LEGISLATIVE INTENT SERVICE
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COURT OF APPEAL, STATE OF CALIFORNIA

ANY APPELLATE DISTRICT

Plaintiff-Respondents	Case No. **UNABRIDGED**
v.	AUTHORITY AND PROCEDURE FOR JUDICIAL CONSIDERATION OF LEGISLATIVE HISTORY AND INTENT
Defendant-Appellant ________________________________/	

Legislative Intent Service, Inc. publishes annually an update to it seminal works a) Legislative History and Intent as Extrinsic Aides to Statutory Construction, Unabridged; and b) Authority and Procedure for Judicial Consideration of Legislative History and Intent, Unabridged. Taken together with the annual supplements as of 2008, these Points and Authorities will set forth more than 950 California cases utilizing legislative history documents as extrinsic aides to statutory construction.

This document is supplemented with 2007-2008 cases in the Supplement 2008 re Authority and Procedure for Judicial Consideration of Legislative History and Intent. The outline of subjects here is the same as in the Supplement. For a complete understanding of the subject, the supplement must be considered with this unabridged edition.

These Points and Authorities, as well as the unabridged edition are available online at www.legintent.com/pointsauthorities.php.

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I. CAN A COURT CONSIDER LEGISLATIVE INTENT?

A. Preeminence of Legislative Intent in Statutory Construction

The classical statement of the importance of legislative intent analysis comes from the case of *William v. Berkeley* (1601) Plow 223, 231 where the court stated "Whoever would consider an act well ought always have particular regard to the intent of it, and accordingly as the intent appears, he ought to construe the words." Our own Justice Holmes put it more succinctly when he said "a page of history is worth a volume of logic." *New York v. Eisner* (1921) 256 U.S. 345, 349.

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The California Supreme Court followed this reasoning recently in *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 235 "... on this question we agree with Justice Holmes that 'a page of history is worth a volume of logic.' [Citation omitted] The manifest purpose of Proposition 62 as a whole was to increase...."

California appellate courts have followed this line of reasoning and refined it in over 16,000 opinions. To construe or interpret a statute, the court's primary objective is to determine the legislative intent of the enactment; all other rules of construction yield to this rule.

> A statute's legislative history and the wider historical circumstances of its enactment may be considered in ascertaining legislative intent and are proper matters for our consideration (Citation.)
> *In re Jeffrey M.*(2006, 5th District) 141 Cal.App.4th 1017, 1026

> In the construction of a statute the intention of the Legislature ... is to be pursued, if possible...;
> *Code of Civil Procedure section 1859*

> In the absence of an unambiguous plain meaning, we must look to extrinsic sources such as legislative history to determine the statute's meaning. (Citation)
> *Avila v. Citrus Community College Dist*. (2006) 38 Cal.4th 148, 155

> As we have often noted, our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent.
> *Laurel Heights Improvement Assn. v. Regents of U.C.* (1993) 6 Cal.4th 1112, 1127

> In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration.
> *In re Lance, W.* (1985) 37 Cal.3d 873, 889 and *In re Harris* (1993) 5 Cal.4th 813, 844

> When questions as to the applicability or interpretation of statutes are presented to this court, numerous cases have recognized that the controlling issue is the intent of the Legislature. [Citations] The legislative history of the statute as well as the historical circumstances of its enactment may be considered in determining the intent of the Legislature. [Citations] Thus we shall look beyond the statute's language and inquire into its history for the purpose of ascertaining legislative intent.
> *People v. Jeffers* (1987) 43 Cal.3d 984, 993

> ...When the Legislature has stated the purpose of its enactment in unmistakable terms, we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose.
> *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 831

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In construing a statute we begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.
California Teachers Assn. v. San Diego Community College District (1981) 28 Cal.3d 692, 698, 699

In the present instance both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. (Citations)
California Mfrs. Assn. v. Public Utilities Commission (1979) 24 Cal.3d 836, 844, 846

Where the language of a statute is ambiguous, courts must "'examine the history and background of the statutory provision in an attempt to ascertain the most reasonable interpretation of the measure.'" (Citations)
Kuperman v. San Diego Assessment Appeals Bd. No. 1 (Smith) (2006, 4th District, Div. 1) 137 Cal.App.4th 918, 937

Our duty is to reconcile conflicting provisions in a manner that carries out the Legislature's intent. (Citation.) Turning to the legislative history behind subdivision (b) of section 417, . . .
People v. Rivera (2003, Fourth District, Division Three) 114 Cal.App.4th 872, 878

If the words of the statute are ambiguous, a court "may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (Citation Omitted) Applying these rules of statutory interpretation, a court "'must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and to avoid an interpretation that would lead to absurd consequences.' . . ."
Guillemin v. Stein (2002, Third District) 104 Cal.App.4th 156, 164

When statutory language is amenable to a range of meaning,... perhaps the factor of greatest significance in the interpretive equation is that of legislative purpose.
Natural Resources Defense Council v. Fish & Game Commission (1994, 3rd Dist) 28 Cal.App.4th 1104, 1123

Our analysis starts from the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent ... In determining intent, we look first to the words themselves ... When the language is clear and unambiguous, there is no need for construction ... When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aides including the including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citation]
Golden State Homebuilding Association v. City of Modesto (1994, 5th Dist) 26 Cal.App.4th 601, 608

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In addition to the rules of statutory construction, a valuable aid in ascertaining legislative intent may be the legislative history of a statute.
In re Rudy L. (1994, 2nd Dist, Div 1) 29 Cal.App.4th 1007, 1012

Third, whatever criticism there may be of judicial recourse to legislative intent in construing statutes [Citations], California is firmly committed to the practice.
Clavell v. North Coast Business Park (1991, 4th Dist, Div 1) 232 Cal.App.3d 328, 332

In the matter before us, the legislative history does not change the outcome. We are concerned, however, that neither the parties to this action, nor amicus ... demonstrate an awareness of the specific legislative history. Because this case presents such a troublesome set of circumstances and a difficult issue to resolve, the pertinent legislative history is consequential and should be discussed.
Zipton v. W.C.A.B. (1990, 1st Dist, Div 3) 218 Cal.App.3d 980, 987

Because of the failure of the Legislature expressly to delineate the meaning of ... "we must rely on a cardinal principle of statutory construction: ... we are required to give it an interpretation based upon the legislative intent with which it was passed." ...

In our determination, we follow the general rule that legislative records may be looked at to determine legislative intention, and it will be presumed that the Legislature adopted the proposed legislation with the intent and meaning expressed in committee reports.
Southland Mechanical Constructors v. Nixen (1981, 4th Dist, Div 2) 119 Cal.App.3d 417, 427

Where a statute is theoretically capable of more than one construction, we choose that which most comports with the intent of the Legislature. [Citations]...

In determining that issue, we apply the recognized approach of seeking the intent of the Legislature in enacting the statutory scheme so that the intent may be carried out by judicial construction... More precisely, we search for the manner in which the Legislature would have treated the problem in the case at bench had the Legislature foreseen it. In that search, we are cognizant of at least three judicial approaches applied singly or in some combination. One approach utilizes maxims of statutory construction which, by a process of selection, can support any result a court thinks appropriate.... Another resolves the unforeseen problem in the way the court would have done had it been the Legislature and blessed with foresight equal to hindsight.... The third approach seeks clues of legislative intent from legislative history and within the statutory scheme of which the legislation to be interpreted is a part.... As seductive and uninhibited as the first and second approaches may be, we deem the third controlling upon us where clues to the legislative intent exist.
Lewis v. Ryan (1976) 64 Cal.App.3d 330, 333

The primary rule of statutory construction, to which every other rule as to interpretation of particular terms must yield,

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> is that the intention of the Legislature must be ascertained if possible, and when once ascertained, will be given effect, even though it may not be consistent with the strict letter of the statute.
> *Marina Village v. California Coastal Zone Conservation Commission* (1976) 61 Cal.App.3d 388, 392

In re Haines (1925) 195 Cal. 605, 613; *Alameda v. Kuchel* (1948) 32 Cal.2d 193, 199; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; *Nunn v. State* (1984) 35 Cal.3d 616; *Brown v. Kelly Broadcasting* (1989) 48 Cal.3d 711, 724; *People v. Edwards* (1991) 54 Cal.3d 787, 810; *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826; *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826; *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 54; *California Teachers Assn. v. Governing Board of Rialto Unified School District* (1997) 14 Cal.4th 627, 632

Neely v. Board of Retirement (1974) 36 Cal.App.3d 815, 819; *Taylor v. McKay* (1975) 53 Cal.App.3d 664, 650; *Rushing v. Powell* (1976) 61 Cal.App.3d 597, 604; *Marrujo v. Hunt* (1977) 71 Cal.App.3d 974, 977; *Mount Vernon Memorial Park v. Board of Funeral Directors and Embalmers* (1978) 79 Cal.App.3d 874-875; *Lastarmes Inc. v. Commissioner* (1982) CCH Dec. 39, 483, 79 Tax Court 810, 826; *County of San Mateo v. Booth* (1982) 135 Cal.App.3d 388, 396; *County of Ventura v. Stark* (1984) 158 Cal.App.3d 1112; McCann v. Welden (1984) 153 Cal.App.3d 814; *In re Eldorado Insurance Company* (1987) 189 Cal.App.3d 1149, 1152; *People v. Thompson* (1988, 2nd Dist, Div 6) 205 Cal.App.3d 871, 879; *Lillebo v. Davis* (1990, 3rd Dist) 222 Cal.App.3d 1421, 1439; *Golden State Homebuilding Association v. City of Modesto* (1994, 5th Dist) 26 Cal.App.4th 601, 608; *Armenio v. County of San Mateo* (1994, 1st Dist, Div 5) 28 Cal.App.4th 413, 416; *In re Rottanak K.* (1995, 5th Dist) 37 Cal.App.4th 260, 267, fn. 8; *State Compensation Insurance Fund v. W.C.A.B.* (1995, 2nd Dist, Div 3) 37 Cal.App.4th 675, 681; *Conservatorship of Bryant* (1996, 4th Dist, Div 1) 45 Cal.App.4th 117, 120; *Decastro West Chodorow & Burns, Inc. v. Superior Court* (1996, 2nd Dist, Div 7) 47 Cal.App.4th 410, 418; *Fireman's Fund Insurance Companies v. Quackenbush* (1997, 1st Dist, Div 5) 52 Cal.App.4th 599, 606; *Conway v. City of Imperial Beach* (1997, 4th Dist, Div 1) 52 Cal.App.4th 78, 84

1. Rationale for Primacy of Legislative Intent-Separation of Powers:

The California Supreme Court in a 1997 case, stated the primacy of legislative intent in statutory construction to be a consequence of the Constitutional separation of powers. It expanded as follows:

> We begin with the touchstone of statutory interpretation, namely, the probable intent of the Legislature. To interpret statutory language, we must "ascertain the intent of the Legislature so as to effectuate the purpose of the law." [Citations] In undertaking this determination, we are mindful of this court's limited role in the process of interpreting enactments from the political branches of our state government. In interpreting statutes, we follow the Legislature's intent,... this court has often recognized, the judicial role in a democratic society is fundamentally to interpret laws, not to write them. The latter power belongs primarily to the people and the political branches of government ...." (*Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607, 675.... It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature. *California Teacher's Assn. v. Governing Board of Rialto United School District* (1997) 14 Cal.4th 627, 632; see also *Tesco Controls, Inc. v. Monterey Mechanical Co.* (2004, Third District) 122 Cal.App.4th 1467, 1478-1479

In a 2005 case the Court stated:

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> In recent years, this court has had several occasions to consider principles of separation of powers as they relate to the relationship between the legislative and judicial branches. (Citations)
>
> "From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine." (Citation) That Constitution apportions the powers of state government among the three branches familiar to all students of government in this country--legislative, executive, and judicial--and states that "[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) Despite the apparent sharp division of powers among the governmental branches that the California Constitution provides, in reality the branches are mutually dependent in many respects, and the actions of one branch may significantly affect another branch. (Citation) . . . Such interrelationship, of course, lies at the heart of the constitutional theory of 'checks and balances' that the separation of powers doctrine is intended to serve." (Citation)
>
> "At the same time, this doctrine unquestionably places limits upon the actions of each branch with respect to the other branches." (Citation) . . . We quoted especially pertinent language from one of those cases: "'Of necessity, the judicial department as well as the executive must in most matters yield to the power of statutory enactments. [Citations]
>
> *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103

Addressing the judicial function in another way, Justice Joseph R. Grodin stated:

> When the Legislature adopts a valid rule, the courts are obliged to apply it; this is a corollary of our system of representative democracy.... Because of the hierarchical relationship between a Legislature and a court in matters of law making, judges feel obliged to follow the directions of the Legislature insofar as they can ascertain them. "Special Book Excerpt: Do Judges Make Law" California Lawyer May, 1989, page 61, at page66 [addressing Grodin's book In Pursuit of Justice: Reflections of a State Supreme Court Justice (University of California Press-1989)]

2. Other Circumstances Justifying an Analysis of Legislative Intent:

In some cases the court concludes its interpretation of a statute without reference to legislative intent and history. Within the context of its interpretation however, these courts then turn to analyze and consider the legislative history of the statute commenting that it supports their conclusion in any event. Typical of this is the following:

> We therefore conclude there is no persuasive authority contrary to the proposition we postulate ... We are convinced that this was the law before the recent legislation, but are nevertheless happy to cite and rely on the legislative pronouncements to the same affect.

