be passed by a 2/3 majority, "except appropriations for public schools" - that's existing law, even prior to Prop 25. But then Prop 25 added this additional clause as an exception to that 2/3 rules - for other bills providing for appropriations related to the budget bill.

That seems to speak at least to the budget bill junior. Does it speak to trailer bills? Well how the Legislature has addressed that is that each trailer bill contains a minor appropriation in it. So for example, in the first year after the adoption of Prop. 25 in 2011's budget, each trailer bill had a mere \$1,000 appropriation. Now keep in mind our state budget and the budget bill appropriates about \$160 billion. Billion. So you can see how strange that little \$1,000 appropriation looked in the trailer bills.

But that was an effort to comport with that new language. Note again that there's that reference to *the* budget bill. Again, 12D says other bills providing for appropriations related to *the* budget bill. So the Constitution says the budget bill and these other bills may be passed by majority vote. What's the other significance besides the vote threshold?

Well, the other significance is normally 2/3 vote bills that have urgency clauses take effect immediately. That is, upon the Governor's signature. In the budget process, they also take effect immediately, but here, only by majority vote. The Constitution actually

defines that new phrase that "other bills providing for appropriations related to the budget bill." How does it define it?

It defines it by calling them, "consisting only of bills identified as related to the budget in the budget bill passed by the Legislature." Now what did we find here again? Those three little words: *the* budget bill. So, as a result of Prop. 25, trailer bills or budget bills junior consist of bills that are identified as related to the budget in *the* budget bill passed. So what do you think happened in September 2017?

Neither of those two budget bills junior nor the half a dozen trailer bills were identified as being related to the budget in the budget bill passed by the Legislature on June 15th. So, what does that mean? Well, it appears that trailer bills and budget bills junior a) have to be identified in the budget bill. But remember, the budget bill was introduced back on January 10th and it had to have been passed by June 15th. So it would appear that with that Constitutional language that budget trailer bills that aren't identified in *the* budget bill are unconstitutional if they are adopted by a majority vote.

Now, it doesn't mean that the bills can't be adopted. It just means that they can't be adopted as trailer bills weeks or months after the budget bill has been adopted because they weren't identified in the budget bill that passed by June 15th. Instead, these measures would have to go through the normal legislative process, meaning that they would be subject to a 2/3 majority vote because they have items of appropriation in them. Plus, they would have to have only one item of appropriation.

Now there is one silver lining. California state courts have already determined that that language about containing only one item of appropriation doesn't mean one single item where we would need dozens, or perhaps a hundred separate appropriation bills. Instead they've said a bill could contain multiple items of appropriation where they're all related to the same department or agency. As a result, there is an opportunity for these bills to make it through the normal process, but they just can't enjoy the benefit of a majority vote to take effect immediately.

If my interpretation of the California Constitution is correct, then this would limit the ability to do budget bills junior and trailer bills after the fact, that is, after the June 15th constitutional deadline, unless they were treated as normal appropriation bills.

So it wouldn't preclude budget bills junior or trailer bills. They just wouldn't be subject to the benefits of Prop 25, again, that majority vote. You should note that this issue is pending in a lawsuit before the California 3rd District Court of Appeal. So perhaps, as a result of that litigation we'll have clarity on this point, and what are the requirements of Article IV, Section 12 as it relates to the State Budget.

Thanks for joining this podcast. Look forward to talking with you again.