

Hi, thanks for joining today's podcast. 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 the unique aspects of California bill drafting.

While some aspects of drafting bills and amendments in California are certainly generic in nature to all types of legislative bill drafting, there are several unique aspects that are a part of bill drafting in the state of California. In general, those individuals drafting bills and amendments should keep in mind the general rules of statutory construction. For example, there's the usual plain meaning rule where the judiciary will look to the "plain meaning" of the statutory language. Of course, in a legal dispute, the statutory language rarely has the same plain meaning to both parties of that dispute.

On the other hand, if there is ambiguity in the statutory language, then extrinsic aids can be used to help the judiciary interpreting the bill language. Those who draft and analyze bill language are aware that there are many other canons of statutory construction, but after these general rules, bill drafters in California need to think about some of the following other issues such as conflicts with other bills.

Does the bill that you're drafting amend the same code section or sections as another bill that's pending at the same legislative session? If so, these bills will need to be reconciled or else chaptering out amendments will need to be added to the bills so that one bill does not repeal the provisions of the other bill.

Another is urgency clause statements. When an urgency clause is in a bill there must be a statement explaining the cause of the urgency. Urgency clauses are allowed in California so that bill take effect immediately. While these statements explaining the urgent need for the bill are generally not challenged by the courts, a legitimate statement must be included in the bill to justify the need for the urgency.

Retroactive versus prospective nature of the bills. As you're probably aware, in most instances, bills are prospective in their application. Most bills in California are effective on January 1 of the following year. However, in some instances a bill's provisions are intended to be applied retroactively. In those circumstances, the bill drafter needs to review the key rules for drafting bill language that will be applied retroactively.

For example, what effective date is contemplated? Should the bill drafter include a statement that the bill clarifies existing law? Moreover, in the case of tax law changes, retroactive bills of more than one year are generally prohibited unless a public purpose is expressed in the bill language that justifies the retroactive application of the bill's provisions.

Picking the proper code section. The bill drafter needs to determine which code section or sections to put the bills changes into existing law. Are you amending an existing code section? If so, that's easy to do. However, if you are adding a new code section, then a determination needs to be made regarding where in the 29 codes the bill's language will be added. As such, an understanding of the legislative scheme is necessary.

The single subject rule for bills. Our state constitution in California, limits bills - just like initiatives on the statewide ballot - to a single subject. While sometimes it's broadly defined by the courts, the bill drafter needs to determine in advance how many related or unrelated items can actually be included in one single bill so that the measure is not subject to a legal challenge.

Codified versus uncodified sections of law. As has been mentioned, there are 29 codes that contain California's half a million individual statutes. There are also uncodified statutes with have the same effect as codified statutes. But they're just not found in these 29 codes. These could be one time measures, such as naming a state building, or the annual budget bill because it's changed each year.

Also, legislative intent language. Some bills include intent language which expresses the findings and declarations of the Legislature regarding what the bill's changes are intended to do. The bill drafter should consider the pros and the cons of using intent language. The following is one appellate court statement on the use of such language. "That two legislators report contradictory legislative intent fortifies judicial reticence to rely on statements made by individual members of the Legislature as an expression of the intent of the entire body." That was in *Ballard v. Anderson* back in 1971. They also said that other extrinsic aids to determine legislative intent are generally more persuasive.

There are other aspects that are unique to bill drafting in California, but these highlighted ones give you a sense of some of the factors to consider when drafting bills and amendments in California.

I hope you've enjoyed this podcast.