

Hi, 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 drafting bill analyses in the California Legislature. An important part of the California legislative process involves the preparation of analyses for legislators when considering bills. All of the committees, both policy and fiscal, prepare analyses of measures then the floors before the process repeats itself in the opposite house.

When reviewing bill analyses, an observer quickly notes the different approaches taken both among the policy committees and the two houses of the California Legislature. For example, some committees pride themselves on lengthy and detailed analyses while others focus on short summaries of the bill's provisions. Some committees list groups and support an opposition while others, primarily the fiscal committees, do not. Moreover, the Assembly and Senate committees have their own unique views on how bill analyses should be structured, and individual committees within these two houses have their different approaches as well.

Fiscal committee analyses are generally brief, usually, one page but sometimes two to four pages depending on the particulars of the bill because their focus is on the fiscal impact of the bill rather than the policy of the measure. On the other hand, policy committee analyses can run multiple pages usually five to ten pages. There are some policy committees such as the judiciary committees whose in-depth analyses of bills that come before their committees can easily be 20 to 30 pages or more in length.

Now while the format may be different among the committees and the two houses of the Legislature, they generally follow these component parts: the number and author, the subject matter, a brief summary of what the bill does, an explanation of the problem being targeted, a discussion of existing law, a discussion of how this particular bill proposes to change that law, the author's statement for the need for his or her bill, a summary of the support arguments, a summary of the opposition arguments, perhaps prior legislation on the topic, any pending legislation and generally a list of supporters and opponents.

There are two criticisms that are occasionally voiced about this bill analyses. The first is that the analyses often do not consider other options to address the identified problem. In other words, the bill analysis will analyze the problem in the proposed solution as contained in the bill that's before the committee or the floor. In other words, they often don't consider what other options there are instead of this particular bill. In addition, the bill analyses are generally limited to explaining existing law, how the particular bill proposes to change the law and what arguments are made for and against doing the bill its provisions.

However, many times there's not an explanation, for example, of the particular language that was used in the bill. This will present a problem for practitioners in courts and those trying to comply with the law in determining the legislative intent behind the use of particular words or phrases that are found in that bill. For preparation of these Assembly and Senate analyses, there are different approaches taken by the two houses. Now for floor analyses in the Assembly, the policy committee consultant who originally analyzed the bill usually prepares that floor analysis. That analysis does not include a list of supporters and opponents.

In the Senate, the floor analysis unit compiles information but the Senate policy committees prepare the actual analysis which largely track the committee analysis and they do list the supporters and the opponents. Generally, if a bill is referred to more than one policy committee, then the floor analysis will be prepared by the policy committee that was the first committee of referral i.e. the committee that heard the bill first.

As both houses have noted to their staff, an important aspect of these analyses is to accurately reflect the current support and opposition to the bills that are pending on the floor. Both houses though believe it is the responsibility of the author's office to provide all support and opposition letters to the appropriate committee prior to the bill reaching the third reading or unfinished business files. The analyses are updated to reflect the additional support or opposition letters received.

Under the rules of each house, every standing committee prepares an analysis of every bill that it has set for hearing which must be made available to the public in the office of the committee at least one working day prior to the date on which the hearing is to be held. Most committees provide the analyses several days in advance of the scheduled hearing.

Now in the case of a special hearing or a meeting of the Committee on Appropriations or the Committee on Budget or their subcommittees, the analyses are usually made available to the public at the beginning of the hearing. Although the Assembly Appropriations Committee normally releases their analyses in a day or two before their scheduled hearing. Under the rules, no question concerning the committee's compliance with the rules with regard to any bill is in order following a vote on passage of the bill in that committee.

Also, a copy of each committee analysis must be transmitted by the committee secretary in the State Assembly or the committee assistant in the State Senate to their respective floor analysis unit at the same time it's made available to the public. The consultants of a standing committee are responsible for monitoring bills assigned to their respective committee throughout the entire legislative process. In the Assembly, this means that except for resolutions and bills on consent, a consultant of the appropriate standing committee must timely prepare an analysis of every bill on third reading or the unfinished business file and of any amendment to a bill that's on the Assembly floor. Thereafter, the Assembly Floor Analysis Unit is responsible for final editing for grammar and format of all their floor analyses.

Pursuant to the Senate rules with the exception of the budget bill and budget implementation bills i.e. the trailer bills, no bill constitutional amendment concurrent resolution, joint resolution, Senate resolution, unfinished business item or a report of a conference committee may be considered until the analysis has been prepared by the office of the Senate Floor Analysis Unit and placed upon the desk of the senators unless it's ordered by the President Pro Tem differently.

In addition, an amendment from the floor is not in order until the amendment has been reviewed by the office of Senate Floor Analysis upon request by the Chair or Vice Chair of the committee on rules or by the lead author of the measure to which a substantive amendment is proposed from the floor. An analysis is prepared by the office of Senate Floor Analysis and placed upon the desk of the senators.

Analyses of legislation serve several important purposes. Foremost is educating the legislators and their staff regarding what existing law is and how the particular bill proposes to change existing law. After enactment of legislation, these bill analyses are very valuable in ascertaining the intent of the legislature. You can see the importance in drafting good bill analyses in the California Legislature. Thanks for joining today's podcast. I hope you enjoyed it.