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1111 Prospect Partners, L.P. v. Superior Court (1995, 4th Dist, Div 1) 38 Cal.App.4th 570, 578, fn. 7 (Review Granted)

Another circumstance is where there are no cases interpreting the statutory language in question. For example in the following case the court held:

> The application of "probably cause" in section 21307 appears to be an issue of first impression. Neither party has cited us to a case which applies that term to an actual will contest. Nor have we found such a case. We must therefore attempt to determine the intention of the Legislature in enacting the section. [Citation]
> *Estate of Peterson* (1999, 4th Dist) 72 Cal.App.4th 431, 436

In re Jesusa V. (2004) 32 Cal.4th 588 with conflicting appellate opinions to resolve, the California Supreme Court analyzed a statute in light of its legislative history. It then addressed two conflicting appellate opinions, stating these cases "which held to the contrary without examining this history are disapproved to the extent they are inconsistent with the discussion herein." (Id., page 624 fn. 12)

B. Legislative Intent of Initiatives, Local Ordinances, Rules, and Regulations

The rules of statutory construction which enable courts to rely on legislative materials to ascertain legislative intent apply equally to the enactments of any body acting in a legislative capacity, including administrative agencies, local boards, and the electorate itself.

1. Initiatives:

> In interpreting a voter initiative, we apply the same principles that govern our construction of a statute. [Citation] We turn first to the statutory language, giving the words their ordinary meaning. [Citation] If the statutory language is not ambiguous, then the plain meaning of the language governs. [Citation] If, however, the statutory language lacks clarity, we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation] In such situations, we strive to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statute['s] general purposes. [Citation] We will avoid any interpretation that would lead to absurd consequences. [Citation]
> *People v. Elliot* (2005) 37 Cal.4th 453, 478

> In interpreting a voter initiative such as Proposition 36, we apply the same principles that govern the construction of a statute. [Citations] "Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law." [Citations.]
> *People v. Canty* (2004) 32 Cal.4th 1266, 1276

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> When an initiative measure's language is ambiguous, we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet. [Citation]
> *People v. Birkett* (1999) 21 Cal.4th 226, 243

> Statutes adopted by initiative are interpreted according to the same rules governing the interpretation of statutes enacted by the legislature.
> *Horwich v. Superior Court* (1999) 21 Cal.4th 272

> The Courts must interpret a constitutional amendment to give effect to the intent of the voters adopting it.
> *In re Quinn* (1973) 35 Cal.App.3d 473, 483

Winchester v. Mabury (1898) 122 Cal. 522, 527; *Winchester v. Howard* (1902) 136 Cal. 432, 439; *People v. Knowles* (1950) 35 Cal.2d 175, 182; *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 245; *Legislature v. Eu* (1991) 54 Cal.3d 492, 505; *Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1072; *Carrisales v. Department of Corrections* (1999) 5073601 Cal.4th (slip opinion. II Discussion, 11th Paragraph)

People v. Markham (1986) 198 Cal.App.3d 249, 259; *Larson v. Duca* (1989) 213 Cal.App.3d 324, 329; *Sanford v. Garamendi* (1991, 3rd Dist) 233 Cal.App.3d 1109, 1118; *Jenkins v. County of Los Angeles* (1999, 2nd Dist, Div 4) 74 Cal.App.4th 524, 531; *Hahn v. State Board of Equalization* (1999, 2nd Dist, Div 1) 73 Cal.App.4th 985, 995-996

2. <u>Local Ordinances</u>:

City council agendas, minutes, reports from the city attorney, transcripts of public hearings held, staff reports and so forth on the adoption of a local ordinance were found properly the subject of a request for judicial notice under Evidence Code section 452 which request was granted in *Bravo Vending v. City of Rancho Mirage* (1993, 4th Dist, Div 2) 16 Cal.App.4th 383, 405-406.

In another case, rules of statutory construction were applied to an ordinance in this manner:

> This conclusion does not mean that TRPA's ordinance cannot be upheld as valid. "It is the duty of the courts, wherever possible, to construe a statute in a manner which is reasonable, consistent with the statutory purpose, and eliminate doubts as to its constitutionality." [Citations] In examining the legislation for such a construction, the court should seek an interpretation which preserves as much of the constitutional provisions of the statute as possible, but which the legislative body would have intended to put into effect had it foreseen the constitutional limitations.
> *Tahoe Regional Planning Agency v. King* (1991, 3rd Dist) 233 Cal.App.3d 1365, 1406

The ballot pamphlet providing the history of county charter provisions were judicially noticed in *Giles v. Horn* (2002, Fourth District, Division 1) 100 Cal.App.4th 206, 225, fn.6

See also: *C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 929; *San Francisco International Yachting Group v. City and County of San Francisco* (1992) 9 Cal.App.4th 672, 682

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3. Regulations:

Resolution 58,859 is a "legislative enactment[] issued by or under the authority of . . . [a] public entity in the United States," of which notice may be taken under Evidence Code section 452, subdivision (b). (Citation) The operative complaint also alleges the existence and some of the terms of the resolution. We also take notice, as legislative history reflecting on the purposes of the enactment, of the city manager's memorandum to the mayor and city council recommending the resolution's adoption. (Citations)
Evans v. City of Berkeley (2006) 38 Cal.4th 1, 7, fn.2

During the proceedings below, both parties requested judicial notice of the legislative and administrative history of section 226.7, and we have considered these documents.
National Steel and Shipbuilding Co. v. Superior Court (Godinez) (2006, 4th District, Div. 1) 135 Cal.App.4th 1072, 1077 [Review Granted]

The administrative record reflects that when the Department proposed to amend regulation 52, subdivision (b) to prohibit gifts of alcoholic beverages.... In rejecting the change, the Office of Administrative Law found the Department's justification and explanation for the changes inadequate.
Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (1999, 4th Dist) 71 Cal.App.4th 1518, 1528

The cardinal rule of construction is that the court should ascertain the intent of the promulgating body so as to effectuate the intended purpose of the statute or regulation. This rule has been extended to construction of administrative regulations. *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 344-45

Prospect Medical Group, Inc .v. Northridge Emergency Medical Group (2006, 2nd District, Div. 3) 136 Cal.App.4th 1155, 1169-70 [Review Granted-5/24/2006] [judicially noticed public comments, and responses to proposed regulations which were never adopted as bearing on the legislative intent of statute] 9/2008, no action yet

4. Court Rules:

The usual rules of statutory construction are applicable to the interpretation of the California Rules of Court. [Citation]
Conservatorship of Coombs (1998) 67 Cal.App.4th 1395, 1398.

Maides v. Ralphs Grocery Co. (2000, 4th Dist, Div 1) 77 Cal.App.4th 1363, 1369; *Volkswagen of America, Inc. v. Superior Court (Adams)* (2001, First District, Division 5) 94 Cal.App.4th 695, 703; *Snider v. Superior Court (Quantum Productions, Inc.)*(2003, Fourth District, Division 1) 113 Cal.App.4th 1187, 1199-1203

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II. IS THERE A NEED FOR AMBIGUOUS LANGUAGE?

A. Plain Meaning Rule and the Need for Ambiguity

> As with any issue of statutory interpretation, we begin with the text of the relevant provisions. If the text is unambiguous and provides a clear answer, we need go no further. If the language supports multiple readings, we may consult extrinsic sources, including, but not limited to the legislative history and administrative interpretations of the language. Where as here, the Legislature has adopted a uniform act, the history behind the creation and adoption of that act is also relevant.
> *Microsoft Corporation v. Franchise Tax Board* (2006) 39 Cal.4th 750, 758

> Assuming that section 12940, former subdivision (j)(1) is susceptible to two conflicting interpretations, we turn to legislative history for guidance.
> *Carter v. Calif. Department of Veteran's Affairs* (2006)38 Cal.4th 914, 927

> Ambiguity "means 'susceptible to more than one reasonable interpretation.' (citation) ¶ . . . [T]he initial examination may lead to the conclusion that 'the language employed is clear and intelligible and suggests but a single meaning. . .' (Citations.) Because legislative intent prevails over the words actually used (citation.), however, where a party argues a latent ambiguity exists, a court may not simply adopt a literal construction and end its inquiry. (Citation.) ¶ A latent ambiguity exists where 'some extrinsic evidence creates a necessity for interpretation or a choice among two or more possible meanings. '(Citation) Such a necessity is present where a literal construction would frustrate rather than promote the purpose of the statute. (Citations.) Another example of such a necessity is presented where a literal construction would produce absurd consequences. (Citation.)"
> *Coburn v. Sievert* (2005, 5th District) 133 Cal.App.4th 1483, 1495

Judicial authority to investigate the intention of the Legislature is frequently stated to be subject to the condition precedent that the statutory language in question must be shown to be ambiguous, uncertain, or unclear before the court may construe or interpret it, or conversely that the plain meaning of a statute must be respected. *Lennane v. FTB* (1994) 9 Cal.4th 263, 268 and *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 744-746. This concept is traditionally referred to as the "plain meaning rule"; more modernly one sees reference to the "new textualism." *J.A. Jones Construction Company v. Superior Court* (1994) 27 Cal.App.4th 1568, 1575-1576

Although this rule is often repeated, it has been disfavored by some commentators in favor of the primacy of legislative intent. Under the heading "The Limits of Literalism" *Sutherland on Statutory Construction* states at section 46.07 the following:

> Although many expressions favoring literal interpretation

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may be found in the cases it is clear that if the literal import of the text of an act is not consistent with the legislative meaning or intent, or such interpretation leads to absurd results, the words of the statutes will be modified to agree with the intention of the legislature. Again, contrary to the traditional operation of the plain meaning rule, courts are increasingly willing to consider other indicia of intent and meaning from the start rather than beginning their inquiry by considering only the language of the act.

...

The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to allow a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read to conform to the spirit of the act. *Sutherland on Statutory Construction*, section 46.07

To like effect, the United States Supreme Court has said:

But words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how clear the words may appear on superficial examination.
Harrison v. Northern Trust Co. (1943) 317 U.S. 476, 479; *see also* *Lynch v. Overholser* (1962) 369 U.S. 705, 710

Consider also the following California cases:

In construing a statute, our task is to determine the Legislature's intent and purpose for the enactment. (Citation) We look first to the plain meaning of the statutory language, giving the words their usual and ordinary meaning. (Ibid) If there is no ambiguity in the statutory language, its plain meaning controls; we presume the Legislature meant what it said.

(Ibid) 'However, if the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.' [Citations]
People v. Yartz (2005) 37 Cal.4th 529, 537-38

Where a statute is theoretically capable of more than one construction we choose that which most comports with the intent of the Legislature.
California Mfrs. Assn. v. Public Utilities Commission (1979) 24 Cal.3d 844, 844, 846

We disagree, however, with respondent's sweeping assertion that in all cases "ambiguity is a condition precedent to interpretation." Although this proposition is generally true, "the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole."

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Silver v. Brown (1966) 63 Cal.2d 841, 845; *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 849; *Poliak v. Board of Psychology* (1997, 3rd Dist) 55 Cal.App.4th 342, 348

The courts resist blind obedience to the putative "plain meaning" of a statutory phrase where literal interpretation would defeat the Legislature's central object.
Leslie Salt Co. v. S.F. Bay Conserv. and Develop. Comm. (1984) 153 Cal.App.3d 605, 614; see also *Kramer v. Intuit Inc.* (2004, Second District Division 2) 121 Cal.App.4th 574, 579

The phrase "such an action" obviously refers to "a civil action under this part." This latter phrase is reasonably susceptible to two constructions. As defendants assert, the phrase could mean that only FEHA claims may be pursued in the county where the discriminatory practice allegedly occurred.
Alternatively, as petitioners contend, the phrase could signify that any civil action which contains an FEHA claim may be brought in that county. Both constructions are reasonable.
It is not clear from the language of Section 12965 which interpretation was intended. Therefore, this court must look at the purpose of the law to ascertain the Legislature's intent.
Brown v. Superior Court (C.C. Myers, Inc.) (1984) 37 Cal.3d 477.
See also: Pollack v. DMV (1985) 38 Cal.3d 367; *Swift v. County of Placer* (1984) 153 Cal.App.3d 209, 214

Another expression of this approach from a 2002 appellate case:

"In interpreting a statute where the language is clear, courts must follow its plain meaning. [Citation.] However, if the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. [Citation.] In the end, we '"must select the construction that comports most closely with the apparent intent of the Legislature with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."
In re Michael D. (2002, Third District) 100 Cal.App.4th 115,121

In *M&B Construction v. Yuba County Water Agency* (1999, 3rd Dist) 68 Cal.App.4th 1353, at pages 1359-1360 the court found:

> Considering only the bare language of section 7059(b), the word "determine" reasonably could be construed to convey the meaning ascribed by either party.... In such a circumstance, we turn to extrinsic aids, including "the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporary administrative construction, and the statutory scheme of which the statute is a part."

