

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 looking at how we prepare to amend or repeal statutes.

Just like other forms of drafting legislation, when you prepare to amend or repeal existing statutes, there are several steps for the bill drafter to take. In this regard, we have some helpful guidance that's been provided in the Graduate Degree in Legislative Drafting program from Athabasca University in Canada. According to them, the first step is research - research the topic and existing statutes. For example, the drafters should review existing legislation that covers the matter or matters that will be dealt with by the proposed amendment or repeal and all effected statutes need to be clearly identified.

After reviewing these existing statutes, the drafter needs to decide whether the existing law should be retained, changed or removed, either in part or in whole. This is generally determined by understanding whether the proposed amendment or repeal will be consistent with the existing statutory scheme or if existing statutes need to be changed in order to be consistent with the new legislation. Of course, if existing law is incompatible, then it will no longer be retained.

When amending, the drafter needs a complete picture of the new legislative scheme in order to work out how to change the existing legislation to produce the desired results. And thereafter, the drafter needs to understand how to implement the proposed changes in the context of the existing statutory scheme. And then once amended, the statutory scheme has to be consistent and coherent.

The second step for the bill drafter is planning; to plan out what he or she is going to draft. For example, while proposing a repeal, the drafter needs to determine which existing laws are no longer going to be retained. Some provisions may be retained, but they need to be reenacted due to substantial amendments being proposed, while other provisions may be carried over into the new statutory scheme.

When proposing amendments, the drafter needs to determine which sections of law need to be amended and how they need to be amended. Also when proposing amendments, the drafter needs to work through all of the relevant sections of existing law that are proposed to be amended as well as other provisions of existing law that may be impacted by these amended statutes. The bill drafter has to identify which provisions need to be changed to give full effect to the new proposal. In some instances, because the amendments are substantial, the bill drafter may actually decide to not amend the existing statutes, but instead to propose to replace the entire existing law.

Now, when working through the provisions of law that need to be altered, the bill drafter has to consider whether any transitional or saving provisions are required. What exactly are these? Well transitional or saving provisions are used to preserve necessary provisions of existing law, such as any pre-existing rights or duties or obligations. These saving provisions are usually used when dealing with a repeal and transitional provisions can be used with both repeals and amendments. They essentially put in place temporary rules. So the savings or transitional rules can be part of the statutory scheme, but can also be standalone separate provisions of the bill that enacts the amending or the repealing provisions.

Now, according to Athabasca University, the third step is to actually draft. In drafting repeal provisions, the bill drafter should use express provisions clearly identifying the provisions of existing law that are being repealed. This means that precise language should be used such

as a direct statement. An example might be the bill could simply state section one, two, three of the Civil Code is repealed. Other suggested guidance from Athabasca University's program includes using separate sections for repeals and doing them in order when repealing multiple code sections.

And finally, in drafting amendments, the bill drafter has to consider a number of approaches, including when new provisions of law will be added and whether there will be partial replacements of provisions. Here too, the drafter should make amendments by express provisions and he or she should use consistent language throughout the statutory scheme, draft in the present tense and avoid unnecessary or overly legalistic words.

That's our brief look at preparing to amend or repeal statutes. Thanks for joining.