

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on drafting considerations for a California legislative constitutional amendment.

As you may be aware, in the California Legislature there are constitutional amendments that can be introduced in either the Senate or the Assembly. Of course, constitutional amendments require a two-thirds majority vote in both houses in order to be placed on the statewide ballot. Now, according to our Legislative Counsel, a constitutional amendment is required to be submitted to a direct vote of the people. And it's adopted by a majority vote of qualified voters casting for that measure. And the result is an amendment to the state constitution. Legislative Counsel also explains that prior to the amendment being voted upon by the people, the Legislature can actually amend, or even withdraw the proposal.

Now, usually, constitutional amendments are submitted to the people at the general election. However, a special election can in fact be called by the Governor for purposes of accepting or rejecting a constitutional amendment or other measures.

Now, an initial question that the drafter needs to answer in considering these legislative constitutional amendments is whether the measure will amend, add, or repeal provisions of the California Constitution. Of course, if the proposal is to amend or repeal any existing provisions of the state constitution and its more than two dozen articles and several hundred provisions, or sections, then the bill drafter obviously knows where to start. On the other hand, if the proposal is to add a provision or multiple provisions then the bill drafter needs to determine whether there's an existing article of the state constitution in which to add those provisions. Or is an entirely new article needing to be added?

Now, just like other legislative measures, such as bills, a title is drafted and a Legislative Counsel's Digest is prepared for any proposed constitutional amendment. Then it explains thereafter in the digest what the proposed constitutional amendment actually proposes to do. The Digest usually starts in its first paragraph with, "The California Constitution provides..." and then it's explained. The next paragraph in the Digest usually begins with "This measure would..." and then explains what the proposed constitutional amendment would do.

In addition to the title, and of course the Legislative Counsel's Digest, a constitutional amendment that's proposed by the Legislature also has a Digest Key, just like a bill does. And it has the same four keys - vote, appropriation, fiscal committee, and local program. Now, here the vote key is pretty obvious because as you know each constitutional amendment requires a two-thirds vote rather than a majority or some other level. The remaining keys, then, are whether the measure appropriates any funding, whether the measure is going to be referred to a fiscal committee, and whether the measure results in or creates a state-mandated local program.

After the vote keys comes the resolving clause and then the actual text of the measure. Here, for example, you can see, it begins with "Resolved by" either the Senate or the Assembly, let's say the Senate. So, "Resolved by the Senate, the Assembly concurring." Then it says "The Legislature of the State of California at its" whatever regular session, such as the 2019-20 that just concluded, "When it commenced that two-thirds of the membership of each house concurring, hereby proposes to the People of the State of

California, that the Constitution of the State be amended as follows." And then of course the actual text, again amending and/or repealing existing provisions and/or adding new provisions.

Again, if it's an Assembly one then it will start with Assembly, if it's Senate, it'll say resolved by the Senate. So, for the rest of the actual drafting of the constitutional amendment, it basically requires the bill drafter to utilize the usual guidelines for bill drafting as well as following the drafting style for California measures.

Thanks for joining today's podcast on drafting constitutional amendments.