B. <u>Plain Meaning Rule in Historical Context</u>

Many cases analyzing the language of a statute to construe its meaning, often termed an intrinsic analysis, do not find it inconsistent to also review the legislative history of an enactment, regardless of the existence of an ambiguity. In this context, the process of analyzing legislative intent and

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construing a statute in light of it, is denoted extrinsic analysis. The California Supreme Court provides an example of this in *People v. Frazer* (1999) 21 Cal.4th 737. In that case the court examined various legislative history materials. (Id., page 753) It noted "Based on the 'express language' of the statute, and 'extrinsic' evidence in the legislative record, we have no doubt the statute operates in this manner. [Citation]" (Id. page 751)

Courts often perform an intrinsic analysis of the literal, or plain meaning of statutory language, finding or not finding ambiguity in statutory language. This finding is followed by any number of rationales for then looking to the legislative intent of that language by recourse to extrinsic aides, i.e. legislative history materials, for an extrinsic analysis of the statute. The sheer number of such cases suggests that the plain meaning rule is not commonly seen in many cases as a barrier to a consideration of legislative history material as an extrinsic aide to statutory analysis. Rather the plain meaning of language is examined and then placed in its historical context by a review of legislative materials. This appears evidenced in the following cases:

> Our first task is to examine the language of the statute enacted ... giving the words their usual, ordinary meaning. [Citations] If the language is clear and unambiguous, we follow the plain meaning of the measure. [Citations] "[T]he 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a measure comports with its purpose...." [Citation]
>
> ... It is appropriate to consider evidence of the intent of the enacting body in addition to the words of the measure, and to examine the history and background of the provision in an attempt to ascertain the most reasonable interpretation. [Citations]
> *People v. Canty* (2004) 32 Cal.4th 1266, 1276-1277
>
> In short, we must begin by giving the statutory language its ordinary everyday meaning, construed in the context of the purposes and objectives of the Legislature.
> *Vikco Insurance Services, Inc. v. Ohio Indemnity Co.* (1999, 1st Dist, Div 4) 70 Cal.App.4th 55, 62 (court examined the "legislative history" of a code section without a clear reference to all of the historical documents examined; at one point it cites to various versions of a bill, and a committee analysis)
>
> What we have said so far is, in theory, dispositive, but we also recognize that legislative *history* can also be *a* factor in the exploration of legislative *intent.* For example, if the legislative history, otherwise independent of the language and surrounding statutory scheme, showed *clearly* that the Legislature really did intend to reverse the *Harris* decision upon the construction of subdivision (a) of section, we should at least be given pause to ponder whether the conclusion otherwise required by the language and canons of statutory construction was correct. (Cf. *J.A. Jones Construction Co. v. Superior Court* (1994) 27

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Cal.App.4th 1568, 1579, 33 Cal.Rptr.2d 206 [noting importance of "*clear statement* of intent in the legislative history"].) On the other hand, as we learn from the recent decision in *Bernard v. Foley* (2006) 39 Cal.4th 794, 47 Cal.Rptr.3d 248, 139 P.3d 1196, legislative history can be a factor to be weighed along with language and structure of a statute, and will often (as is logical) *support* the conclusion to be drawn from the bare language of a statute and its surrounding statutory structure. (*Id.* at p. 809, 47 Cal.Rptr.3d 248, 139 P.3d 1196 ["In sum, we conclude that nothing in the statute's structure, terms or language authorizes us to impose a professional or occupational limitation on the definition of 'care custodian'.... This conclusion is buttressed by the legislative history of the statute, to which we now turn."].) Also, our Supreme Court will sometimes *test* a conclusion regarding statutory construction by examining contemporaneous legislative history. (E.g., *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1208, fn. 31, 48 Cal.Rptr.3d 108, 141 P.3d 225.)
Gunther v. Lin (2006, 4th District, Division 3) 144 Cal.App.4th 223,243

The Court will place the plain meaning of a statute in its historical context in the following ways:

1. Ambiguity Not Readily Ascertainable

In *People v. Goodloe* (1995, 1st Dist, Div 1) 37 Cal.App.4th 485, 491, the court addressed the plain meaning rule, acknowledged that determining whether a statute is ambiguous is not always readily ascertainable, then looked to evidence of legislative history. *See also: People v. Hurtado* (1999, 4th Dist, Div 1) 73 Cal.App.4th 1243, 1253, fn.10

In *Woodbury v. Brown-Dempsey* (2003, Fourth Dist., Div. Two) 108 Cal.App.4th 421, the court stated:

> Where the statutory language is clear and unambiguous, there is no need for judicial construction. Giving the words used here their ordinary import and meaning, we discern no particular ambiguity. . .
>
> . . .
>
> The matter is not wholly free from all doubt, however; assuming that the provision is ambiguous, we may look to other aids in interpreting its meaning: If the statutory language is ambiguous, we may look to the legislative history, the background of the enactment, including apparent goals of the legislation, and public policy, to determine its meaning.
> *Woodbury v. Brown-Dempsey* (2003-Fourth District, Div. Two) 108 Cal.App.4th 421, 433-434

2. No Ambiguity: Yet Language "Inconclusive" or not "dispositive"

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Where the literal language of a statute is not dispositive we consider its legislative history to see if that process informs our interpretation. Both the legislative history of the statute and the wider historical circumstances of the enactment may be considered in ascertaining legislative intent. (Citation)
Asfaw v. Woldberhan (2007, 2nd District, Division 8) 147 Cal.App.4th 1407, 1417-1418

While the language of section 7164 is not ambiguous per se, it is certainly inconclusive regarding the intended consequences of a violation of the statute. Inasmuch as the "general object of the legislation ..., and the mischief sought to be remedied" (Parr v. Municipal Court (1971) 3 Cal.3d 861, 866) may shed some light on this question, we deem it appropriate to consider the legislative history with this prospect in mind.
Arya Group, Inc. v. Cher (2000, 2nd Dist, Div 2) 77 Cal.App.4th 610, 614, fn.3

3. <u>Latent Ambiguity: Justifies Resort to Legislative History</u>

Thus, extrinsic aids can be used to (1) identify the existence of a latent ambiguity and (2) resolve the ambiguity. We recognized that the treatise cited has adopted a different view of what is an extrinsic aid than the California Supreme Court, though the difference in labels does not appear to create a difference in the use of those aids that would change the outcome in this case.
Coburn v. Sievert (2005, 5th District) 133 Cal.App.4th 1483, 1496, fn.5

. . . But language that appears unambiguous on its face may be shown to have a latent ambiguity; if so, a court may turn to customary rules of statutory construction or legislative history for guidance. [Citation.] [¶] . . . Statutory language [that] seems clear when considered in isolation may in fact be ambiguous or uncertain when considered in context. . . .
Noel v. River Hills Wilsons, Inc. (2003, Fourth District Division 1) 113 Cal.App.4th 1363, 1373

. . . the first question in statutory interpretation is whether the statute is ambiguous. Statutory language may be ambiguous on its face, or it may be "shown to have a latent ambiguity such that it does not provide a definitive answer." We find that section 35330 has a latent ambiguity.

. . .

In order to discern the Legislature's intent in this regard, we have reviewed the available legislative history for section. . . .
Casterson v. Superior Court (Cardoso) (2002, Sixth District) 101 Cal.App.4th 177 188

But where the language may appear to be unambiguous yet a latent ambiguity exists, the courts must go behind the literal language and analyze the intent of the law utilizing "customary rules of statutory construction or legislative history for guidance. [Citation.]"

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> *McLaughlin v. State Board of Education* (1999, 1st Dist, Div 2) 75 Cal.App.4th 196, 215

> However, language that appears unambiguous on its face may be shown to have a latent ambiguity and thus a court may turn to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation]
> *In re Marriage of Campbell* (1999, 1st Dist, Div 5) 74 Cal.App.4th 1058, 1062

> If the meaning of "cultivated" and its related forms varies from statute to statute, it is appropriate to turn to legislative history in our effort to understand the Legislature's intent concerning the meaning and scope of section 1021.9.
> *Quarterman v. Kefauver* (1997, 1st Dist, Div 1) 55 Cal.App.4th 1366, 1373

> SCEA asserts that the legislative history of the statute itself reveals a "latent ambiguity" not apparent from its text. As SCEA notes, "language that appears unambiguous on its face may be shown to have a latent ambiguity; if so, a court may turn to customary rules of statutory construction or legislative history for guidance." (Citation.)"'[A] latent ambiguity is said to exist where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic evidence creates a necessity for interpretation or a choice among two or more possible meanings.' [Citation.]" (Citation.)

> Even if we were to consider the legislative history of the statute, however, we would still find no latent ambiguity suggesting another possible meaning of the statutory language. fn. 4 SCEA relies primarily on a 1977 report written by the State Bar Committee on Arbitration, . . .
> *Whaley v. Sony Computer Entertainment America, Inc.* (2004, Fourth District Division 1) 121 Cal. App.4th 479, 487

> See also: *People v. Hagedorn* (2005, Fifth District) 127 Cal.App.4th 734, 743

4. <u>No Ambiguity: Legislative History "Consistent" With the Plain Meaning of the Statute</u>

The California Supreme Court in *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748-751 examined the text of the statutory language as amended in the legislative bill enacting the text, and a committee analysis for evidence of legislative intent. It culminated its analysis and review stating: "This interpretation is consistent with the plain meaning language of the statute and the Legislature's manifest intent in enacting section 340.6."

In another case, the California Supreme Court analyzed language finding no ambiguity, declined an invitation to examine legislative history material, yet then went into a lengthy consideration of that documentation, stating:

> Defendants ask that we consider not only the context in which the Corporate Securities Law was enacted, but also available legislative history in the form of comments made by the committee appointed by then Commissioner of Corporations Harold R. Volk which drafted the law when the law was submitted to the

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> Legislature and by Commissioner Volk and Professor Harold Marsh, Jr., the reporter of that committee, in their treatise, Practice Under the California Corporate Securities Law of 1968 (1969). We decline the invitation. Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning. [Citation] We note, however, the materials cited by defendants are not inconsistent with our conclusion that the civil remedies of section 25500 are not limited in the manner suggested by Diamond Multimedia. The drafters' comments confirm that the purpose of the Corporate Securities Law is ....
> *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1055, and generally 1055-1057

> Because it fully harmonizes the two provisions this construction is favored under the rules of statutory construction. To satisfy ourselves that it is not inconsistent with legislative intent, we consider the legislative history of section. . .
> *Cacho v. Boudreau* (2007) 40 Cal. 4th 341, 353

> Because we find the plain meaning of section 15305.5, subdivision (c) sufficiently clear, both in isolation and in its statutory context, we need not consider legislative history or other extrinsic indications of legislative intent. We note, however, that our interpretation is consistent with expressed legislative intent. The sponsor of the bill . . . stated . . .
> *Young v. McCoy* (2007, 2nd District, Division 1) 147 Cal.App.4th 1078, 1086, fn. 8

> Our analysis of the plain meaning of section 731, subdivision (b) is consistent with the legislative history of the section. The original committee bill analysis explains: . . .
> *In re Geneva C.* (2006 2nd District, Division 4) 141 Cal.App.4th 754, 759

See Also: *People v. Ali* (1967) 66 Cal.2d 277 and *Southland Mechanical Constructors v. Nixen* (1981, 4th Dist, Div 2) 119 Cal.App.3d 417, 430

5. No Ambiguity: Legislative History Examined Due to its Proffer by all Parties:

One court, after stating the principles of the plain meaning rule, went on to look to legislative intent and history stating: "Nonetheless, as the parties have dwelled so on legislative history, we turn to that often murky arena for enlightenment." *Wells Fargo Bank v. Bank of America* (1995, 2nd Dist, Div 2) 32 Cal.App.4th, 424, 434.

> Both the Attorney General and Flatley have asked us to take judicial notice of portions of the legislative history of . . . Flatley's request is in support of his claim that . . . The Attorney General's request is in connection with his response to an argument made by Mauro that . . . Mauro objects on the grounds that the statute speaks for itself and recourse to legislative

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> history is unnecessary. While we have in the past made the same observation regarding the plain language of the statute, and we reach our conclusions in this case based on the statute's plain language, we have nonetheless granted similar requests to take judicial notice of section 425.16's legislative history in past cases. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120, 81 Cal.Rptr.2d 471, 969 P.2d 564.) Accordingly, we grant the requests.
> *Flatley v. Mauro* (2006) 39 Cal.4th 299, 306, fn.2

6. <u>No Ambiguity: *Duty* to Analyze Statute's Legislative History</u>

> Although in our view, the language used in Section 64(c) is not ambiguous, the intent of the Legislature is the end and aim of all statutory construction....
> *Title Insurance and Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 95

In one case, when rejecting an argument to strictly apply the plain meaning rule, an appellate court spoke of resort to legislative intent documents in terms of a duty:

> Appellant's argument, that considering the clear and unambiguous language of the statute the legislative history and the contemporaneous administrative construction were inadmissible to prove legislative intent and the purpose of the statutory amendment, is ill-founded and must fail for two major reasons.
>
> First, it is commonplace that a word is a symbol of thought and as such has no fixed or true objective meaning. The meaning of particular words or groups of words varies with the verbal context and the surrounding circumstances in which the words are used [Citations]. In line with these premises, the "plain meaning rule" advocated by appellant has been severely criticized by 2A Sutherland, Statutory Construction (4th ed. 1973) section 45.02, page 4: "This rule is deceptive, however, in that it implies that words have intrinsic meanings ... [A] word is merely a symbol which can be used to refer to different things.... It is impossible to determine the referent of the word without a knowledge of the facts involved in its use.... It is only through custom, usage, and convention that language acquires established meanings. The assertion in a judicial opinion that a statute needs no interpretation because it is 'clear and unambiguous' is in reality evidence that the court has already considered and construed the act. It may also signify that the court is unwilling to consider matter or evidence bearing on the question as to how the statute should be construed, and is instead declaring its effect on the basis of the judge's own uninstructed and unrationalized impression of its meaning. Because issues as to what a statute means or what a legislature intended are essentially issues of fact, even though they are decided by the judge and not by a jury, a court should never exclude relevant and probative evidence from consideration." fn. 5
>
> In the case at bench, the extrinsic evidence in dispute was highly relevant to show the legislative intent underlying the statute. This is especially true with respect to the legislative history of the enactment which furnishes crucial evidence with

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> respect to the measurement of knotted nets, the subject matter of the present controversy. It follows that the trial court was not only free, but also duty bound to admit the challenged extrinsic evidence to ascertain the true intent of the Legislature and to effectuate the purpose of the law.
>
> Second, appellant's argument is untenable for the additional reason that section 8602 is far from being clear or unambiguous....
> *Pennisi v. Fish & Game* (1979, 1st Dist, Div 2) 97 Cal.App.3d 268, 275-276

In another context, a duty to examine the legislative history of a section is suggested by the language of the California Supreme Court. The court seems to chastise a defendant for not providing legislative history materials when advancing a construction of a statutory provision based on legislative intent:

> Defendant further asserts that the Legislature, when enacting the one-year-from-discovery provision of section... intended to codify... the common law discovery rule... In advancing this legislative intent argument, however, defendant refers neither to the text of section 340.6 nor to any legislative history materials.
> *Samuels v. Mix* (1999) 22 Cal.4th 1, 10

Similarly, appellate courts suggest a duty to provide legislative history when advancing a statutory construction:

