

Hi, this is Chris Micheli with the Sacramento government relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is on gut and amend bills in the California State Legislature.

One of the controversial occurrences that occurs during the legislative sessions of the California Legislature are so-called gut and amend bills. Now, according to our Legislative Counsel, these measures are defined as "when amendments to a bill remove the current contents in their entirety and replace them with different provisions." Now, the controversy is on the second part of this process, i.e. the amending, replacing the bill's current contents with a subject that is wholly unrelated to the original contents of the bill.

These types of amendments raise the legislative issue of germaneness, which generally refers to whether a proposed amendment is relevant to the subject matter that's currently contained in that particular measure. Now, while the Legislative Counsel in California may opine on the issue of germaneness, the determination of germaneness is generally decided by the presiding officer of the Assembly or Senate.

Ultimately, it's subject to appeal and determination of a majority of the members of the respective houses of the California Legislature. In other words, a majority of the Members of the Assembly, 41, or a majority of the members of the State Senate, 21, will determine whether amendments to a measure are germane or not and, therefore, whether the gut and amend was proper or not.

In addition, we have to consider the appropriateness of gut and amend bills in the context of Prop. 54 that was adopted by the voters and requires a bill be in print for 72 hours before the final version of the bill can be voted upon by members of the Legislature. Now, because that ballot measure added the word "any" before the types of amendments, the 72-hour rule means it applies to both substantive and technical amendments.

While the proponents of Prop. 54 clearly intended to address one of the problems with the legislative process that related to gut and amend measures, the language does raise the question whether they meant to apply the 72 hours notice to both substantive and technical amendments. Technical amendments, for example, could be chaptering out language to ensure that a later-enacted bill doesn't chapter out an earlier-enacted bill.

Regardless of one's interpretation, Prop. 54 has to be taken into account at the end of the legislative session when dealing with gut and amend bills. Now, each house of the Legislature has rules related to determining whether these amendments are, in fact, germane to the current contents of the bill.

For example, there's Assembly Rule 92. Its title is "Amendment to be Germane." What it basically says is that an amendment to any bill, other than a bill stating legislative intent to make necessary statutory changes to implement the budget bill, is not in order when the amendment relates to a different subject than, or is intended to accomplish a different purpose than, or requires a title that's essentially different than the original bill. Now, note again, despite Assembly Rule 92, the full Assembly ultimately decides this question after a determination has been made by the presiding officer.

On the Senate side, we have Senate Rule 23(e), which draws a distinction to amendments to rewrite a bill. Here, the first inquiry is whether the amendment is germane to the current version of the bill, but adds a new subject to the bill that's different from but relates to the current contents of the bill. Subdivision (f) of Senate Rule 23 acknowledges these new bills when an amendment creates a new bill if the amendment changes the subject of the bill to a new or entirely different subject.

The other rule in the Senate is Senate Rule 38.5. First, it requires every amendment proposed to be germane. In order to be germane, it says that an amendment must relate to the same subject as the original bill, resolution, or even question that's under consideration by the house. A point of order may be raised that the proposed amendment or an amendment now in the bill, resolution, or other question before the body that's under consideration is not germane so long as that question is within control of the legislative body, i.e. the state Senate.

In that case, Senate Rule 38.5 provides that the President Pro Tem must decide whether the point of order is well taken on the question of germaneness. In the absence of the President Pro Tem, then the Vice Chair of the Rules Committee decides whether that point of order is well taken. If in the opinion of either the Pro Tem or the Rules Committee Vice Chair, the point of order is well taken, then the question of germaneness gets referred to the full five-member Committee on Cules for a final determination.

Thereafter, the rules committee makes its determination by the following legislative day. Note that if the point of order is raised and the referral is made on the last legislative day preceding a joint recess, then the Committee on Rules must make its determination before adjourning for that recess. The matter basically remains on the Daily File until that determination is made.

Now, finally, if when they consider the matter, the Committee on Rules determines that the amendment is not germane, then that bill or resolution or other question before the body is stricken from the Daily File and it cannot be acted upon during the remainder of that legislative session. Now, of course, the author of the bill or resolution must be given an opportunity to amend his or her bill or resolution.

If that occurs, then the bill or resolution can continue to be acted upon. If on the other end, the rules committee determines that the amendment is germane, then that bill, or resolution, or other question before the body for consideration may be acted upon by the full house. That's an overview of how the Assembly and the Senate handles gut and amend bills. I hope you've enjoyed this podcast. Thanks for joining.