

Hi. This is Chris Micheli with the Sacramento governmental relations of firm Aprea & Micheli, and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is the Suspense File and the process used to consider fiscal legislation in the California legislature.

The two appropriations committees in the California Legislature have a unique procedure, and each of them terms it the Suspense File. In California, as opposed to the US Congress where the appropriations committees actually appropriate money, in California, the two appropriations committees in the Senate and the Assembly are the ones charged with considering the fiscal effects of legislation.

Basically, any bill that has been keyed, which is a term used by the legislative council to determine whether or not a bill is tagged as a Fiscal Committee bill. Again, that's done by the legislative council whose primary job is to draft legislation. They also make a determination as to whether or not a bill is anticipated to have a state fiscal effect.

A measure that is keyed or tagged fiscal by the legislative council generally means that that bill will be referred to Fiscal Committee in each house after the appropriate policy committee has actually heard and considered the bill and passed it out.

Under the joint rules of the Senate and the Assembly, a bill is re-referred to the Fiscal Committee, again, after it passes the policy committee or committees of each house. When the bill does one of four things, again, this determination is made by the legislative council's office.

The first thing is, does the bill appropriate money? That's relatively straightforward, because the bill itself will contain an amount that's being appropriated. Two, it will result in a substantial expenditure of state money. Is this some program that requires the expenditure of money?

Three, result in a substantial loss of revenue for the state. One of the most common examples is a tax credit or exemption, something that reduces money to the state. Or, fourth, result in a substantial reduction of expenditures of state money by reducing, transferring, or eliminating any existing responsibilities of any state agency program or function.

That's a little bit more ambiguous. I would note that these last three all talk about substantial, and yet, nothing in the joint rule. By the way, this is found in Joint 10.5. Nothing in Joint Rule 10.5 defines the word substantial.

Under the rules of both houses, that is the Assembly rules and the Senate rules, again, as opposed to the joint rules, their respective committees on appropriations may maintain a Suspense File. Basically, that's a file to which bills are referred by a majority vote of the members of the committee to allow further consideration in ultimate vote by the Fiscal Committee.

A bill can be taken off the respective Suspense File and heard with basically a two-day notice that's published in either the Assembly daily file or the Senate daily file. Again, taking it off, the Suspense File requires a vote of majority of the members. The Suspense File that's used by the appropriations committees in the Senate and Assembly is utilized as the means of managing their bill load.

While the intent behind the Suspense File makes sense in concept, that is they consider all the fiscal related bills at one single time, the practical implications of determining which bills stay or leave the Suspense File can often be very interesting and intriguing to watch.

Again, the stated intent of the respective Suspense File is to consider all of the bills that have a fiscal effect that's above a certain threshold all at the same time. Meaning, let's have the committee vote on all the fiscal bills once all of them have been heard and considered, and let's do it on a single day.

Keep in mind that the Assembly Appropriations Committee generally meets every Wednesday at 9:00 AM. The Senate Appropriations Committee generally meets every Monday morning at 10:00 AM. They all meet for a number of weeks, six, seven, eight weeks at the time during the legislative session to consider a handful bills at each hearing. They've got to compile them all up in one fell swoop to vote on.

In this way, the way that they utilize the Suspense File is that the Fiscal Committee can make decisions on all of the bills that have a fiscal impact to the state all at one time, rather than each week when they're meeting during the course of the legislative session.

The vast majority of bills, I'm told about 80 percent of them that are introduced, about 25,000 per year go before the appropriations committees of each house for consideration after the respective policy committee has passed the bill. Of course, this occurs before the bill reaches the floor of the respective houses, either the Assembly or the Senate.

Each Fiscal Committee has a threshold for the bills, that is a fiscal impact, where they're referred to the Suspense File. As you can probably expect, these amounts differ between the Assembly and the Senate.

In the Assembly, the Assembly Appropriations Committee utilizes a threshold of \$150,000 or more from any fund source in any fiscal year, as well as any bill in which the primary purpose of the measure is to create a task force, a commission, a report, or some sort of study. Any of these categories meet the criteria for referral to the Suspense File.

On the other hand, in the Senate Appropriations Committee, the bills referred to the Suspense File are those bills that have a fiscal impact in a single fiscal year from the general fund, or from private funds of \$50,000 or more.

Remember, \$150,000 in the Assembly, \$50,000 in the Senate. Note that this also includes all general obligation bond funds. In the Senate, they also refer to the Suspense File any pilot project bills if the statewide implementation cost of that project or program would result in a fiscal impact of \$50,000 or more in a single fiscal year.