> The employers fn. 10 state that the statute prohibits successive class suits, because class actions are expensive to litigate and consume substantial judicial resources, and the statute was designed to prevent forum shopping. They cite, however, no legislative history supporting these statements. fn. 11
> *Alch v. Superior Court (Time Warner Entertainment)* (2004) 122 Cal.App.4th 339, 364
>
> Our interpretation finds support in the legislative history surrounding Assembly Bill No. 3253. . .In contrast, Summerfield has directed us to *no* legislative history suggesting the
>
> Legislature ever intended to abolish for all emergency credential holders. . .
> *Summerfield v. Windsor Unified School District* (2002, First District, Division 3) 95 Cal.App.4th 1026, 1035

7. <u>No Ambiguity: Legislative History Informs, Buttresses, Validates, Comports with or Confirms Court Interpretation</u>

> To confirm the proper interpretation of sections 201 and 203, we next examine the ostensible objects to be achieved and the legislative history.
> *Smith v. Superior Court* (2006) 39 Cal.4th 77, 85
>
> Insofar as the Court of Appeal specifically addressed disclosure of the deputy's identity, it erred in finding that this information is not confidential under section 832.7. This

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conclusion derives largely from section 832.7, subdivision (c), which permits . . . The language limiting the information that may be disclosed under this exception demonstrates . . . The legislative history of this provision confirms the Legislature's intent to. . .
Copley Press, Inc., v. Superior Court (San Diego County) (2006) 39 Cal.4th 1272, 1297

In sum, we conclude that nothing in the statute's structure, terms or language authorizes us to impose a professional or occupational limitation on the definition of "care custodian" . . . or to craft a preexisting personal friendship exception thereto. This conclusion is buttressed by the legislative history of the statute, to which we now turn.
Bernard v. Foley (2006) 39 Cal.4th 794, 809

. . . This statutory language is unambiguous, and makes the filing of a viable anti-SLAPP motion . . . Legislature history buttresses this conclusion. In enacting the anti-SLAPP statute, the Legislature. . .
S.B. Beach Properties v. Berti (2006) 39 Cal.4th 374, 383-384

The Law Revision Commission comment to section 4 confirms this interpretation. The Commission explains . . . The comment then notes: . . . Thus, as a general rule, future changes to the Family Code . . .
In re Marriage of Fellows (2006) 39 Cal.4th 179, 186

Finally, section 1355(b)'s legislative history supports the conclusion that all homeowners are bound by amendments adopted and recorded subsequent to purchase. . . court "may observe that available legislative history buttresses a plain language construction" . . .
Villa De Las Palmas Homeowners Assn. V. Terifaj (2004) 33 Cal.4th 73, 85

The legislative history of section 43.8 confirms this view. In 1974, when section 43.8 was being considered for adoption, Senate Committee staff provided this analysis ...
Hassan v. Mercy American River Hospital (2003) 31 Cal.4th 709, 721

To the extent the statute is ambiguous, the legislative history supports the conclusion the exemption statutes incorporate fewer than all the crimes listed in Penal Code section. . .
Doe v. Saenz (2006, 1st District, Div. 3) 140 Cal.App.4th 960, 984

The legislative history of section 384 is also consistent with our construction. Even when a statute is unambiguous, it is nevertheless common for a court to review legislative history in order to confirm its statutory analysis. (Citation) Here, by contrast, there is an inherent ambiguity, in that . . . . Contrary to Jakob's assertion, this ambiguity is not resolved by the express declaration of legislative intent set out in section 384, subdivision (a). fn. 11 Thus, it is proper to examine the legislative history of section 384 to determine the proper scope of the phrase "any judgment." (Citations)

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In re Microsoft I-V Cases (2006, 1st District, Div. 1) 135 Cal.App.4th 706, 719

Even if the plain meaning of the words of the statute was not enough, the legislative history of Senate Bill No. 459 requires the same conclusion. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 736 [court "may observe that available legislative history buttresses a plain language construction"].) On our own motion, we take judicial notice of the legislative history of Senate Bill No. 459. (Evid. Code, § 452, subd. (c); Kern v. County of Imperial (1990) 226 Cal.App.3d 391, 400, fn.8 [appellate court may take judicial notice of legislative history materials on own motion].)
In re Jacob J. (2005, Third District) 130 Cal.App.4th 429, 436

Because we find section 731 is not ambiguous, we need not resort to legislative history for our decision. We only note the history as confirmation of our conclusion as to the plain language of the statute. The stated rationale for the numerous changes created by Senate Bill . . .
In re Carlos E. (2005, Fifth District) 127 Cal.App.4th 1529, 1541

Although we have concluded that the meaning of section 189 is clear, in the event a reader has any doubt, he or she may easily extinguish it by looking at the legislative history. . .

Senate Bill No. 310 was enacted in 1993. . . Senator Ruben Ayala introduced the bill, stating;. . .
People v. Chavez (2004, Fifth District) 118 Cal.App.4th 379, 386

We agree with the Agency that the plain language of the Act authorizes a redevelopment agency to seek injunctive relief compelling a responsible party to cleanup its hazardous waste and there is no need to review the legislative history. But even if the Act was ambiguous, the legislative history shows that the Legislature intended a redevelopment agency to have such power. . . .
Redevelopment Agency of San Diego v. San Diego Gas & Electric Co. (2003, Fourth District, Division 1) 111 Cal.App.4th 912, 918

Viewed from this perspective, we think there is nothing ambiguous or unclear about the statutes. By its plain language it prohibits. . .

. . .

Legislative history further supports our conclusion. As we pursue that task, we keep the following admonition in mind: "It is a well-established canon of statutory construction that a court should go beyond the literal language of the statute if reliance on that language would defeat the plain purpose of the statute. . ." (Citation Omitted.)
Florez v. Linens 'N Things, Inc. (2003, Fourth Dist. Div. Three) 108 Cal.App.4th 447, 451-452

When statutory language is clear, courts do not resort to other aids to determine legislative intent. . . . The statutory language in section 12025. . .the Legislature clearly intended to impose broader criminal liability than suggested by appellant.

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In any event, legislative history and a commonsense interpretation of the ordinary meaning of the words support the instruction given. . .
People v. Padilla (2002, Second District, Division 4) 98 Cal.App.4th 127, 133

Although we have not found any such ambiguity as to section 66427.4, the City and the Association contend that section 66427.5 is ambiguous and inapplicable, and they rely heavily on the legislative history of the 1991 and 1995 amendments to that section. Although we find little ambiguity, it is proper to consider legislative history "where it buttresses our interpretation of the plain meaning of a statute. [Citation.]" [Citations] Accordingly, we briefly review the legislative history of section 66427.5.
El Dorado Palm Springs, Ltd. V. City of Palm Springs et al (2002, 4th Dist, Div 2) 96 Cal.App.4th 1155, 1167

If there were any ambiguity in section 121358-and we do not find any-it would be resolved by the legislative history of the statute. . . First, the legislative materials indicate. . . *Souvannarath v. Hadden* (2002, Fifth District) 95 Cal.App.4th 1115, 1126

Our primary aim in construing any law is to determine the legislative intent. [Citation] In doing so we look first to the words of the statute, giving them their usual and ordinary meaning. {Citation)...

Although we need not resort to "extrinsic indicia of the enactor's intent" (Conservatorship of Coombs, supra, 67 Cal.App.4th at p. 1398), the following explanation of rule 3(b)'s adoption is informative:...
Maides v. Ralph Grocery Co. (2000, 4th Dist, Div 1) 77 Cal. App.4th 1363, 1369

Where, as here, legislative intent is expressed in unambiguous terms, we must treat the statutory language as conclusive; "no resort to extrinsic aids is necessary or proper." [Citations] But, we may consider legislative history where it buttresses our interpretation of the plain meaning of a statute. [Citation]
Jenkins v. County of Los Angeles (1999, 2nd Dist, Div 4) 74 Cal.App.4th 524, 530

But the "plain meaning rule" does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose .... [Citation]
Ream v. Superior Court (1996, 3rd Dist) 48 Cal.App.4th 1812, 1818-1819, court examined a legislative report, a committee analysis, and the bill itself.

Further, even if we assume the statute is ambiguous on this point, the legislative history validates our interpretation. The legislative history reveals ....
People v. Olecik (1995, 6th Dist) 51 Cal.App.4th 54, 67, 69

However, while the unadorned language and organization of the statute are consistent with plaintiff's position, the legislative history of the statute and the wider historical

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circumstances of its enactment ... persuade us that the Legislature intended to create the automatic immunity petitioners assert.
American Tobacco Co. v. Superior Court (1989) 208 Cal.App.3d 480, 486

Legislative materials inform our construction of a statute only when the words of the statute are unclear (People v. Jones (1993) 5 Cal.4th 1142, 1146 [22 Cal.Rptr.2d 753, 857 P.2d 1163]), but a clear statement of intent may serve to confirm a provisions plain meaning.... The Legislature's substitution of 'separate violations' for 'prior offenses' in former section 23175, its explanation for doing so in section 23217, and the legislative materials available to assist and inform the Legislature's consideration of Assembly Bill No. 3833, taken together, amply reflect the Legislature's goal of preventing the DUI offender from escaping an enhanced penalty for multiple offenses. They indicate moreover the Legislature's intention to punish all repeat DUI offenders harshly,...
People v. Snook (1997) 16 Cal.4th 1210, 1219

City of La Mesa v. California Joint Powers Ins. Authority (2005, 1st District, Div. 5) 131 Cal.App.4th 66, 75; *In re Marriage of Cauley* (2006, 6th District) 138 Cal.App.4th 1100, 1107-1108

8. No Ambiguity: Court May Test Construction Against Legislative History

At oral argument, defense counsel insisted that we need not, and should not, consult section 2015.5's history, because the statute is unambiguous on its face. However, as our cases make clear, courts may always test their construction of disputed statutory language against extrinsic aids bearing on the drafters' intent. (Olmstead v. Arthur J. Gallagher & Co. (2004) 32 Cal.4th 804, 813; In re Eddie M. (2003) 31 Cal.4th 480, 497.) This principle assumes greater relevance where, as here, the parties accept the statute's literal terms but strongly dispute whether they are directory or mandatory.
Kulshrestha v. First Union Commercial Corp. (2004) 33 Cal.4th 601, 613, fn.7

We may also "test our construction against those extrinsic aids that bear on the enactors' intent." [Citation] Both the structure of the Legislature's regulation of misconduct in litigation, and the legislative history of section 128.5, support our conclusion....
Olmstead v. Arthur J. Gallagher & Co. (2004) 32 Cal.4th 804, 813

9. No Ambiguity: Exam of Legislative History Warranted Given Arguments

Ozkan also claims the legislative history of section 12015.5 favors his argument. Where, as here, the meaning of a statute is clear on its face, we need not consult sources of legislative history to discern the intent of the lawmakers, so as to interpret the statute. (Citation Omitted.) However, Ozkan's arguments rest considerably on selected portions of the legislative history of section 12015.5, and although we perceive

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no ambiguity in the language of section 12015.5, we find that an examination of the legislative history is warranted.
People v. Ozkan (2004, First District, Division 5) 124 Cal.App.4th 1072, 1080

10. Other Cases:

The plain language of the relevant condition –"or any other court order"– includes a stay-away order issued as a condition of probation. Any ambiguity or doubt in this respect is dispelled by the history of the provision, which discloses the Legislature's intent to include, in the quoted phrase, orders issued as a condition of probation.
People v. Corpuz (2006) 38 Cal.4th 994, 997

Dickey v. Raisin Proration Zone #1 (1944) 24 Cal.2d 796, 802; *Stafford v. Los Angeles County Employees Retirement Board* (1954) 42 Cal.2d 795, 799; *Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645; *San Bernardino Fire and Police v. City of San Bernardino* (1962) 199 Cal.2d 410, 413; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 739-40; *People v. Pieters* (1991) 52 Cal.3d 894, 898-899; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1334, fn. 7; *Mercy Hospital and Medical Center v. Farmers Insurance Group of Companies* (1997) 15 Cal.4th 213, 219

People ex rel Flournoy v. Yellow Cab Co. (1973) 31 Cal.App.3d 41, 45; *Sacramento County v. Pacific Gas & Electric* (1987) 193 Cal.App.3d 300; *Santa Barbara County Taxpayers Assn. v. County of Santa Barbara* (1987) 194 Cal.App.3d 674, 680; *Farnow v. Superior Court* (1990, 1st Dist, Div 2) 226 Cal.App.3d 481, 490; *People v. Hannah* (1999, 2nd Dist) 73 Cal.App.4th 270, 273; *Maides v. Ralphs Grocery Co.* (2000, 4th Dist, Div 1) 77 Cal.App.4th 1363, 1369; *Estate of Thomas* (2004, Second District, Division 2) 124 Cal.App.4th 711, 723

III. HOW TO PROVIDE LEGISLATIVE HISTORY TO THE COURTS

A. Procedures for Proffering Evidence of Legislative Intent.

By a review of the hundreds of California cases utilizing legislative history documents as extrinsic aides to statutory construction we find there are at least four methods for receiving this evidence.

1. By Informal Notice of Legislative Facts:

Legislative facts, as distinguished from adjudicative facts, have been historically, and still frequently are, noticed informally. Imwinkelried, Wydick and Hogan, California Evidentiary Foundations 3rd edition states:

> Like Federal Rule of Evidence 201, the statutes do not restrict the courts' informal notice of so-called legislative facts. As the court stated in Auchmoody v. 911 Emergency Servs., 214 Cal.App.3d 1510, 1518-1519,... (1989) "[T]he Law Revision Commission Comment to Evidence Code section 450 provides that 'Under the Evidence code, as under existing law, courts may consider whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of ... extrinsic aides.'" Nevertheless, the courts sometimes cite the judicial notice statutes to justify

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their consideration of material relevant to the construction of statutes.
Johnson v. Superior Court (1994, 2nd Dist, Div 5) 25 Cal.App.4th 1564 (Id. page 586, fn. 1)

In *El Dorado Palm Springs, Ltd. v. City of Palm Springs, et al* (2002, 4th Dist, Div 2) 96 Cal.App.4th, 1155, we find this footnote regarding the use of the legislative history of an enactment:

> The City filed a legislative history of the 1991 and 1995 legislation prepared by Legislative Intent Service with the trial court. Unless otherwise indicated, we refer to our record for the legislative history discussed in this section. Id., page 1167, fn. 11

Many of the cases utilizing legislative history materials as "extrinsic aides" to statutory construction make no mention of the process by which the material comes before the court. See *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917; *California Teachers Assn. v. Governing Board of Rialto United School District* (1997) 14 Cal.4th 627, 632-648 and *In re Marriage of Cordero* (2002, 4th Dist, Div 3) 95 Cal.App.4th 653, 663, fn. 9 (" A legislative history of Family Code section 4502 has been prepared by the Legislative Intent Service.")

