

This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is on publishing letters to the Journal for determining legislative intent.

Sometimes in order to explain the intent behind a specific piece of legislation, one or both houses of the Legislature will utilize a process by which a legislator publishes a letter stating his or her intent to explain the piece of legislation. For Assembly Members, this is published in the Assembly Daily Journal, and for Senators this is published in the Senate Daily Journal.

Generally this letter from the legislator is used to explain perhaps an ambiguity in the bill, or explain the purpose of a particular change in the law or for some other reason. Again, in both the State Assembly and the State Senate such a letter to the Journal is a rather formal process. For example, the letter must be on the legislator's letterhead and signed by that particular legislator.

The general custom and practice of the two houses of California's Legislature is to have the respective leadership staff - meaning both the majority Democrat and minority Republican parties - review the contents of that letter from the legislator and determine whether or not either party has any objections to the contents found in the letter. Now, the consultants to the majority and minority parties may request revisions to that letter to the Journal, otherwise they'll give their consent.

Note that the Assembly Speaker's Office also reviews and approves these letters to the Journal and their counterpart in the Senate - that is the Senate President Pro Tem's office - does the same. Usually the two Republican leaders, the one in the Assembly and the one in the Senate, also provide a similar review and approval, of course, whether it's an Assembly Bill or a Senate Bill.

Now, if approval is not received by both sides of the aisle - and this is a rare occurrence - then the legislator can request that the letter be printed in the respective Daily Journal with a majority vote. So a roll call vote of either the Assembly - needing 41 members of the Assembly - or 21 in the Senate. A simple majority of legislators in the respective house must vote to approve the printing of the letter to the Journal.

In most instances, as I've indicated, letters to the Journal are printed with unanimous consent of the body in the respective house. But in the end that is not necessary, as only a majority vote of the individual house must approve the printing of that letter. The general practice is that the Assembly letters are authored by the individual Assembly Member and they're addressed to Dotson Wilson who is the Chief Clerk of the Assembly. The Senate one is by the Senator, of course on his or her letterhead, and that letter is addressed to Danny Alvarez who is the Secretary of the Senate.

In the Senate and the Assembly once the letter has been approved by the leadership's staff and the leaders' offices, then the legislator generally stands and asks permission of the house. Now oftentimes this motion to print the letter in the Journal is actually made by the respective Majority Leader of either the Assembly or the Senate. The majority leader will stand on the floor of the Senate or Assembly, ask permission of the houses to print the letter in the respective house's Journal, and again they'll ask for unanimous consent. If for some reason, and again, this

is a rare occurrence, but if for some reason approval isn't granted by both sides of the political aisle then a simple majority vote is required.

I would also note that generally the appropriate policy and or fiscal committee staff handle the request to print letters in the Journal. And so, for example, a bill that's affecting the civil code is going to be reviewed and process by the Judiciary Committee staff in the Assembly or the Senate.

Letters to the Journal can sometimes also be used when no further amendments to a bill are going to be made, and yet there might be some lingering concerns with the bill language. Often courts do give some degree of weight to these letters that they may be probative of legislative intent. To be fair, the different versions of a bill, the Committee and the Floor Analyses, and even the Governor's Enrolled Bill Reports are given greater weight. But nonetheless, a letter to the Journal may be a good indicator regarding what is the intent of the bill's author.

Although some courts do prefer to consider documents provided to all legislators as better indicators of legislative intent, such as the Floor Analysis, these Journal letters from the bill author are probably the best indicator because the bill's author is usually the legislator who's been most intimately involved in the bill and therefore, in my mind, the letter from the legislator who's the author should be given more weight by the courts when determining legislative intent.

I hope you've enjoyed this brief podcast on letters to the Daily Journal.