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MCLE Self-Study Exam©

Legislation: Process, Documents and Analysis - a Primer

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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. When the text of a statute is unambiguous and provides a clear answer, the courts generally go no further than that text. When a statute's language supports multiple interpretations, then California law permits resort to extrinsic sources to ascertain legislative intent. This includes the legislative history and administrative interpretations of the language.

While laws in California have been enacted in each legislative session since the 1850's, not many Californians understand the process by which a bill becomes law. There is no reason why the process itself must remain a mystery to anyone working outside of any state Capitol. For a number of states, the process is accompanied by useful documentation and materials that provide evidence of purpose, intent, rationale, and development of the language of the law in question.

The California Legislative Open Records Act, pursuant to Government Code sections 9070, et seq., was enacted in 1975 and provides that Legislative public records as defined are open to inspection and that every citizen has a right to inspect and receive a copy of any public record with certain enumerated exceptions.

1. Legislative Process

A very simplified explanation of the legislative process is set forth in the following steps:

- A legislator (author) will forward language and ideas to the Legislative Counsel, who will draft the bill. This draft will be introduced by that legislator. The legislator generates and receives information on the bill from its sponsor, staff or proponents and opponents to the bill. These are maintained in the author's file which is made public at the discretion of the holder.

- The clerk reads the number, name of author, and descriptive title of the bill; this constitutes a “first reading” of the measure.
- At this point, the bill will be assigned, depending on the house of origin, by the Assembly Speaker, or the Senate Rules Committee, to the policy committee appropriate to the subject of the bill for its first hearing.
- The policy committee can hear testimony in support or opposition to the bill, pass the bill as is or with recommended amendments, or defeat the bill. Once a bill is set for hearing, committee consultants collect background information from the author, the sponsor, proponents and opponents, as well as prepare an analysis of the measure. The committee file containing these materials is generally made public.
- When a bill is passed by committees, it is read a “second time” in the house of origin. If the policy committee recommends amendments, they are officially passed on second reading.
- Where funding or monies are involved, then the bills will be heard in the fiscal committee. The committee consultant prepares an analysis, and receives information on the bill.
- After passage by the committee(s), the bill is on “third reading” where it is usually explained by the author, discussed by the members, and voted on by a roll call vote. Each house has prepared a third reading analysis for the bill at this time.
- The bill then proceeds to the next House – thus, if it began in the Assembly, it will now be assigned to the Senate policy committee related to its subject matter. Again, if funding or monies are part of the bill, then the bill will also be reviewed by the second House’s fiscal committee.
- If the bill is amended in the second house, the House of origin must concur (agree) to the amendments. A concurrence in Senate or Assembly amendments analysis is generated by the offices of third reading. Once both Houses agree to the language of the bill, it will be forwarded to the Governor. However, if an agreement cannot be reached by both Houses, the bill moves to conference. The purpose of a Conference Committee is to bring together six legislators, three from each House, in an attempt to reach a compromise on a bill’s language which is acceptable to both the Senate and the Assembly. If a compromise is reached, the bill is forwarded to the Governor. A Conference Committee report is produced and the offices performing third reading analyses prepare a conference or conference complete analysis.
- There are three options available to the Governor when presented with a bill:

1) Sign the bill into law; or

- 2) Allow it to become law without the Governor's signature; or
- 3) Veto the bill.

The Governor's staff receives information on the bill from its author, sponsor, proponents and opponents as well as enrolled bill reports from relevant state agencies. These materials are kept in the Governor's file, made public usually once that Governor is no longer in office.

- When the Governor vetoes a bill, both Houses can override the veto by a two-thirds vote.
- Bills go into effect on January 1st of the following year. Thus, a bill signed by the Governor on October 12, 2007 will become effective on January 1, 2008, unless the bill contains an "urgency clause."
- Urgency clauses cause the bill to take effect immediately upon being signed into law by the Governor and chaptered by the Secretary of State. The Secretary of State assigns the bill a chapter number and it becomes part of that Legislative Session's general statutes at large.

As you can see, every chaptered law starts out as a bill – a separate legislative measure. When your statutory language is subject to more than one interpretation, it becomes important to understand the purpose, intent or rationale for your particular language focus. To do so successfully, you need to review the surviving legislative materials related to the enactment of the bill affecting your language of interest.

2. Types of Documents that Evidence Legislative Intent

The List of documents noted below is long and yet it is not exhaustive. Different eras in California legislative history generated different useful materials – the answer to the question of whether there is surviving legislative history for any bill from any legislative session since the 1850's is always "yes"!