Legislative history materials were simply appended to a brief, and accepted as the court found sufficient notice and opportunity to oppose the use of the document that had been given in a 1995 appellate decision.

> At oral argument, counsel for the Chronicle said he had never before seen this legislative report. We note, however, that More cited the report in its brief in this case, and that a copy of the report was attached as an exhibit to More's opening brief in the prior case. In an abundance of caution, we allowed both parties to submit additional briefing to discuss the report. We have reviewed that briefing and incorporate our response in the text of the opinion.
> *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995, 1st Dist, Div 5) 39 Cal.App.4th 1379, 1383, fn. 4

> However note to the contrary *People v. Ozkan* (2004, First District, Division 5) 124 Cal.App.4th 1072, 1080 fn.5 where judicial notice request found in a footnote in a brief was denied. However the court went on to consider the legislative history given appellants arguments.

2. By Judicial Notice:

Evidence Code section 450 provides judicial notice "may be taken of a relevant matter only if that matter is either required or authorized to be judicially noticed by statutory or decisional law. (Section 47.2, Judicial Notice, Jefferson's California Evidence Benchbook) Under Evidence Code section 452(c) "Official acts of the legislative, executive and judicial departments of the United States, or any state of the United States" may be noticed. California

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courts have taken judicial notice of legislative history materials under this section. *People v. Ledesma* (1997) 16 Cal.4th 90, 98, fn. 4.

To provide an example of how the courts have commonly utilized this procedure, we look to *Pearl v. Workers' Comp. Appeals Bd.* (2001) 26 Cal.4th 189, 198, fn. 4 "We grant Pearl's request for judicial notice of legislative history materials on Labor Code section 3208.3 and Government Code section 21166." And to *Estate of Thomas* (2004, Second District, Division 2) 124 Cal.App.4th 711, 723, fn.3 "At Thomas's request, the trial court took judicial notice of an analysis prepared by the Legislative Intent Service, which appears to be a comprehensive compilation of the UPAIA's legislative history."

In *People v. Brown* (1993) 6 Cal.4th 322, 334, the Court took judicial notice in this manner:

> In this regard, we have consulted the "Legislative Intent Service" history of section 170.3.
> *People v. Jenkins* (1987) 196 Cal.App.3d 394, 404

Consider these other cases:

> Both the Attorney General and Flatley have asked us to take judicial notice of portions of the legislative history of . . . Flatley's request is in support of his claim that . . . . The Attorney General's request is in connection with his response to an argument made by Mauro that . . . . Mauro objects on the grounds that the statute speaks for itself and recourse to legislative history is unnecessary. While we have in the past made the same observation regarding the plain language of the statute, and we reach our conclusions in this case based on the statute's plain language, we have nonetheless granted similar requests to take judicial notice of section 425.16's legislative history in past cases. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120, 81 Cal.Rptr.2d 471, 969 P.2d 564.) Accordingly, we grant the requests.
> *Flatley v. Mauro* (2006) 39 Cal.4th 299, 306, fn.2

> We grant the People's request for judicial notice of the legislative history of section 2933.1.
> *In re Reeves* (2005) 35 Cal.4th 765, 776, fn.15

> The correct way to request judicial notice of a document is by motion. (Cal. Rules of Court, rule 22(a).)
> *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31

> Contemporaneous legislative committee analyses are subject to judicial notice. (Citation) We may also regard them as reliable indicia of the legislative intent underlying the enacted statute. (Citation) We find particularly instructive a Senate Floor analysis. . .
> *In re Microsoft I-V Cases* (2006, 1st District, Div. 1) 135 Cal.App.4th 706, 719-720

> We grant Huff's request that we take judicial notice of this legislative history. (Evid. Code, § 452.)

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Huff v. Wilkins (2006, 4th District, Div. 1) 138 Cal.App.4th 732, 742, fn.3 (committee analysis)

We have taken judicial notice of the Senate and Assembly Committees on Judiciary's analyses of Senate Bill No. 218. (See *In re J.W.* 2002) 29 Cal. 4th 200, 211, . . .["To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice"].)
Wayne F. v. Superior Court of San Diego County (2006, 4th District) 145 Cal. App. 4th 1331, 1339 fn.3

We take judicial notice of certain materials from the legislative history of section 8026, including legislative committee reports and various versions of AB 2582 as appearing in the Assembly and Senate committee bill files. We also grant the County's request to take judicial notice of the letter from the sponsor of AB 2582 transmitting the final version of the bill to the Governor for signing.
Faulder v. Mendocino County Board of Supervisors (2006, 1st District, Division 4) 144 Cal. App. 4th 1362, 1376 fn. 4

We grant Growers' request for judicial notice of the legislative history of section 55638 prepared by Legislative IntentService and other materials filed on June 6, 2006, and grant Secured Lender's June 7, 2006 request for judicial notice of legislative materials labeled as exhibits A and B.
Frazier Nuts, Inc. v. American Ag Credit (2006, 5th District) 141 Cal.App.4th 1263, 1272

On our own motion, we take judicial notice of the legislative history of Senate Bill No. 459. (Evid. Code, § 452, subd. (c); Kern v. County of Imperial (1990) 226 Cal.App.3d 391, 400, fn.8 [appellate court may take judicial notice of legislative history materials on own motion].)
In re Jacob J. (2005, Third District) 130 Cal.App.4th 429, 436

Santa Clara Valley Transportation Authority v. Rea (2006, 6th District) 140 Cal.App.4th 1303, 1321, fn.6; *Doe v. Saenz* (2006, 1st District, Div. 3) 140 Cal.App.4th 960, 984

Third District Court of Appeal:

In the Third District Court of Appeal there is now a format for submitting a motion for judicial notice of legislative history in its jurisdiction:

In order to help this court determine what constitutes properly cognizable legislative history, and what does not, in the future motions for judicial notice of legislative history materials *in this court* should be in the following form:

1. The motion shall identify each separate document for which judicial notice is sought as a separate exhibit;

2. The moving party shall submit a memorandum of points and authorities citing authority why each such exhibit constitutes cognizable legislative history.

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Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (2005, 3rd District) 133 Cal.App.4th 26, 31 (emphasis added)

In further regard to judicial notice of legislative history documents:

In *Post v. Prati* (1979) 90 Cal.App.3d 626, 634, the court identified these materials as coming within the parameters of Evidence Code section 452(c): a) legislative committee reports; b) excerpts from testimony given at public legislative hearings; and c) correspondence to the Governor recommending passage of the bill from Legislative Analyst, a state agency and an individual legislator.

A court's authority to exercise its discretion to judicially notice such materials under Evidence Code section 452 is without significant restriction. The California Law Revision Commission comments to Evidence Code section 450 quoted in part in *Johnson v. Superior Court*, and referenced by Imwinkelried, Wydick and Hogan, above, also provide:

> Section 450 will neither broaden nor limit the extent to which a court may resort to extrinsic aides in determining the rules of law that it is required to notice. Nor will Section 450 broaden or limit the extent to which a court may take judicial notice of any other matter not specified in Section 451 or 452.
> Evidence Code section 450, Law Revision Commission Comment.

California courts have liberally employed this authority:

> We take judicial notice of the ballot arguments to Proposition 9 and the legislative history material of section 83116.5, documents we typically consult as interpretive aids in these circumstances. (See, e.g., *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 246.)
> *People v. Snyder* (2000) 22 Cal.4th 304, 315, fn.5

> Defendants request judicial notice of various legislative history materials. We grant their request to notice exhibit A, which consists of legislative history materials to Senate Bill No. 679. (See Evid. Code, § 452, subd. (c); *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064 [31 Cal.Rptr.2d 358, 875 p.2d 73].) *Delaney v. Baker* (1999) 20 Cal.4th 23, 30

> Courts may take judicial notice of relevant legislative history to resolve ambiguities and uncertainties concerning the purpose and meaning of a statute. (Citations.) Moreover, as a reviewing court, we must, and here do, take judicial notice of those materials properly noticed by the trial court, including enrolled bill reports to the governor and legislative committee and caucus reports, worksheets, and digests. (Citations.)
> *People v. Connor* (2004, Sixth District) 115 Cal.App.4th 669, 683 fn. 6

> On our own motion, we take judicial notice of the legislative history of Senate Bill No. 1406 and the 1994

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amendments to the statute enacted as Senate Bill No. 1377. (Evid. Code, §§ 452, subd. (c), 459; *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8 [appellate court may take judicial notice of legislative history materials on own motion])
Realmuto v. Gagnard (2003, Fourth District, Division 1)) 110 Cal.App.4th 193, 201, fn.3

LACERA has provided us with a legislative history of Assembly Bill 1893 prepared by Legislative Intent Service. These materials include legislative committee bill analyses, which we judicially notice pursuant to Evidence Code sections 459 and 452, subdivision (c). (Citation Omitted.)
Board of Retirement v. Superior Court (People) (2002, Second District, Division 6) 101 Cal.App.4th 1062, 1070

At Arya's request, we have taken judicial notice of the materials provided by the Legislative Intent Service. (Evid. Code, §§ 452, subd. (c), 459, 459;
Commodore Home Systems, Inc. v. Superior Court (1982) 32 Cal.3d 211, 218, fn. 9.) *Arya Group, Inc. v. Cher* (2000, 2nd Dist, Div 2) 77 Cal.App.4th 610, 614, fn. 3

Defendant filed a request of judicial notice of legislative history for Penal Code Section 215.... "The request for judicial notice is granted."
People v. Medina (1995, 5th Dist) 39 Cal.App.4th 643, 647

Pursuant to Evidence Code Section 452, defendant requests that this court take judicial notice of the fact that there is a chemical difference between cocaine base and cocaine hydrochloride. He also requests this court to take judicial notice of Senate Bill No. 943, chapter 1174, and its legislative history. The Attorney General does not oppose these requests and they are granted.
People v. Adams (1990, 5th Dist) 220 Cal.App.3d 680, 686

We have complied with Evidence Code Section 455, Subdivision (b) in order to take notice of the Legislative Counsel's communication. Such documents may be used to determine legislative intent.
People v. Rodriguez (1984, 5th Dist) 160 Cal.App.3d 207, 214

We have before us the materials judicially noticed below. Primarily, they consist of two (2) major legislative committee reports on geothermal resources, the "final (legislative) history" of the act, excerpts from testimony given at public legislative hearings, and some correspondence directed to the governor's office recommending his signature on Senate Bill 169 (the Act) from the legislative analyst, a state agency, and an individual legislator. Judicial notice was properly taken of these materials since they are in the categories of "(c) official acts of the legislative, executive, judicial departments of the United States and of any state of the United States."
Post v. Prati (1979) 90 Cal.App.3d 626, 634

Pearson v. State Social Welfare Board (1960) 54 Cal.2d 184, 210; *State Compensation Insurance Fund v. W.C.A.B.* (1985) 40 Cal.3d 5; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504, fn. 1; *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 501, fn. 22; *Estate of Joseph* (1998) 17 Cal.4th 203, 210 fn. 1; *People v. Nguyen* (1999) 21 Cal.4th 197, 206, fn. 3; *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, fn. 3; *People v. Acosta* (2002) 29 Cal.4th 105,

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119, fn. 5; *In re J.W.* (2002) 29 Cal.4th 200, 211; *People v. Canty* (2004) 32 Cal.4th 1266, 1281, fn. 4; *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 717 fn. 2; *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 375, fn. 9; *People v. Holmes* (2004) 32 Cal.4th 432, 439 fn. 3; *Martin v. Szeto* (2004) 32 Cal.4th 445, 451-452, fn. 9; *Eisner v. Uveges* (2004) 34 Cal. 4th 915, 929 fn.10 *People v. Holmes* (2004) 32 Cal.4th 432, 439

