

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an Adjunct Professor at McGeorge School of Law. Today's podcast, and thank you for joining, is on negotiating bills and amendments. Negotiating bills and amendments in the California legislative process is an important skill for lobbyists and others to have as they work measures through this process.

Many advocates spend their time supporting or opposing bills on policy or fiscal grounds and they don't engage in the actual negotiation of bill language for any number of reasons. For example, it may be due to their client being philosophically opposed to a measure. In that case, there's no need to propose any amendments to the bill. In other instances, however, a client's position may be opposed unless amended.

In that case, the lobbyist will need to draft amendments or have someone who can do. When seeking amendments to a bill, some lobbyists simply describe verbally or in writing the amendment or amendments that their client desires without providing specific language. Other advocates draft bill language so that they can provide the bill author, or staff, or fellow lobbyists, or the bill sponsor with proposed amendments to the bill for their consideration.

Then the discussion among the parties will likely turn from talking about amendments in concept to reviewing actual changes to the existing bill language. When reviewing proposed bill amendments, it's important to understand the general rules of statutory construction and to be aware of how Legislative Counsel normally drafts bill language as well as the terminology that their office utilizes in drafting statutory language. There are obvious differences in statutes that contain the words shall versus may.

In other instances, amendments may be technical in nature or they could be substantive based upon the proposed changes. In addition, there's an actual art to negotiating bills like negotiating in general. For example, are both sides trying to achieve success so that there's a win-win outcome for all parties or is one party being more aggressive and then the negotiation might create a win-lose outcome? What type of approach will use an advocate take in your negotiations?

Will you be passive? Will you be aggressive? Will you make requests? Will you make demands? Are you in a position of strength or one of weakness? Is the bill important or not very consequential? These are just some of the questions that might arise as well as a host of different factors that may influence what position an advocate takes in negotiating bills and amendments. The most common negotiating approach in the legislative process seems to be ask for more and settle for less.

For example, if your client wants to increase an existing tax credit from 5% to 7%, at a minimum, the bill to be introduced will likely have a 9% or 10% rate. This is a common tactic to introduce a bill asking for a higher amount knowing that through the legislative process and the ensuing negotiations over the bill, one is likely to end up at a lower rate than originally asked for.

Another critical component in successful bill negotiations is to fully understand the area of law being addressed by your bill. This enables you to appreciate the key nuances that may be required as you negotiate the bill's provisions and the exact statutory provisions that are being added, amended, or repealed. Obviously, you'll have to know your clients' best interest and what is essentially their best and final offer as you begin those negotiations.

More successful lobbyists are the ones who negotiate a bill's provisions because they know and understand the existing law, what the actual impact of the bill language will be, as well as the politics, and the players, and all the different interests in a particular subject area. It's more difficult to negotiate when someone does not know or understand the current state of the law and the implications of the proposed bill language.

In other instances, lobbyists have an expert from their client work on the bill language and that individual may be actively involved in the negotiations due to that person's level of knowledge, [or] his or her experience or expertise in a particular area of the law. Just a word or two, the changes could have a significant or even detrimental impact on an individual business, or even an entire industry. As a result, the person who is negotiating must understand the potential impacts of the legislation.

Thanks for joining us for this quick look at how to negotiate bills and amendments.