Documents:

- The bill as introduced and all of its amended versions
- The chaptered version of the bill after the Governor has signed and the Secretary of State has assigned its chapter number
- Assembly Policy Committee analyses
- Assembly Policy Committee legislative bill file materials
- Assembly Fiscal Committee analyses
- Assembly Fiscal Committee legislative bill file materials
- Senate Policy Committee analyses
- Senate Policy Committee legislative bill file materials
- Senate Fiscal Committee analyses
- Senate Fiscal Committee legislative bill file materials
- Legislative Counsel digests and opinions
- Third Reading analyses
- Floor analyses

- Legislative Analyst's analyses
- Consent analyses: This indicates a bill was unopposed, and received unanimous votes in all committees.
- Unfinished Business analyses: Measures awaiting concurrence by the house of origin in amendments adopted by the other house.
- Concurrence analyses: approval by the house of origin of a bill as amended in the other house. Unwillingness to approve results in the formation of a conference committee.
- Conference Committee analyses and reports
- Political Caucuses' analyses
- Bill author/legislator's legislative bill file
- Governor's Chaptered Bill File: Non-sitting Governor's bill file may be available and could contain enrolled bill report analyses by the Legislative Counsel and state agencies, author's letter urging approval, and supporting and opposing analyses and correspondence
- Sponsor's legislative bill file
- State Agency legislative bill file
- State Agency Reports to the Legislature or Governor
- Official Commission Reports: such as the California Code Commission, or the California Law Revision Commission
- Assembly or Senate Journal: Journals of the Assembly and Senate the day after a floor session, which contains roll call votes on bills, and bills considered on the floor; also can contains official message from the Governor, statements of intent, explanation of vote and transmission of, or the text of reports on a subject
- Interim and Task Force Reports by Committees and Select Committees
- Committee Interim hearing transcripts
- Failed competitor and predecessor bills: Bills that sought to affect the same statutory language in the same or a different way as the successful bill compel research to reveal language development hurdles and background insight.

3. How to Read and Analyze Legislative History Documents

The Bill: Begin by reading each amended version of your bill to help you identify the broad policy framework within which you must analyze any individual section, word, phrase, or clause of interest to you.

Each bill is broken out by simple, orderly section references: "Section 1," "Section 2," et seq. Your statute will be affected within one of these bill "section" references.

Modern bills (from 1967 to date) contain a "Legislative Counsel's Digest," which provides a brief analysis of the proposed legislation prepared by the attorneys to the Legislature within each amended version of the bill.

Read each amended version of the bill for your section and/or your language of focus. Where does it first appear? What is the date of that amended version of the

bill? If it is language added at the end of the Legislative session (August and September), you may need to consider whether your language was developed in an earlier competitor or failed predecessor bill.

Consider the bill overall – was this a single-section bill? Was this a massive enactment or revision of an area of law? Was this an omnibus bill? Was this a “budget trailer” bill? Each of these considerations will assist your understanding the context within which your language was being affected: Was the enacted bill substantive or nonsubstantive to your statutory language?

You will also need to read the beginning and end of each bill for any possible uncoded legislative findings, declarations, statements of intent, and urgency clauses.

Look for double-joining or double-jointing language within the bill. “Double-joining” is a legislative action taken to connect and then order the amendment of a single code section by more than one bill in the same legislative session. The goal is to avoid text being amended out by the bill “chaptered” last -- under California law, the highest chaptered bill will “chapter out” any earlier chaptered measures.

Analyses and File Materials: Within the analyses and file materials, one can look for the history of the bill. As you review each page of legislative history documents, ask and answer the following questions:

- Who sponsored this legislation?
- What was the problem to be remedied or the circumstances being addressed?
- Who are the proponents and opponents to this measure? Why are they supporting or opposing the bill? Did the opponents remain oppositional after later amendments to the bill were passed?
- Was this bill the product of an interim hearing, task force report, or a study process?
- Was the language enacted by the bill derived from a model act, uniform law, or the law of another state?
- Were there any other bills, competing or preceding this bill, in the legislature?

The materials may contain specific discussion of your statutory language – if not, examine the context by which your statute was being affected.

Determine the relevance and reliability of the document(s) to your analysis of legislative intent. For each document containing discussion relevant to the language of focus, or your issue(s) within the legislative history materials obtained, ask yourself:

Who wrote this document [for example, was it the legislative committee's staff; the sponsor of the bill; the legislator; a department analyst; Legislative Counsel, or the Legislative Analyst?]

What is the document exactly?

Where did you find the document? Was it in the committee file? Was it a committee analysis? Do you see the relevant discussion repeated or paraphrased in other legislative history materials?

When was the document of interest to you written? Does that date correlate to when your language was placed in the bill or affected substantively by the bill?

Why was this bill proposed? What is the background driving this legislation?

How do the materials address your legislative intent question? Do the materials specifically answer why your language was being added, amended, or deleted? If not, do the materials provide sufficient policy discussion that inferentially explains the likely reasons why your language was affected?

Your responses to these questions enable one to determine whether a court would consider the discussion in the documents related to the language of focus or your issue relevant to determining the legislative intent, and reliable indicia of legislative intent. Some courts refer to this as determining whether the document(s) are "cognizable legislative history" that is, document(s) which shed light on the collegial view of the legislature as a whole.

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