People v. Sterling Refining Co. (1927) 86 Cal.App. 558, 564; *ABC Acceptance v. Delby* (1957) 150 Cal.App.2d Supp. 826, 828; *People v. Long* (1970) 7 Cal.App.3d 586; *Marocco v. Ford Motor Co.* (1970) 7 Cal.App.3d 84, 88; *McGlothlen v. DMV* (1977) 71 Cal.App.3d 1005, 1015; *Southland Mechanical Constructors v. Nixen* (1981, 4th Dist, Div 2) 119 Cal.App.3d 417, 428; *Zhao v. Wong* (1996, 1st Dist, Div 1) 48 Cal.App.4th 1114, 1123, fn.5; *Sounhein v. City of San Dimas* (1996, 2nd Dist, Div 5) 47 Cal.App.4th 1181, 1196; *Steiner v. Superior Court of Orange County* (1996, 4th Dist, Div 3) 50 Cal.App.4th 1771, 1786 fn. 22; *Sears v. Baccaglio* (1998, 1st Dist, Div 2) 60 Cal.App.4th 1136, 1146-1147; *People v. Patterson* (1999, 3rd Dist) 72 Cal.App.4th 438, 442-443; *People v. Belcher* (1999, 5th Dist) 75 Cal.App.4th 150, 161; *People v. Hunt* (1999, 3rd Dist) 74 Cal.App.4th 939, 947, fn.2; *Main Fiber Products, Inc. v. Morgan & Franz Insurance Agency* (1999, 4th Dist, Div 2) 73 Cal.App.4th 1130, 1136; *Zink v. Gourley* (2000, 2nd Dist, Div 5) 77 Cal.App.4th 774, 779, fn. 3; *Guardian North Bay, Inc. v. Superior Court (Myers)* 2001, Sixth District) 94 Cal.App.4th 963, 976, fn 2); *Unnamed Physician v. Board of Trustees* (2001, Fifth District) 93 Cal.App.4th 607, 623; *Ruiz v. Sylva* (2002, Second District, Division 8) 102 Cal.App.4th 199, 208 fn. 6; *Emeryville Redevelopment Agency v. Harcros Pigments, Inc.* (2002, First District, Division 4) 101 Cal.App.4th 1083, 1097, fn.3; *City of Malibu v. Santa Monica Mountains Conservancy* (2002, Second District, Division 6) 98 Cal.App.4th 1379, 1387; *People v. Chenze* (2002, Fourth District, Division 3) 97 Cal.App.4th 521, 527; *Smith v. Santa Rosa Police Department* (2002, First District, Division 2) 97 Cal.App.4th 546, 557, fn 9; *In re Raymond E.* (2002, Third District) 97 Cal.App.4th 613, 617; *Souvannarath v. Hadden* (2002,Fifth District) 95 Cal.App.4th 1115, 1126 fn 8; *Conservatorship of Davidson* (2003, First District, Division Three) 113 Cal.App.4th 1035, 1050-1051, fn.8; *Teamsters Local 856 v. Priceless, LLC* (2003, First District Division one) 112 Cal. App.4th 1500, 1517; *City of West Hollywood v. 1112 Investment Co.* (2003, Second District, Division 4) 105 Cal.App.4th 1134, 1143 fn. 2;*People v. Miranda* (2004, Second District Division 2) 123 Cal.App.4th 1124, 1131; *City of Santa Monica v. Stewart* (2005, Second District, Division 8) 126 Cal.App.4th 43, 81; *Reis v. Biggs Unified School District* (2005, Third District) 126 Cal.App.4th 809, 826; *In re Elijah S.* (2005, First District, Div. 3) 125 Cal.App.4th 1532, 1556; *Roy v. Superior Court (Lucky Star Industries, Inc.)* (2005, Fourth District, Division 2) 127 Cal.App.4th 337, 342; *Olson v. Automobile Club of Southern California* (2006, Second District, Div. 2) 139 Cal.App.4th 552, 557 fn.2, [Review Granted]; *Syngenta Crop Protection, Inc. v. Helliker (Gustafson LLC)* (2006, 2nd District, Div. 3) 138 Cal.App.4th 1135, 1162, fn.10; *Bosworth v. Whitmore* (2006, 2nd District, Div. 4) 135 Cal.App.4th 536, 546, fn.10; *People v. Palmer* (2005, 2nd District, Div. 3) 133 Cal.App.4th 1141, 1150, fn.6; *CPF Agency Corp. v. R&S Towing* (2005, 4th Dist., Div. 1) 132 Cal.App.4th 1014, 1029; *People v. Superior Court (Ferguson)* (2005, 1st District, Div. 3) 132 Cal.App.4th 1525, 1532; *Benjamin G. v. Special Ed. Hearing Office (Long Beach Unified School Dist.)* (2005, 2nd District, Div. 1) 131 Cal.App.4th 875, 881, fn.5

a. How to Make Discretionary Judicial Notice Mandatory:

Under Evidence Code section 452(c), a court has discretion to take judicial notice. Following the conditions of Evidence Code section 453 can present a party with the ability to make it mandatory for a court to take judicial notice. "Section 453 states that judicial notice of a proposition listed in § 452 becomes mandatory if a party makes a timely request and [f]urnishes the court with sufficient information to enable it to take judicial notice of the matter." [Citation] Imwinkelreid, Wydick, Hogan, California Evidentiary Foundations, 3d Edition, 2000, page 590

The section requires one to give "each adverse party sufficient notice of the requests, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request;" and to furnish "the court with sufficient information to enable it to take judicial notice of the matter."

Jefferson addresses the amount of time required for the notice stating:

> Whether the notice to adverse parties gives them sufficient or reasonable time to prepare to dispute a party's request for

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judicial notice depends on such considerations as the matter sought to be judicially noticed and the circumstances and complexity of the case. The requirement of "sufficient" notice means "reasonable" notice. (Id., section 47.36, pages 1080-1081)

b. Judicially Noticed Documents Must Be Relevant:

Materials that may be judicially noticed must meet the requirement of relevancy similar to any evidence sought to be introduced. (Section 47.6, Judicial Notice, Jefferson's Evidence Benchbook) In *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1065, the court found that even where judicial notice was mandatory, a superceding requirement of relevancy must be met. Witkin comments on this case stating:

> The power of the court to take judicial notice is limited by Ev. C. 350 (only relevant evidence is admissible; see text, Section 290) and Ev. C. 352 (exclusion of evidence where prejudice outweighs probative value; see text Section 298). Thus, only relevant material may be judicially noticed, and this limitation applies even to matters for which, under Evid. C. 451 (see text, Section 86 et seq.) judicial would appear to be mandatory. 1 Witkin, California Evidence, (1998 Supp) Judicial Notice, Section 80, page 55

See also: Stop Youth Addiction, Inc. v. Lucky Stores, Inc. (1998) 17 Cal.4th 553, 557, fn. 13; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1; *Schifando v. City of Los Angeles* (2004) 31 Cal.4th 1074, 1089; *People v. Connor* (2004, Sixth District) 115 Cal.App.4th 669, 683 fn. 6

In a case following *Mangini* the court stated:

> Shamrock requests us to take judicial notice of matters reflected in various articles and editorials and legislative documents. We deny its request. It is true that, as a "reviewing court" (Evid. Code, § 459, subd. (a)), we *must* take judicial notice of some matters (id., § 451) and *may* take judicial notice of others (id., § 452). There is, however, a precondition to the taking of judicial notice in either its mandatory or permissive form - any matter to be judicially noticed must be relevant to a material issue. [Citation]
> *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 423, fn. 2

Another practical application of the relevancy requirement can be seen in *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1. There the court stated:

> The legislative history of the 1993 amendment to Code of Civil Procedure section 1021.5 supports this conclusion. Thus, an analysis of the Senate bill to amend the statute explains: "Fee awards to public entities may not be increased or decreased by use of a 'multiplier,' *as otherwise authorized by law."* [Citation] Moses requests that we take judicial notice of this item of the legislative history; we grant the request. He also requests that we take judicial notice of certain materials concerning unrelated proposed legislation; because such materials have little relevance to a material issue in this matter, we deny the request. [Citation] Amici curiae The Impact Fund et al.

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> request us to take judicial notice of matters reflected in several specified documents including analysis of proposed legislation and a report by the State Bar Access to Justice Working Group, which they claim are related to the issue whether California attorney fees law authorizes payment for contingent risk in order to provide an incentive for private attorneys to prosecute public interest cases. Because the materials are relevant to a material issue in this case, we grant the request. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136, fn. 1
>
> In a 2005 case, the Supreme court found:
>
> Real party asserts that nothing in the legislative history of section 631 explicitly supports the view that the statute was intended to impose a temporal limitation on when the written consent is prepared and entered into.
>
> We find that, to the extent the relevant history provides any guidance at all, it yields the opposite conclusion. *Grafton Partners v. Superior Court (PriceWaterhouseCoopers LLP)* (2005) 36 Cal.4th 944,961

People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal.4th 707, 715

(1) Relevancy Reconsidered:

Evidence Code section 210 defines "Relevant evidence" to mean "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."

Bernard Jefferson refers to the "imprecise standard" of this section and states: "In practical terms, the relevancy test that a trial judge must use is one of logic, reason, experience, reasonable inference, and common sense, to be applied in each individual case." 1 Jefferson, California Evidence Benchbook (3d ed. 1998) section 27.21, page 299

Witkin provides "No precise or universal test of relevancy is furnished by the law. The question must be determined in each case according to the teachings of reason and judicial experience." [Citation] 1 Witkin California Evidence (3d Edition, 1986) Circumstantial Evidence, section 309, page 279

A careful review of the numerous cases construing legislative intent in accord with the legislative history of the statute at issue shows that courts will approach the matter on a case by case basis. Generally, see Legislative Intent Service Points and Authorities entitled: "Legislative History and Intent As Aides to Statutory Construction."

For an example of the California Supreme Court acting on a case by case basis in its use of a particular type of legislative document, one can examine its treatment of documents from the Governor's file in two cases. In *Calatayud v. State of California* (1998) 18 Cal.4th 1057, 1071 the court examined, among

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other legislative history materials, an enrolled bill report to the Governor from the Governor's file. On the other hand, in *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 502, fn. 21, the court declined to considered an analogous document, an Attorney General's memorandum to the Governor, found in the Governor's file.

c. Do Rules of Evidence Apply:

Jefferson's Evidence Benchbook addresses Evidence Code section 454(a)(2):

> Other exclusionary rules do not apply to sources of judicial notice. Evid. C §454(a)(2). For example, an adverse party may not object to the court's use of hearsay material to determine whether a matter is a proper matter for judicial notice. Even before the abolition of the best evidence rule, a copy of a document, instead of the original, could be the source of information for judicial notice. (Id., section 47.6, p. 1092)

3. By Cite to "Published" Documents:

Several recent decisions of the California Supreme Court find simple citation to "published" legislative documents sufficient to bring the legislative history to the court's attention.

In *Quelimane Company, Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26 the Court stated with regard to specific legislative documents:

> A request for judicial notice of published material is unnecessary. Citation to the material is sufficient (See Stop Youth Addition v. Lucky Stores, Inc. supra, 17 Cal.4th 553, 571, fn. 9) We therefore consider the request for judicial notice as a citation to those materials that are published. (Id., page 46, fn. 9)

In the *Stop Youth Addiction* case the Supreme Court indicated that judicial notice was not required for "readily available published materials." The court stated:

> CCC further requests we judicially notice: (1) a 1995 background study of the UCL commissioned by the California Law Revision Commission; (2) section 874A, comment (h) of the Restatement Second of Torts; and (3) a 1996 report of the Commerce Committee of the United States Senate concerning the Fair Packaging and Labeling Act. Although simple citations to such readily available published materials would have sufficed, to the extent they contain relevant materials we grant these portions of CCC's request. (Evid. Code Section 452, subd. (c)['[o]fficial acts'];...
> *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 577, fn. 13

Also in *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, (1998) 17 Cal.4th 553, 571, fn. 9, the Court addresses a party's request for judicial notice of two legislative bills and then states "Simple citations to such published materials

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would have sufficed (see *Mangini v. R.J. Reynolds Tobacco Co.*, supra, 7 Cal.4th 1057 at p. 1064); nevertheless, as relevant to ... we grant plaintiff's request. [citation]"

In the *Mangini* case, the Court states:

> Concurrently with two of its briefs, Reynolds asked us to notice materials relating to legislative history of the statute [federal] at issue. Although a simple citation to some of the readily available published material, such as excerpts from the United States Code Congressional and Administrative News, would have sufficed, we grant those requests, consisting of the first three items of Reynolds's original request, and the second item of its first supplemental request. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 634, 153 Cal.Rptr. 511, Evid.Code, S 452, subd. (c).) (Id., page 1064)

Tracing the cases cited in support of the procedure of simply citing to "published documents," one finds in the original case, *Mangini*, the court was asked to examine federal legislative history, documents traditionally published in book format by Congress i.e. Congressional reports published in the United States Code Service Annotated. These documents are distinctively different in nature than most of that generated by California and other state Legislatures as a legislative bill is considered. The citation to *Post v. Prati*, and the Evidence Code sections in the *Mangini* case thus seems arguably a comparison of apples and oranges.

A recent case following the *Quelimane* decision found no need to grant judicial notice requested by both parties to the case, stating "Annette and Sharon each have submitted a request for judicial notice of legislative history materials generally available from published sources. We deny both requests as unnecessary." *Sharon S. v Superior Court (Annette F.)* (2003) 31 Cal.4th 417, 440, fn. 18 [committee and floor analyses cited, as well as California administrative registers]

a. What are "Published" Documents:

Reviewing the cases, "published documents" appear to be the legislative bill, committee analyses, and from United States Code Service Annotated, Congressional reports. It may be then that any state legislative analyses, bills, analyses generated by an official entity of the Legislature or state, documents published in the Senate or Assembly Journal, or other legislative publications will qualify for this classification. Inferentially legislative file materials would seem to be "unpublished."

With regard to federal legislation, "published" would seem to encompass congressional reports, excerpts from the Congressional Record, hearing transcripts, bills, debates and so forth.

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4. **By Stipulation:**

The parties stipulated to the operable facts, to the admission of documentary evidence, and to the trial court's use of legislative intent service materials provided to the court. The parties agreed that the matter was entirely one of law. *Community Redevelopment Agency v. County of Los Angeles* (2001, 2nd Dist, Div 2) 89 Cal.App.4th 719, 725

B. **Do Legislative Documents Need to be Authenticated?**

1. **Authentication Not Required:**

Evidence Code sections 453-460 provide the procedure for taking judicial notice. Evidence Code section 454 sets forth the information that may be used in taking judicial notice and provides:

> (a) In determining the propriety of taking judicial notice of a matter or the tenor thereof:
> (1) any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by a party.
> (2) Exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.

Witkin states regarding this section "'In determining the propriety of taking judicial notice of a matter, or the tenor thereof' (Ev. C. 454), the judge is free from nearly all of the restrictions of the rules of evidence." (Id. Judicial Notice, Section 118, page 101)

Judicially noticed extrinsic aides, such as legislative history materials, are not evidence per se: "...judicial notice is an alternative to the presentation of formal evidence." (Imwinkelried, Wydick & Hogan, California Evidentiary Foundations, 3d Edition, page 585)

In *Gravert v. Deluse* (1970) 6 Cal.App.3d 576, 580, the court discussed the underlying principles stating "Judicial notice is, therefore, better described as a substitute for proof, 'a judicial shortcut,' a doing away with the formal necessity for evidence because there is no real necessity for it." See also *Mangini v. J.R. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062.

