

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 the differences between transitional versus savings provisions and how the bill drafters should handle these different provisions.

So, one area of bill drafting is the use of transitional or savings provisions. What are the differences between the two and how are they used? Well, we're provided some helpful guidance from the Graduate Diploma in Legislative Drafting program from Athabasca University in Canada. All transitional provisions come into play when new legislation amends or repeals existing law. For example, they address the issue of how activities or rights begun under existing law are then treated under the amended or repealed law. This is obviously important so that those who have relied upon existing law understand their rights or their status after the bill or the law has been amended or repealed.

Basically, these transitional provisions contain rules to ensure a proper transition and a smooth one from prior law to the new law. Savings provisions are a type of transitional provision, and they're generally used to retain an existing right or authority that might otherwise be affected by the new law. In essence, these savings provisions preserve the right or the authority despite the new law's amendment or repeal of that former law. So some of the types of transitional provisions that may be used could be, does the new law apply to cases or conduct that began under the former law? Are there interim rules to be followed when transitioning from the former to the new law? Any existing rights that should be preserved under the new law or the repealed law are matters under the former law to be treated differently under the new law? Are pending legal proceedings to be conducted under the former law or the new law? Also, should a new procedure or process be applied to existing cases? Is there some sort of a phase in period being provided? So how should the bill drafter handle these transitional provisions?

Basically, the drafter must use express terms in these instances. For example, if the new law is intended to apply retroactively, then the drafter should be explicit in stating this rather than relying upon extrinsic aids to rebut the usual presumption against a statute applying retroactively. At other times, the Legislature will actually repeal and reenact a section of law. A recent example is from the 2020 legislative session, SB 1383, Jackson, which actually repealed and reenacted a major provision of the Fair Employment and Housing Act statute. In this instance in SB 1383, instead of making numerous amendments to the existing statute, the bill was actually drafted to repeal the existing code section on January 1, 2021, and then reenact the same code section in its modified form to also take place on January 1, 2021.

The following are some examples of statutes that may require transitional provisions, including, the elimination of a state office and the appointees to it; legal proceedings that have already commenced, but have not concluded; licenses that have been issued, and in theory, remain in force; some financial benefits such as tax incentives that may have been earned, but not used or claimed yet; the authority to impose a penalty for an offense that was committed prior to the law's repeal; carrying out duties that were required at the time of the law's repeal; and what about legal documents that were in effect at the time of the law's repeal. So what are some options available to the bill drafter to address these types of statutes? Well, for example, legal proceedings could be allowed to continue under the old statute or under the new statute. The drafter could also apply the new law to existing cases that began under the former law, but have not yet concluded at the time of the repeal legislation.

In other instances, the assets, liabilities, functions, personnel could all be transitioned over to a new entity from a former entity being dissolved. In other instances, interim arrangements are adopted in which a temporary regime is utilized so that during this specified interim period, the old rules are used until the new ones actually take effect. So regardless of the form that these transitional provisions take, the bill drafter needs to expressly deal with past matters or apply the new law to current circumstances.

In this way, the drafter will provide a smooth transition for those affected by the old law, as well as those affected by the new law. Thanks for joining today's podcast. I hope you enjoyed it.