

Hi. This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an Adjunct Professor at McGeorge School of Law. Today's podcast is an "Introduction to Legislative Drafting."

Let's start off first with what exactly is legislative drafting. It's often referred to as bill drafting, but, of course, legislative drafting is defined more broadly to include what's called primary legislation and secondary legislation.

Primary legislation is what you'd expect, bills, resolutions, and constitutional amendments that are drafted and debated and voted upon by the legislative branch of government, while secondary legislative drafting concerns things like regulations, executive orders, other types of rules generally done by executive branch agencies.

Basically, it's the work of the professionals who, for the legislature, provide their services in a centralized office, for example, in the United States Congress or in the legislatures around the country. In fact, the US House and the US Senate actually have their own separate offices of the legislative counsel.

Here in California, there's the Office of the Legislative Counsel, with about 80 attorneys, who draft five to seven thousand bills per year of each two-year session, as well as anywhere from 8 to 11 or 12 thousand amendments to those measures. Again, all the states have some variation of a central legislative drafting office.

Let's start with who. Who does legislative drafting? There are professionals around the country who draft legislative measures. There is limited training, unfortunately, in legislative drafting, even in most law schools, because most don't distinguish legislative from other forms of legal document drafting.

While many law schools offer courses in things like constitutional law, statutory interpretation, and even legal writing, very little time is spent on drafting laws and regulations.

In fact, there are only a handful of law schools that offer drafting clinics to their students, at least a half a dozen or so from Boston University to American University to the University of Texas at Austin.

There are a couple of graduate programs, including a Graduate Diploma in Legislative Drafting from Athabasca University in Alberta, Canada, and there is an LLM, a Master of Laws program, in Legislative and Regulatory Drafting at the University of London.

What? These individuals draft legislative measures, which include bills, resolutions, and constitutional amendments. What else do they do? Drafters may also advise on constitutionality of proposed legislation. Many state and federal executive branch agencies also have lawyers who draft, again, what's called secondary legislation, like regulations, notices, executive orders.

Where? Where do they do it? Professionals draft measures at statehouses around the country, as well as in numerous state agencies and departments. There are just a handful of full-time professional drafters in the private sector. In that regard, most bill drafters are actually employed by the public sector.

When? When do they draft? Most legislatures meet a few months each year, while there are some states, like California and certainly the Congress, that are considered full-time legislatures.

Nonetheless, legislative drafters can ply their trade throughout the year to address requests that are made by their clients, legislators. Of course, for those who draft in executive branch agencies, that agency work can occur anytime throughout the calendar year.

How? How do they draft? Professional bill drafters utilize skills that they've developed through drafting measures, primarily through on-the-job experience and some training, like in the California Legislative Counsel Bureau.

Unlike poetry or most other forms of written expression, bill drafters naturally have to select their words carefully, avoid unnecessary prose. They also want to write in simple and consistent formats to reduce potentials for ambiguity and misunderstandings.

To begin with, bill drafters have to thoroughly research their client bill proposals and understand the relevant laws that exist today as well as how the legislative measure will amend, add, or repeal or otherwise change laws.

Some often characterize legislative drafting as more of an art than a science. In other words, you might have three drafters with the same proposal but draft three different versions of the same statute. Of course, each might have proponents or detractors of those three different versions of a similar statute.

In the end, those who draft legislative and regulatory language have the privilege of bill ideas and solutions to important public policy problems that they turn into statutes and regulations. They also have an indispensable role in the legislative and regulatory process.

That's our Introduction to Legislative Drafting. I hope you enjoyed.