Witkin provides "Under the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required. Judicial notice is thus a substitute for formal proof." (Id., Judicial Notice, Section 80, page 74)

Witkin elsewhere provides:

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> Introduction of a writing in evidence requires a foundation by authentication (infra, Section 903)....
>
> Introduction in evidence is unnecessary where a writing is judicially noticed (infra, section 80 et seq.),...(Id. Documentary Evidence, Section 902, page 869)

Discussing the matter further under the article on judicial notice, Witkin states:

> Our former Code provision (C.C.P. 1827) classified judicial notice as a type of *evidence*. (See supra, Section 18) The classification was unsound, for the judge does not proceed in accordance with the rule of competency of witnesses and authentication of writings, nor is he restricted by the exclusionary rules (opinion rule, hearsay rule, best evidence rule, etc.).... (Id., Judicial Notice, Section 82, pages 75-76)

Evidence Code sections 453-460 evidence judicially noticed documents are an aide to the court, not evidence per se. Underscoring this is the existence of two sections of the Evidence Code enabling two distinct opportunities to a party to request a court to judicially notice legislative history documents as extrinsic aides to statutory construction. Evidence Code section 455 enables a trial court to take judicial notice of these materials. A reviewing court may also take judicial notice, under Evidence Code section 459, of matters which the trial court could have taken judicial notice of under Evidence Code section 451 and 453. This opportunity exists regardless of action taken or not taken at the trial court. (See further discussion in "Judicial Notice at the Appellate Court Level.")

Legislative history materials serve as an extrinsic aide in interpreting the law, and are not proffered "to prove the existence or nonexistence of a fact" as the term "evidence" is defined under Evidence Code section 140. This understanding is reflected in *California Teachers Assn. v. San Diego Community College District* (1981) 28 Cal.3d 692 at 698-699. "The interpretation of a statute,... is a question of law; and we are not bound by evidence presented on the question in the trial court. [Citations] The propriety of the use of extrinsic materials in determining legislative intent is a question which may be properly considered on appeal regardless of whether the issue was raised in the trial court."

For a case where the California Supreme court apparently used “unpublished” documents without any issue of authentication arising, see *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917.

2. Authentication by Declaration or Affidavit:

Imwinkelreid, Wydick and Hogan California Evidentiary Foundations, 3d (2000) edition, provide with regard to authentication and judicial notice:

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> Some judges still insist on authentication of any material submitted in support of a judicial notice request. See *Quelimane Co. v. Stewart Title Guaranty Co.*, 19 Cal.4th 26, 46 fn. 9 ... ("None of the materials submitted by plaintiffs is authenticated, however. (Evid. Code §§ 1401, 1530)"),... For that reason, to be on the safe side, it is a good practice to submit the material with a supporting affidavit from an expert. The notary public's signature on the affidavit is presumptively authentic under Evidence Code §1453(c).... Id., pages 590-591

Code of Civil Procedure section 2015.5 authorizes declarations under penalty of perjury in lieu of affidavits. In *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601,610 the court stated "Thus, with certain exceptions not relevant here, and subject to the conditions discussed below, section 2015.5 allows use of "unsworn" declarations made under penalty of perjury whenever state law "require[s] or permit[s]" facts to be evidenced by affidavits or other "sworn" statements. A valid declaration has the same "force and effect" as an affidavit administered under oath."

A party seeking judicial notice of legislative documents as an aide to statutory construction can reasonably move the court, under Evidence Code section 453, to use the documents as provided by Legislative Intent Service. Legislative Intent Service researches and copies legislative materials in the regular course of its business. It retains these copies in its private library of more than 8 million pages of legislative history gathered over its more than 30 year history.

Legislative Intent Service has been cited as the compiler, or source of the legislative record, in more than 60 California cases. (See Cases Citing Legislative Intent Service) The Second District Court of Appeal recently referred to legislative material, judicially noticed, as documents "... on file with Legislative Intent Service, History of Assem. Bill No. 1137 (1993-1994 Reg. Sess.),..." *Cheyanna M. v. A.C. Nielsen Co.* (1998, 2nd Dist) 66 Cal.App.4th 855, 877

A Legislative Intent Service declaration was recently cited in *People v. Connor* (2004, 6th Dist) 115 Cal. App. 4th 669, 681:

> The record contains two declarations submitted by defendant from Dorothy H. Thomson, Director of Legislative Intent Service, who attached as exhibits numerous documents that her staff retrieved in a search for the legislative history of the former and current versions of section 1203.05. Although defendant relied on these documents in his opposition to the News's petition, he did not formally ask the trail court to take judicial notice of them. However, we assume the court did so on its own motion because it summarized some of the exhibits in its decision.

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And in *Whaley v. Sony Computer America, Inc.* (2004, 4th District, Division 1) 121 Cal.App.4th 479, 487 the court cited to another such declaration, stating:

> Even if we were to consider the legislative history of the statute, however, we would still find no latent ambiguity suggesting another possible meaning of the statutory language. fn. 4...This report was obtained by Legislative Intent Service, a private company specializing in the research of legislative history and intent, from the file of the legislative representative of the State Bar of California. . . . fn.4. We grant SCEA's request for judicial notice as to items 1-11 of the legislative history attached to the declaration of Maria A. Sanders.

In another case, we infer that the declaration of Legislative Intent Service was before the court from the manner in which a legislative document is cited by the court. The citation is that which is used by Legislative Intent Service in its declarations. From *Ritchie v. Konrad* (2004, Second District, Division 7) 115 Cal.App.4th 1275, 1287, fn. 15: "Cal. Senate Judiciary Committee memorandum. (Legis. History Report, Ex. A, #11. To the same effect is the comment from the Judicial Council. . . . (Legis. History Report, Ex. A, #11)"

Looking to the actions of the California Supreme Court, *Quelimane* was followed by *In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 47, fn. 6. In *Marriage of Pendleton*, the court examined two committee analyses but would not examine two letters from an author's file, raising, among other things, lack of authentication. After *Quelimane* and *Marriage of Pendleton* the California Supreme Court in *People v. Sanchez* (2001) 24 Cal.4th 983, 992, fn. 4 simply accepted the entire legislative history (composed of published and unpublished documents) gathered by Legislative Intent Service stating: "Defendant's request that we take judicial notice of the materials included in the Legislative Intent Service report on the legislative history of section 191.5 is granted.".

C. <u>How Much of the Legislative History Should be Submitted?</u>

Whether to submit the entire legislative history of an enactment, or some part thereof must be decided by a consideration of all factors, significance of the issue of statutory construction, quantity of legislative history available, quality of available discussion in the legislative documents, tenor of the court and opposing counsel in the case, and so on. So many cases involve either a partial submission of legislative history, or a complete submission, that it appears to need to be considered on a case by case basis.

In June 2006, the California Supreme Court examined a complete legislative history:

> Indeed, a complete review of the Knox-Keene Acts voluminous legislative history does not support defendant's broad

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> interpretation of section 1395(b) and generally supports the People's more limited reading of that section.
> *People v. Cole* (2006) 38 Cal.4th 964, 989

> Other cases of the California Supreme Court:

> Unable to find support in the statutory text, Tenants urge us instead to rely on isolated fragments of the Act's legislative history. They point us in particular to a single paragraph in a Senate committee analysis. . .
> *Drouet v. Superior Court (Broustis)* (2003) 31 Cal.4th 583, 598

The Second District seems to criticize reliance on selected Documents from the legislative history of a bill stating:

> In support of their demurrer, the defendants cited a legislative committee analysis stating that the bill . . . They also cited an enrolled bill report stating, . . . We do not view these brief summaries as comprehensive statements of the intent of the statute. Moreover, although legislative history can help to disclose the intent of the Legislature when a statute is unclear or ambiguous, the statutory language is the primary indication of legislative intent. (Citation.)
> *Fremont Indemnity Company v. Fremont General Corporation* (2007, 2nd District, Division 3) 148 Cal.App.4th 97, 128-129

> The employers fn. 10 state that the statute prohibits successive class suits, because class actions are expensive to litigate and consume substantial judicial resources, and the statute was designed to prevent forum shopping. They cite, however, no legislative history supporting these statements. fn. 11. The employers offer a single page from the legislative history. . .fn.12 Our review of the legislative history reveals the following information. . .
> *Alch v. Superior Court (Time Warner Entertainment)* (2004, 2nd District, Div. 8) 122 Cal.App.4th 339, 364, fn.11 and fn.12

The Third District Court of Appeal, to the contrary, directs submission of individual documents for which judicial notice is sought of each as a separate exhibit with points and authorities citing authority for each exhibit being "cognizable legislative history." *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005, Third District) 133 Cal.App.4th 26 Following *Kaufman*, without comment: *Doe v. Saenz* (2006, 1st District, Div. 3) 140 Cal.App.4th 960, 986, fn.12; *Hesperia Citizens for Responsible Development v. City of Hesperia* (2007, 4th District, Division 1) 151 Cal.App.4th 653, 659; *Sabbah v. Sabbah* (2007, 4th District, Division 3) 151 Cal.App.4th 818 824

Despite the procedures for judicial notice of legislative history set forth in Kaufman & Broad Communities, Inc. vs. Performance Plastering, Inc. a 2006 case of the Third District appears to be considering a complete legislative history when it states:

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> A 104-page exhibit containing the legislative history of Assembly Bill no. 743 was prepared by the Legislative Intent Service (hereafter Legis. Hist.) and was submitted and considered by the trial court.
> *Wirth v. State of California* (2006, 3rd District) 142 Cal.App.4th 131, 141, fn. 6

Looking at the Fourth District we find this case:

> Defendant's counsel states that the other materials found by Legislative Intent Service were merely copies of earlier versions of section 466.5. He offers his opinion that the author's letter was the only document reflecting the general purpose and scope of the section.
>
> We note, however, that nothing in the letter specifically addresses the question presented in this case. In addition, we are reluctant to sanction defense counsel's selective presentation of one excerpt from the legislative history obtained from the Legislative Intent Service. The entire legislative history should have been submitted to us.
> *People v. Valenzuela* (2001, 4th Dist, Div 2) 92 Cal.App.4th 768, 776, fn. 3 and fn. 4

In the Fifth District, it appears a complete legislative history is reviewed:

> We grant Grower's request for judicial notice of the legislative history of section 55638 prepared by Legislative Intent Service and other materials filed on June 6, 2006, and grant Secured Lender's June 7, 2007 request for judicial notice of legislative materials labeled as Exhibits A and B.
> *Frazier Nuts v. American Ag Credit* (2006, 5th District) 141 Cal.App.4th 1263, 1272

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*Violante v. Communities Southwest Development & Construction Co. (*2006, 4th District, Div. 2) 138 Cal.App.4th 972, 977

D. <u>Can an Appellate Court Take Judicial Notice of Legislative History?</u>

As referenced above, the appellate court has the same right and power to take judicial notice as that which is vested in the trial court. (<u>Evidence Code section 459</u>; Rutter's <u>California Practice Guide: Civil Appeals and Writs</u>, 5:149)

> The parties also have filed a number of requests that we take judicial notice of public documents that include . . . the legislative history of Assembly Bill No. 1630 prior to its consideration and veto by the Governor and excepts from legislative material prepared by the Assembly Revenue and Taxation Committee when legislation was under consideration to conform state tax law with federal tax law as revised in 1978. We take judicial notice of these documents pursuant to Evidence Code section 459, subdivision (a) and 452, subdivision (c), permitting judicial notice to be taken of "[o]fficial acts of the legislative, executive or judicial departments . . . of any state

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of the United States." "Official acts include records, reports and orders of administrative agencies." (Citation)
Ordlock v. Franchise Tax Board (2006) 38 Cal.4th 897, 912, fn. 8

The Court of Appeal granted RVLG's request for judicial notice of documents bearing on the legislative history of section.... Among the documents the court judicially noticed were the ... fn. 7 [fn. 7: We have likewise granted RVLG's request in this court to take judicial notice of these same legislative history materials.]
Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345, 359 fn. 7

We grant defendant's request to take judicial notice of legislative history materials concerning section 12022.5(d) and related provisions. (Evid. Code §452, subd. (c))
People v. Ledesma (1997) 16 Cal.4th 90, 98, fn. 4

Nor are we aware of any other conclusive evidence that the Legislature intended to bar appellate review of the due process claim raised in this case. In this regard we have consulted the "Legislative Intent Service" history of Section 170.3.
People v. Brown (1993) 6 Cal.4th 322, 334

The interpretation of a statute, however, is a question of law; and we are not bound by evidence presented on the question in the trial court. [Citations] The propriety of the use of extrinsic materials in determining legislative intent is a question which may be properly considered on appeal regardless of whether the issue was raised in the trial court.
California Teachers Assn. v. San Diego Community College District (1981) 28 Cal.3d 692, 698, 699

Legislative history supports that interpretation. We grant the CSEA's request for judicial notice of . . . Although the trial court did not have the benefit of these materials, they assist in our de novo review.
California School Employees Association v. Tustin Unified School District (2007, 4th District, Division 3) 148 Cal.App.4th 510, 518

In connection with their argument, appellants have sought judicial notice of portions of the legislative history of the subject statutes, none of which was introduced below before the trial court. Respondents have opposed this motion. We now take judicial notice of these materials. (Evid. Code, §§ 452, 459; [Citations.])
Peart v. Ferro (2004, 1st Dist. Div 3) 119 Cal.App.4th 60, 81

On our own motion, we take judicial notice of the legislative history of Assembly Bill No. 116 . . .and Senate Bill No. 2331 . . . (Evid. Code, §§ 452, subd. (c), 459; Kern v. County of Imperial (1990) 226 Cal.App.3d 391, 400, fn. 8 [appellate court may take judicial notice of legislative history materials on own motion].)
PG&E Corp. v. Public Utilities Commission (Office of Ratepayer Advocates) 2004, First District Division 5) 118 Cal.App.4th 1174, 1204, fn.25