In addition, all bills are sent to the Suspense File if the fiscal impact in any single year is \$150,000 or more from a special fund, or \$50,000 or more from any special account or fund where a two-thirds vote may be required to increase revenue for such an account or a fund. There's a \$50,000 threshold and \$150,000 threshold on the Senate side, but just one \$150,000 threshold on the Assembly side.

Note that an important exception to this rule applies where a bill is a deficiency bill or a supplemental appropriations bill, which is generally authored by the chair of the Senate Budget Committee, or the chair of the Assembly Budget Committee, or the claims bill which are bills used to pay judgments or settlements of the state of California.

Those are normally authored by the chair of the Senate Appropriations Committee or the Assembly Appropriations Committee.

Note that for purposes of applying these rules in the Assembly and Senate Appropriations Committees, fiscal impact is generally defined to include cost increases, cost pressures, which is a very popular one, revenue decreases, increases in appropriations, and reductions in the states appropriations limit.

It's interesting in terms of the process because in both the Assembly and Senate Appropriations Committees, the bill authors actually don't have to testify at the Suspense File hearing. Meaning, they've waved presentation. They don't have to show up when they vote. Instead, the committee members just vote on the measures with them without any additional testimony.

In fact, it's interesting to note that in most instances, bills that are going to the Suspense File don't get any testimony at all, because the bill authors "wave" their presentation, the bill is just sent to the Suspense File without any presentation by the bill author, no testimony in support or opposition, and then later, a couple weeks later, is the actual vote.

In most instances, a bill in the Fiscal Committee actually doesn't get any testimony or presentations, just a vote down the road. Because this public hearing is usually waved, supporters and opponents, and even the Department Of Finance generally don't testify.

Although in recent years, the Department of Finance is often called upon as to whether or not they want to offer any position. In most instances, proponents and opponents choose not to speak in support or opposition of a bill where the bill's author has waved presentation.

Final determinations. The final decisions regarding bills that are coming off or staying on the Suspense File are generally determined by the appropriation's chair, of course, and the leadership team of the respective house. Certainly, they gather input from a number of sources -- The members of the committee, certainly the Republican vice chair, and the minority leaders office.

Sometimes, policy committee staff provide input. Certainly, the bill authors lobby for their bills. Of course, interest groups express their support and opposition for bills that are pending on the Suspense File. The leadership staff and the fiscal staff prepare the fiscal analyses, and they discuss with the main decision-makers, again, which bills are held or passed off a suspense.

Legislators whose bills are pending on the Suspense Files of the two appropriations committees, as well as interest groups that support or oppose these bills certainly try to sway the small group of decision-makers, and hope that they prevail in getting their bill that they support off of suspense or the bills that they oppose to be held on suspense.

Certainly, the minority party has input on their top priority bills. They go and provide their recommendations to the chair and leadership. How do the two committees handle their activities?

The Assembly Committee handles its Suspense File by voting on the bills based upon their subject matter.

In other words, they'll take all the bills in health, all the bills in public safety, education, general government, etc. The chair, of course, will call out what subject matter they're going to deal with next, but then, they'll go through all of the bills in that particular subject matter.

Every bill that's on the Suspense File in the Assembly Appropriations Committee is called, whether it's going to pass or not. Each bill in the Assembly is either passed as is, it's passed with amendments, or it's held on suspense. The chair will say, "Do pass with amendments" or "Hold in committee."

The Assembly Appropriations Committee dispenses with all of the bills that they are hearing. Every bill gets a vote either to be held or to pass. There's rarely discussion or dissent from the chair's recommendation as they go through several hundred bills in a relatively brief committee hearing.

The Senate Committee handles their Suspense File a little bit differently. They call the bills in alphabetical order, based upon the legislator's last name. The committee goes through the list of legislators in alphabetical order. The author's name is called. The chair only announces a bill that they're going to vote on. That vote is to pass the bill of suspense either as is or with amendments.

There's no formal action in Senate Appropriations Committee that's taken on the bills that are held on the Suspense File. In other words, the bills that are held in committee are never announced publicly. There's no actual no-vote or vote to hold the bill in committee.

Again, while the Assembly announces which bills are held on suspense, the Senate stays silent. Meaning, it only calls for a vote and actually votes on the bills that it's passing. There's no vote or official action that the bill is remaining on suspense.

Note that in May, is generally the first Suspense File hearing to consider the house of origin bills. However, the one that's held in mid to late August each year is where they consider the bills from the other house.

Usually, the fiscal committees not only meet on the same day, but often at the same time, because they're dealing with other's bills and they want to ensure that each committee is treating the other house's bills in a fair and consistent manner.

That's basically a discussion of how bills deemed to have a fiscal effect, and then how they're dealt with when they're on the Suspense Files in the Assembly and Senate Appropriations Committee.

I hope you enjoyed this podcast on the Suspense File process.