Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is on policy analysis in the legislative process.

Have you ever wondered how the California Legislature goes about analyzing the thousands of proposals that are introduced as bills, during each two-year legislative session, and how does the Legislature's process for bill analysis differ from the policy analysis methodologies used almost everywhere else, including in academia and the private sector?

The answers to these questions provide some interesting insights into both the strengths and the weaknesses of California's legislative process. For anyone who has seen a bill introduced in the California Legislature that's in print, one of the first items addressed is a section titled The Legislative Counsel's Digest. Is this actually an analysis of the bill? Not really.

Instead, the purpose of the Legislative Counsel's Digest is to succinctly describe what current law is, and then summarize the changes that are proposed in that bill. The Legislative Counsel's Digest describes how the bill proposes to change the existing law. Otherwise, the digest is strictly neutral. It neither evaluates the pros or the cons of the proposal, nor does it make any recommendations to it.

Who does the analysis of the bills and where do you go to find them? Quite simply, legislative proposals in California are analyzed by the staff of the committees to which they are referred, as well as by the staff of the respective houses prior to a proposal coming up for a floor vote.

As a result, a typical bill that makes it into law is analyzed as many as six times by a policy committee in each house, by a fiscal committee in each house, and on the floor of each house. These analyses are accessible via the California Legislative Information website that's maintained by the California Legislative Counsel office.

If you were to pull up a Bill Analysis from several different committees, you would notice that there's no set process or approach or methodology that's applied. Instead, you are likely to note that there seems to be some common elements addressed in most of these Bill Analyses but that each of the committees in each of the floors applies their own approach.

Some policy committees in the Assembly and the Senate have well deserved reputations for extensive written analyses that include an in-depth discussion of existing law, as well as the proposed changes contained in the bill, as well as numerous additional comments. These analyses reflect the intent of the author and they explain in detail the arguments for and against the proposed law changes.

There are other committees whose analyses are often limited, merely reciting some of the language of the bill in the proposed measure without much discussion that could provide valuable insight for those trying to understand or learn the intent behind the changes in the law.

What we've determined is that there's no fixed policy analysis methodology in the Legislature and the quality and quantity of these analyses can vary from committee to committee, floor to floor or even bill to bill. Nonetheless, there are some common elements that are covered in most legislative bill analyses. How do these analyses differ from a policy analysis methodology is often taught in academia and used elsewhere?

When we examine the bill analysis methodologies used in the California Legislature and for that matter, most other legislative bodies around the country, we find that the policy analysis is generally focused on the evaluation of a specific proposal, that is what is contained in the bill itself.

In other words, rather than beginning the analysis with the definition of the problem the analysis emanates from a proposed solution, that is what's proposed in the bill. This approach is understandable given that most legislative processes begin with the introduction of a bill that contains the text of a specific solution that tries to address a stated public policy problem.

While these legislative bill analysis methodologies typically focus on evaluating a specific proposal, the other hand is the policy analysis methodologies that are taught in academia and used elsewhere tend to start from the definition of the problem. Once that public policy problem is defined, then the analysis turns to identifying and evaluating various alternatives to address that stated problem.

This policy analysis is usually a rigorous, multi-step process that involves a thorough analysis of the various alternative means of addressing the public policy problem. While a legislative bill analysis of a specific solution can often and does involve extensive research and considerable evaluation, there are pitfalls to this approach.

Given the nature of the legislative process, the tendency is to become preoccupied with the solution and pay less attention to identifying and analyzing the various solutions to an underlying public policy problem. Authors of legislation are understandably inclined to focus on building the case for the particular solution for which they are advocating.

All too often, they tend to overlook the underlying steps of defining the problem, identifying possible alternatives, selecting criteria and projecting outcomes. All too often, the staff who analyze these legislative measures also overlook these underlying steps.

As a consequence, legislatures often get stuck in a contest of wills over specific solutions, instead of first attempting to define and agree upon the underlying problem. Without a clear understanding and agreement on the problem they're attempting to address legislators often deprive themselves of the key element of reaching consensus on a policy solution.

There are some practical realities that make it difficult for legislative bodies to apply traditional policy analysis methodologies, with nearly 2,500 bills introduced each year in the two-year session in the California Legislature and upwards of 8,000 amendments

made to these bills. It's an unrealistic expectation that legislative staff would have the time to engage in such a thorough analysis on each and every bill, in each and every amendment.

On the other hand, while a thorough analysis of each bill and each amendment might be impossible due to time constraints, this does not mean that traditional policy analysis cannot be infused into at least a portion of the legislative process.

Decisions about how and when to infuse traditional policy analysis methodology into the legislative process are appropriately made by the leadership of the two houses of the legislature.

One possibility would be to hold authors of legislation accountable to conduct and produce a formal policy analysis on each piece of legislation that they propose, as well as each major amendment. These formal analyses would accompany the proposal thereby providing committee and for staff something to review and critique.

Another possibility would be for committee chairs and the floor leaders to have discretion as to which measures need a full-scale policy analysis prior to a formal vote. Regardless of the method chosen, the additional time and effort needs to be spent on analyzing both the problems and the possible solutions before legislation is considered, let alone adopted.

In our ever-ending rush to do something, the Legislature often needs to return to the policy issue before the prior legislation which didn't accomplish what it had intended. It was either inadequate to effectively solve the problem being addressed or perhaps it was poorly drafted and needs to be revisited and revised.

In either instance, the policy analysis was probably limited and perhaps a more comprehensive analysis would have resulted in a better policy solution proposed. In summary, while most legislative bodies use policy analysis methodologies that focus on evaluating specific solutions, it's imperative that the underlying policy analysis steps not be overlooked.

Even though legislative bodies may be concentrating on the evaluation of specific solutions, they cannot properly do so unless they've had the discipline to define the problem, identify and evaluate the various alternatives, and to formulate the very best solution.

I think the legislative process would be better served in the long-term by providing greater policy analysis of both the problems and the solutions being debated by members of the Legislature. I hope you enjoyed this podcast on policy analysis in the legislative process.