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On our own motion, we take judicial notice of the legislative history of Senate Bill No. 1406 and the 1994 amendments to the statute enacted as Senate Bill No. 1377. (Evid. Code, §§ 452, subd. (c), 459;
Kern v. County of Imperial (1990) 226 Cal.App.3d 391, 400, fn. 8 [appellate court may take judicial notice of legislative history materials on own motion]) Realmuto v. Gagnard (2003) 110 Cal.App.4th 193, 201, fn.3

LACERA has provided us with a legislative history of Assembly Bill 1893 prepared by Legislative Intent Service. These materials include legislative committee bill analyses, which we judicially notice pursuant to Evidence Code sections 459 and 452, subdivision (c). [Citation]
Board of Retirement v. Superior Court (People) (2002, 2nd Dist) 101 Cal.App.4th 1062, 1070

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. [Citations] In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. [Citation]
Hale v. Southern California IPA Medical Group, Inc. (2001, 2nd Dist, Div 3) 86 Cal.App.4th 919, 927

Courts may take judicial notice of relevant legislative history to resolve ambiguities and uncertainties concerning the purpose and meaning of a statute. (See Evid. Code, § 452, subd. (c) [permitting judicial notice of official acts of the Legislature]; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9.) Moreover, as a reviewing court, we must, and here do, take judicial notice of those materials properly noticed by the trial court, including enrolled bill reports to the governor and legislative committee and caucus reports, work sheets, and digests. (Evid. Code, § 459, subd. (a); [Citations]
People v. Connor (2004, 6th Dist.) 115 Cal.App.4th 669, 681 fn. 3

Interpretation of a statute is a question of law which we review de novo.
People v. Saephanh (2000, 5th Dist) 80 Cal.App.4th 451, 457

Respondents filed a motion asking this court to take judicial notice of the legislative history of this bill, as provided by a report of the Legislative Intent Service that is attached as exhibit 1 to the motion. The motion was heard and granted at the hearing on oral argument.
Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997, 2nd Dist, Div 7) 52 Cal.App.4th 1165, 1203, fn.6

While this appeal was pending, CAIC requested that this court take judicial notice of the legislative intent service history of the 1988 and 1991 amendments to section 473. We decided to consider that request when we considered the merits of this appeal. We now decide to grant that request.
Lorenz v. Commercial Acceptance Insurance Co. (1995, 6th Dist) 40 Cal.App.4th 981, 988

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In a search to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.
Schmidt v. So. California Rapid Transit District (1993, 2nd Dist, Div 2) 14 Cal.App.4th 23, 30, fn. 10

The court also rejected as untimely San Marino's offer of the legislative history of section 99, as compiled by the private legislative intent service. We have taken judicial notice of that material.
Greenwood Addition Homeowners Assn. v. City of San Marino (1993, 2nd Dist, Div 2) 14 Cal.App.4th 1360, 1366, fn. 5

On our own motion, we take judicial notice of various legislative documents dealing with section 1298 furnished by the Legislative Intent Service.
Grubb & Ellis Co. v. Bello (1993, 2nd Dist, Div 4) 19 Cal.App.4th 231, 240

In evaluating the extent, it any, to which section 308 preempts the City's ordinance, we must interpret both pieces of legislation. "[T]he construction of statutes and the ascertainment of legislative intent are purely questions of law. This court is not limited by the interpretation of the statute made by the trial court...." [Citation] Nor are we limited to the evidence presented on the question in the trial court. [Citation]
Bravo Vending v. City of Rancho Mirage (1993, 4th Dist, Div 2) 16 Cal.App.4th 383, 391-392

On our own motion and over the objection of Kern we take judicial notice of the legislative committee reports dealing with Assembly Bill No. 3382.
Kern v. County of Imperial (1990, 4th Dist, Div 1) 226 Cal.App.3d 391, 400, fn. 8

People v. Cruz (1996, 1st Dist) 13 Cal.App.4th 764, 780, fn. 9; *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 502, fn. 22; *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 571, 577, fn. 9, fn. 13; *People v. Benson* (1998) 18 Cal.4th 24, 34, fn. 6; *Estate of Joseph* (1998) 17 Cal.4th 203, 210, fn. 1; *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 444, fn. 4; *Planning & Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 265, 271, fn. 4; *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 862, fn. 7; *In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 60, fn. 6; *People v. Sanchez* (2001) 24 Cal.4th 983, 1002; *Alford v. Superior Court (People)* 2003) 29 Cal.4th 1033, 1041, fn. 4

Fogolson v. Municipal Court (1981) 120 Cal.App.3d 858, 861; *In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 46, fn. 6; *Woodman v. Superior Court* (1987) 196 Cal.App.3d 407; *Terry York Imports v. DMV* (1987, 2nd Dist, Div 1) 197 Cal.App.3d 307, 317, fn. 2; *Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 262; *Coopers and Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535; *People v. Isaia* (1989) 206 Cal.App.3d 1558, 1564, fn. 2; *Carlton Browne and Company v. Superior Court* (1989, 2nd Dist) 210 Cal.App.3d 35, 41, fn. 3; *E. Peninsula Ed. Council v. Palos Verdes School District* (1989, 2nd Dist) 210 Cal.App.3d 155, 168; *Shapell Industries v. Governing Board* (1991, 6th Dist) 1 Cal.App.4th 218, 241; *Johnson v. Superior Court* (1994, 2nd Dist, Div 5) 25 Cal.App.4th 1564, 1569, fn. 2; *Society of California Pioneers v. Baker* (1996, 1st Dist, Div 1) 43 Cal.App.4th 774, 784; *Sounhein v. City of San Dimas* (1996, 2nd Dist, Div 5) 47 Cal.App.4th 1181, 1190, fn. 6; *Steiner v. Superior Court* (1996, 4th Dist, Div 3) 50 Cal.App.4th 1771, 1786, fn. 22; *People v. Griggs* (1997, 5th Dist) 59 Cal.App.4th 557, 561, fn. 4; *McDowell v. Watson* (1997, 4th Dist, Div 2) 59 Cal.App.4th 1155, 1161, fn. 3; *Forty-Niner Truck Plaza, Inc. v. Union Oil Co.* (1997, 3rd Dist) 58 Cal.App.4th 1261, 1274, fn. 3, 1277, fn. 7; *Brown v. Smith* (1997, 4th Dist, Div 1) 55 Cal.App.4th 767, 778, *Covarrubias v. Superior Court* (1998, 6th Dist) 60 Cal.App.4th 1168, 1181, fn. 9; *In re Parker* (1998, 4th Dist, Div 1) 60 Cal.App.4th 1453, 1465, fn. 11; *People v. Ward* (1998, 4th Dist, Div 2) 62 Cal.App.4th 122,

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128, fn. 2; *In re Marriage of Perry* (1998, 3rd Dist) 61 Cal.App.4th 295, 308, fn. 3; *People v. Garcia* (1998, 1st Dist, Div 1) 63 Cal.App.4th 820, 831, fn. 10, fn. 12; *Kidd v. State of California* (1998, 3rd Dist) 62 Cal.App.4th 386, 407, 411, fn. 7, fn. 9; *Southbay Creditors Trust v. General Motors Acceptance Corp.* (1999, 4th Dist, Div 1) 69 Cal.App.4th 1068, 1080, fn.9; *Hale v. Southern California IPA Medical Group, Inc.* (2001, 2nd Dist, Div 3) 86 Cal.App,4th 919, 927; *Gaetani v. Goss-Golden West Sheet Metal Profit Sharing Plan* (2000, 1st Dist, Div 2) 84 Cal.App.4th 1118, 1127; *In re Danny H.* (2002, Second District, Division 3) 104 Cal.App.4th 92, 100, fn 16;

1. When is Judicial Notice Mandatory or Discretionary?

> Appellate courts *must* take judicial notice of (1) any matter properly noticed by the trial court, and (ii) any matter that the trial court was *required* to judicially notice under Evidence Code §§451 (matters which must be judicially noticed) or §453 (matters for compulsory judicial notice upon request). [Evidence Code §459(a)]
>
> ...
>
> Appellate courts have the *option* to take judicial notice of any matter subject to discretionary judicial notice by the trial court under Evidence Code §452. [Evidence Code §459(a) {Citation)]
>
> Rutter's California Practice Guide: Civil Appeals and Writs, 5:152, 5:154

2. Judicially Noticed Materials Must be Relevant

Appellate courts will take judicial notice of matters relevant to the dispositive point on appeal. Rutter's California Practice Guide: Civil Appeals and Writs, 5:156.2

3. What Can an Appellate Court Judicially Notice?

Appellate courts have the same authority as the trial courts (Evidence Code §454) to consult any source of pertinent information, whether or not furnished by a party, in determining the propriety of taking judicial notice or the tenor of judicial notice. [Evidece Code §459(b)] Rutter's California Practice Guide: Civil Appeals and Writs, 5:157

The appellate court must give the parties a reasonable opportunity to present relevant information on the propriety and tenor of judicial notice. [Evidence Code §§455(a), 459(c) (Citations)] Rutter's California Practice Guide: Civil Appeals and Writs, 5:158

4. What is the Procedure at the Appellate Courts?

California Rule of Court section 8.252(a)(1)provides, "To obtain judicial notice by a reviewing court under evidence Code section 459, a party must serve and file a separate motion with a proposed order." It further requires, "If the

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matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so." See Rutter's California Practice Guide: Civil Appeals and Writs, 5:150 through 5:167 for useful practice guides and pointers. In addressing Rule 8.252 it is pointed out that "Thus, the former practice of requesting judicial notice in a brief *is no longer permitted."* Id., section 5:161

In a 2004 case the court found in a footnote:

> In a footnote in his brief, Ozkan requests that we take judicial notice of the legislative history of section 12015.5. While we must deny his request, because it is not properly supported by a formal motion (Cal. Rules of Court, rule 22), Ozkan's arguments nevertheless lead us to examine the relevant legislative history of section 12015.5.
> *People v. Ozkan* (2004, First District, Division 5) 124 Cal. App. 4th 1072, 1080 fn.5

> Rule 8.252(c)(1) provides "A party may move that reviewing court take evidence. Rule 8.252(c)(3) states "For documentary evidence, a party may offer the original, a certified copy, or a photocopy. The court may admit the document in evidence without a hearing."
> Special procedures apply at the Third District Court of Appeal. *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005, Third District) 133 Cal.App.4th 26

5. Can an Appellate Court Take Judicial Notice on its own Initiative?

> Because the statute is ambiguous, we review portions of section 3044(f)'s legislative history that shed light on the Legislature's intent in enacting it. Fn 7 – The parties were notified pursuant to Evidence Code section 459, Subdivision (c), that we were considering taking judicial notice of identified portions of the legislative history and they were given a reasonable opportunity to meet this information pursuant to Evidence Code section 455, subdivision (a), and 459, subdivision d). Neither party responded to our invitation.
> *Sabbah v. Sabbah* (2007, 4th District, Division 3) 151 Cal.App.4th 818, 824

> Senate Floor, Analysis of Assembly Bill No. 3260 (1993-1994 Reg. Sess.) as amended August 24, 1994 . . . On the court's own motion, we take judicial notice of this legislative history of section 1363.1.
> *Medeiros v. Superior Court (Los Angeles)* (2007, 2nd District, Division 7) 146 Cal. App.4th 1008, 1017

E. Can an Expert Be Used?

Expert testimony is becoming increasingly common as a means of assisting trial courts in understanding and interpreting legislative materials. This trend has been evidenced by appellate court citation of Legislative Intent Service experts in the following decisions:

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> Finally, as it did in the trial court, FSD relies upon expert evidence of the act's legislative history. Such evidence is an appropriate means of assisting courts in understanding and interpreting statutes.... Like FSD's expert, we agree that in light of both the history of the act and its express provisions, commissioners have no power to initiate changes in organization or reorganization.
> *Fallbrook Sanitation District v. LAFCO* (1989) 208 Cal.App.3d 753, 764

> We set forth in the margin the statutory history of these sections. It fully supports the testimony of William Keller, a qualified expert analyst of legislative intent, that the Legislature intended to broaden the power of the Assessor when it enacted section 441, subdivision (d). Keller testified that ....
> *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 782

Judd v. United States (1987) 650 Fed. Supp. 1503, 1511; *Jimenez v. W.C.A.B.* (1991, 1st Dist, Div 5) 1 Cal.App.4th 61, 67, fn. 3; *Segura v. McBride* (1992, 1st Dist, Div 4) 5 Cal.App.4th 1028, 1033

In addition, numerous appellate opinions have incorporated Legislative Intent Service expert opinions sometimes verbatim, but without attribution. See for example *Graham v. W.C.A.B.* (1989) 210 Cal.App.3d 499

F. How Is Legislative History Cited?

The California Style Manual (3d Ed. 1986) sections 54-63 provides guidance as to the types of documents referred to by the author. However, it does not cover all the types of legislative documents available nor is it uniformly followed. A common form of reference to legislative materials is to use the full names of the documents as they are set forth on your Legislative Intent Service exhibit list contained in the Declaration accompanying the research material.

Attribution to the Legislative Intent Service by name as the source of the materials to be judicially noticed is becoming more common and may assist in authentication. *See*, for instance, *People v. Brown* (1993) 6 Cal.4th 322, 334 and *People v. Sanchez* (2001) 24 Cal.4th 983, 992, fn. 4. For a list of more than 60 cases citing to Legislative Intent Service as the source of the documents, see www.legintent.com.

G. Are Legislative Intent Service Fees a Recoverable Cost?

> Not only was it necessary to furnish the legislative materials to the trial court, but the evidence was uncontroverted that those materials were not readily available to FHP except through LIS or a similar service. It was not an abuse of discretion to allow recovery of costs of materials necessary to the litigation which were readily available only through the source utilized.

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Van De Kamp v. Gumbiner (1990, 2nd Dist, Div 5) 221 Cal.App.3d 1260, 1280 *See also: Bossey v. Affleck* (1990, 1st Dist, Div 4) 225 Cal.App.3d 1162, 1164

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