



# Engrossment\*

Fall/2004

## BUSINESS MODEL

Bill Keller and Tom Stallard, founders of LEGISLATIVE INTENT SERVICE, recently reminisced at an office meeting about their 30 years of success in this business and noted that perhaps it simply comes down to being “*thoughtful, thorough and a pleasure to work with.*” It’s a philosophy of doing business that has served us and our clients well.

If you’re at the State Bar Annual Meeting in October in Monterey, come by our table and meet our attorneys. We’re also leading a panel, entitled “Win Your Next Case Using Legislative History.” Learn how to use legislative history documents to support your arguments and win! Experts and experienced attorneys will guide you towards understanding the legislative process and the use of legislative history materials in court. We are excited about this event and invite all interested to join us for a lively discussion on *Saturday, October 9<sup>th</sup>, 8:30 to 10:30 a.m.* If you miss this Panel, give us a call to arrange for a **free MCLE** at your firm!

## HIT THE NET, GET AN AIR BALL

Although LEGISLATIVE INTENT SERVICE has been in business for 30 years collecting the surviving legislative history materials and documents on legislative measures, regulations, and constitutional provisions, the last few years have seen the availability of Senate and Assembly Bills on the net by the State Legislature (1993 to the present). However, we have noticed major gaps in these documents.

In all cases, the Committees’ legislative bill files, the author’s files, and the Governor’s post-enrollment files are not available. We regularly find more Committees’ analyses in the files than are posted on the public website. Furthermore, it would not be unusual that, prior to the introduction of a bill, the Legislature or other sources undertook studies of the subject, generating background documentation integral to a bill’s legislative consideration. Such reports from interim or joint committees or state departments or agencies or independent organizations such as the California Law Revision Commission or the California State Bar would also not be available on-line at this same site.

These gaps in the legislative history can be crucial, especially when clients are interested in understanding the public policies or reasons for the development of specific language, or the identity of those who suggested specific amendments, or the rationale given by the sponsor for promoting the bill. Being properly prepared will require answers to these questions.

## IN THE NEWS!

Recently, the Sixth District Court of Appeal rendered a decision in the case of People v. Connor, aided by materials collected by LEGISLATIVE INTENT SERVICE. The court opinion noted that the declarations were executed by one of our directors, Dorothy Thomson. In a footnote, the court stated the following:

“[6] 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); *In re J. W.* (2002) 29 Cal.4th 200, 211; *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 276, fn. 9; e.g., *Lolley v. Campbell* (2002) 28 Cal.4th 367, 375 [enrolled bill report to governor]; *People v. Snyder* (2000) 22 Cal.4th 304, 310 [party caucus reports]; *People v. Neild* (2002) 99 Cal.App.4th 1223, 1227 [committee report]; *Forty-Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1273 [bill analysis worksheet]; *Natural Resources Defense Council v. Fish & Game Com.* (1994) 28 Cal.App.4th 1104, 1118 [worksheet]; *Wallin v. Vienna Sausage Manufacturing Co.* (1984) 156 Cal.App.3d 1051, 1054 [bill digest].)” (115 Cal.App.4<sup>th</sup> 699).

\* *The process of comparing the printed bill to ensure it looks like the original and to verify that amendments have been correctly inserted.*

## **DIGITIZED DELIVERIES DRIVE DEMANDS**

Delivery of a digitized format of our research by way of a net posting to a secured ftp site or a CD-ROM has met with great popularity. While there is a set-up fee per bill associated with digitization, the costs saved on copying charges associated with this delivery process is definitely an economic factor considered by our clients. Furthermore, the materials saved on a CD-ROM are always accessible and easy to store. So, if you are comfortable working on your computer, you may want to give this delivery format a try.

## **MAKE A FEDERAL LAW OUT OF IT!**

We are asked all the time if we research federal bills and our answer is: "Yes, we do!" At first glance, federal legislative history research of public laws seems simple. First, the materials are readily available in any Congressional Depository Library and university library collections. Second, the documents to research are easily identifiable: the bill, committee reports, hearing transcripts, congressional debates, and committee prints/reports or studies, along with miscellaneous presidential and secondary source documents.

While this material is well organized and indexed back to the 18<sup>th</sup> Century, the challenge is that a lot of public laws are omnibus or comprehensive in nature, being a product of a five- to ten-year history. Thus, the proposed bills prior to the bill enacting the public law may be addressed by six to 30 earlier bills carrying similar language. These early bills reveal the development of the language and their reports often provide helpful substantive discussion, history and debates. Also, omnibus bills generate congressional legislative documents that are equally very lengthy.

Hence, the challenge to "gather it all" may easily turn into a time-consuming effort, with some cases requiring us to review thousands of pages of documents. It helps when our clients have a point of focus in a code section or subdivision, which allows us to cull through the bills to find the pertinent origination of the focus and to gather the relevant bills and accompanying materials and reports. The file materials generated by the committees are not readily available from them or the National Archives, which imposes a 20 to 30 year hold on the files. We have developed the capacity to locate surviving and available materials through our local Northern California Congressional Depository libraries and the University of California government publications collection.

## **AUTHENTICATING LEGISLATIVE DOCUMENTS**

Capitol offices of committees, authors, or other sources of crucial legislative documents are generally reluctant to certify the document copies available in their files. Thus, when an attorney seeks to have a court take judicial notice of these documents, authentication can become a concern. That is why LEGISLATIVE INTENT SERVICE years ago developed a report format that incorporates a declaration by one of our attorneys. Our declaration can be coupled with a declaration by the submitting attorney as a part of his or her motion for judicial notice. From our survey of recent California State Supreme Court cases, our declaration appears to be successfully withstanding judicial review. (*See People v. Connor* (2004) 115 Cal.App.4th 669, 681, fn.3.)

## **JUDICIAL NOTICE ASSISTANCE**

LEGISLATIVE INTENT SERVICE has developed a "Motion for Judicial Notice" form as a guide for our clients seeking to introduce our legislative history materials before the court. *Please contact our office if you would like to receive a sample form.*

## **RECOVERING THE COSTS OF LEGISLATIVE INTENT SERVICE**

The fees paid by your firm that were incurred to have our company research legislative intent can be recovered if your position prevails in court. (*Van de Kamp v. Gumbiner*, 221 CA3rd 1260 (1990)).

## **HOW TO CONTACT US!**

Call *toll-free* at 1-800-666-1917  
Or log on to our *website* at [www.legintent.com](http://www.legintent.com)  
Or send us an *email* at:  
Dorothy Thomson: [dthomson@legintent.com](mailto:dthomson@legintent.com)  
Filomena Yeroshek: [fjeroshek@legintent.com](mailto:fjeroshek@legintent.com)  
Maria Sanders: [msanders@legintent.com](mailto:msanders@legintent.com)

## **MCLE?**

Call Maria Sanders at  
1-800-666-1917  
for a free presentation at your firm.