

Hi, this is Chris Micheli, with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast, where we look at drafting bills and amendments in the California State Legislature.

One of the important roles for any capital lawyer, particularly those in state or federal government, is knowing how to properly draft bills and amendments to those bills. There really is an art to drafting bills. It comes easily for some but is difficult for others.

A critical factor is whether the bill's language is clear enough to accomplish the intent of the bill's author and its sponsor and, also, of course, whether the bill language can be easily understood by third parties, who may not have been privy to all of the legislative discussions and negotiations over the particular statutory language.

Now, California legislative rules require all bills and amendments to be, in what we call, Legislative Counsel Form prior to the bill being introduced or any amendment being made.

The Legislative Counsel Bureau, of course, is the Legislature's lawyers. They're in charge of drafting bills and amendments. Neither the Senate Desk nor the Assembly Desk can process any bills or amendments unless they are in that Legislative Counsel Form.

Regardless of whether a third party does the initial drafting of a bill or an amendment, it's the attorneys with the Office of Legislative Counsel who ultimately do the formal bill drafting. Sometimes they tweak the language that's been previously written in order to keep the proposed statutory language consistent with the other code's sections.

Also, the Legislative Counsel's attorneys may suggest where to place a new law in the codebooks. There are numerous provisions of our California Government Code that deal with bill and amendment drafting, including provisions specific to the role and the conduct of the Legislative Counsel, as well as two major sections dealing with, what they call enactment of statutes and the operation of statutes.

As you would imagine, the Office of Legislative Counsel is keenly aware of these types of measures. Don't forget that measures include bills, resolutions, and constitutional amendments. Legislative Counsel also has to be worried about some of the provisions such as chaptering out amendments, the effective and operative dates, as well as just the general rules of statutory interpretation when they're drafting these bills and amendments.

On occasion, a legislator and his or her staff may actually direct the attorney at Legislative Counsel to not make any changes to the bill language. Why might they do that? Perhaps because the bill language was carefully crafted as a part of negotiations to address the needs or desires, or maybe to remove opposition of interested parties say, for example, when a compromise was achieved on particular bill language.

As a result of this, legislators and their staff often work closely with Legislative Counsel deputies on the desired bill language from start to end of the legislative process. In fact, on some drafting requests, the legislator or the sponsor of the bill knows exactly the bill or amendment language they desire and so, they give it to the Legislative Counsel deputies.

There are other instances where the drafting request made to the Legislative Counsel Bureau is very generic or broad, such as when a legislator asks, "Please draft me a bill to do X." Then, the Legislative Counsel deputy has to draft the bill from scratch.

In either instance, whether it's a general request or a specific one, the attorneys in the Office of the Legislative Counsel Bureau utilize the important rules of statutory construction that judges utilize and other guidelines in their bill drafting guidebooks on how to properly draft bills and amendments.

One of the threshold questions in drafting any new bill is whether the bill is proposing a new statute or it's amending or repealing an existing one. Remember, a bill can add a new section of law or amend an existing section of law or, of course, repeal an existing section of the law.

For a bill that creates a new statute, one of the threshold questions will be, what code do we put it in? You may recall from other podcasts that there are 29 different codes that comprise California statutes. They run from the Civil Code and the Code of Civil Procedure to the Health and Safety Code, the Penal Code, Welfares and Institutions Code, and many in between.

According to the Legislative Counsel, there are more than 150,000 statutes in these 29 codes. Again, one of those initial questions is, what Code should it be in, and what section or area of the Code should it be in?

Although Legislative Counsel ultimately drafts the bill language and amendments, there are many skilled lawyers out there who are able to craft effective bill and amendment language themselves.

Just by way of background, Legislative Counsel, each year on average, gets anywhere from 6,000 to 8,000 requests for new bills, and they, on average, process more than 10,000 amendment requests. That's quite an amount of bill drafting and amendment drafting by the Legislative Counsel deputies.

As you could imagine, it's a very valuable skill to possess to properly draft bills and amendments. I think it also provides some pretty keen insight into how statutes are interpreted by the courts. Once you've had the experience of writing statutory language, you realize, often, how difficult it is even when you know what you want to say.

Now, most people start off in drafting a bill with the plain English rule but, as you could imagine, there are many other statutory interpretation rules for drafting bills and amendments. Now, when the Legislative Counsel drafts amendments, some of the questions that they ask -- what should be changed with existing language, what's the actual intent of the amendment, and how best can it be accomplished?

What are some of the examples of the different types of bills and amendments that Legislative Counsel drafts? As I've mentioned, they amend, add, or repeal sections. They can add entire new chapters, multiple sections. They can draft both codified statutes and uncodified language.

Sometimes they draft intent or spot language. They have to know how to draft urgency clauses when bills have to take effect immediately. They also have to distinguish between general and special statutes as well as making bills prospective in application or retroactive in application.

They have to know how to make an appropriation in a bill and how to impose a local mandate. That's just with bills. Don't forget, there are also constitutional amendments, where the Legislature places, by a two-thirds vote before the electorate, any proposed amendments to the California Constitution.

Then, of course, there are three different types of resolutions -- concurrent resolutions, between the two houses, joint resolutions, when the two houses speak to Congress, and then, the individual houses themselves, the Assembly and Senate, have their own respective resolutions. All of these have to be familiar to Legislative Counsel deputies.

There are many options for drafting bills and amendments. Those persons working on legislation are often assisted by the Legislative Counsel attorneys, who are clearly well educated in drafting bills and amendments.

Thanks for joining today's podcast. Just to give you some general guidance on looking at drafting bills and amendments in the California Legislature. Thanks for joining. Hope you enjoyed it.