

Hi, this is Chris Micheli, a principal with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Thanks for joining today's podcast on obstacles faced in the legislative process.

As one might contemplate, there are numerous obstacles to overcome during the legislative process here in California. These are generally characterized as policy, fiscal, and political obstacles that may have to be addressed as a bill travels through the legislative process. In preparation for introducing a bill our effort here is to pose a few questions that one might want to ask before proceeding with a bill in the California Legislature.

Let's look at legislators concerns. When presenting a bill proposal to a legislator as a potential author of a bill, generally legislators care about the following key issues:

- What does the bill do and what are the policy arguments for and against the bill?
- What's the fiscal impact, if any, of this bill?
- Who will support the bill? Who will oppose the bill?
- How does the bill impact the legislator's legislative district?
- How will the Governor view the bill?
- What are the political implications, if any, of the bill?

Assuming the legislator agrees to author a bill the sponsor, or the principal supporter, of the legislation will need to prepare to address the potential obstacles that the bill will encounter along the way of the legislative process. The following obstacles are reviewed by posing questions that will help guide your resolution of these obstacles.

The first set is policy obstacles. Naturally, there should be a good policy rationale for the legislation. Unfortunately, the Legislature generally examines a proposed solution rather than examine the policy problem that is attempted to be addressed and then determine what the best solution to that problem actually is.

At this early point, the bill's proponents need to address these questions.

- In presenting the bill, which contains a solution, has the policy problem been clearly explained?
- Is this bill the best solution to the stated policy problem?
- Are there other viable solutions to address the problem?
- What are the potential policy problems with the other solutions?
- Is there sufficient policy justification to make the proposed change in the law?
- Is there evidence that the alleged shortcoming in existing law actually exists?

Let's turn to the fiscal obstacles. Assuming the policy implications are addressed, the fiscal impact is duly considered by the respective appropriations committees, that is the fiscal committees in the California Legislature. Note that even some policy committees do consider the fiscal impact of proposed legislation such as the health committees, the education committees, the revenue and taxation committees - in fact, the Assembly Revenue and Taxation Committee used to have its own suspense file, compared to those of the appropriations committees where they held bills with a fiscal impact until a later date at which point all of the bills with a fiscal impact were voted upon. That was done away with in the 2017 legislative session.

The fiscal considerations always come into play if a bill meets the threshold to be placed on the suspense file in either the Assembly or the Senate Appropriations Committees - particularly in the times when the state is facing financial difficulties. And the view of the Governor of course, certainly during the current Brown administration, on the fiscal impact of legislation is quite crucial. As such, here are some of the questions to address for the fiscal obstacles.

- Is there any fiscal impact due to the proposed law change contained in the bill? If so, how significant is the fiscal impact?
- If there is a fiscal impact, is to the state government, to local government, to the private sector, or a combination thereof?
- If the fiscal impact is significant, is there some sort of funding source or a mechanism to help pay for the cost of the bill?
- What is the likely position of the Governor's Department of Finance: support or oppose or neutral?

Let's turn to political obstacles. Certain entrenched special interests are sometimes the most difficult hurdle to overcome in the California legislative process - even if the author and sponsor have resolved the policy and fiscal concerns of the legislation. That's because those who are in a powerful position generally do not want to do anything that does not advance their own interest or that may ultimately weaken their position. Some of the questions to pose in this area include:

- Which groups or groups are likely to support the bill and how can they impact the proposed law change? Then,
- Which group or groups are likely to oppose the bill, and how can they impact the proposed law change?
- Does a change in law result in hurting one group and/or helping another group?
- Is there potential grassroots support for either side of the bill, in support or in opposition? If so, how significant would that grassroots support or opposition be for this bill?
- Has the media portrayed this proposal, if at all?
- How about the majority and minority parties? Is the majority party in support or opposition?
- And how do the key legislative staff view the proposal - leadership staff, policy committee staff, fiscal committee staff?
- And of course, what's the administration's view of the law change?
- Does this proposed bill impact one or more state agencies? If so, will the agency support or oppose or be neutral on that proposal?
- Are there possible amendments to the bill to alleviate some or all of the fiscal and/or policy concerns with this particular bill?
- And of course, to come full circle, how does the bill proposed impact legislative districts, a particular geographic area, or does it impact the state as a whole?

Are there other obstacles to consider? In a few instances, vote requirements may become an obstacle if the bill requires a super-majority vote for passage. For example, does this bill contain an urgency clause, or does the bill result in anyone paying a higher level of taxes? These types of bills will require a two-thirds super-majority vote for passage on both floors of the Legislature. Or does the bill trigger an even higher vote threshold because it amends a particular initiative statute, such as Prop 99 - the tobacco tax measure.

As one would expect, each controversial bill can create its own unique set of obstacles that will need to be addressed. That's why there's not a clear set of rules that apply in the same way for all pieces of legislation. It is a rare year in the legislative process that one does not learn a new tactic or some method to improve a bill's chances of success in the following year.

Thanks for joining our podcast. Hoped you learned a little bit about some of the obstacles that can be faced in the legislative process here in California. Thanks for joining.