

Hi, this is Chris Micheli with the Sacramento Governmental Relations firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law.

Today's podcast is a look at the role of the bill drafter. In the California Legislature, all types of legislative measures, whether they're bills, resolutions, or constitutional amendments, as well as amendments to all those measures can only be introduced or processed at the Assembly and Senate desks if they are in what's called Legislative Counsel Form.

The primary purpose is to ensure greater consistency in California statutes. This means that the nonpartisan Office of the Legislative Counsel, who serves as legal counsel and principal bill drafter to California legislators and the governor, their role is to ensure that measures are in this legislative counsel form.

What's the job of these bill drafters? Well, they're attorneys. They're known formally as a deputy legislative counsel. There's about 80 of them. They staff lawmakers and legislative staff, committee staff, the governor's office, and even work with executive branch agency staff among others. They also work with people who don't work for the state but who have been authorized by a legislator to speak with a deputy legislative counsel.

Once a bill or amendment request has been submitted to the Office of Legislative Counsel, then these well-respected attorneys begin drafting the bill. How is it that legislation is prepared?

Typically, drafting a bill, a constitutional amendment, or even a resolution or any amendment to one of those measures begins when the legislator contacts a drafting attorney -- again, a deputy legislative counsel -- and presents his or her idea for a bill or some sort of resolution of a public policy problem that the lawmaker wants to address by legislation.

Once this request is received by a legislative counsel bureau, then the drafting attorney researches the issue. He or she works with the legislator or their staff to develop a draft of the measure.

On occasion, the legislator may ask that the drafting attorney consult with an interested party such as a lobbyist or interest group or to prepare a measure that's been based on a draft prepared by the constituent or interest group. At other times, the drafting attorney may even utilize similar legislation from another state or even a model act or a uniform act.

Fundamentally, the bill drafter's job is to determine the objectives of the proposed legislation and then determine what are the goals of the legislator who's going to author this measure.

Similar to an attorney in public and/or private practice, the legislative lawyer consults with his or her client -- in this case, the legislator -- about the need or the goal of the desired document, such as a bill, that the attorney is preparing at that client's request.

This means that the bill drafter has to be familiar with the area of law that's being targeted by the legislation. The deputy legislative counsel has to understand the most effective way to meet the legislator's intent.

The bill drafter does not consult with the client about the politics of the legislative proposal, but rather he or she consults with the client to explain existing law and possible changes to the law in order to accomplish the client's desired goal.

Now, this could include describing possible alternative methods to achieving the legislator's goal, any legal obstacles, for example, whether the proposal would violate a provision of either the state or federal constitutions or any procedural obstacles, for example, whether the measure would require a supermajority vote in order to pass the two houses of the Legislature.

Ultimately, the bill drafter will work to incorporate the lawmaker's ideas into the proper legislative format. Remember, it's not the role of the bill drafter to incorporate his or her own ideas. It's the legal duty of the drafter to prepare the bill regardless of any personal views about the legislation because the legislative lawyer is impartial in his or her analysis as well as bill drafting.

After the consultation with the client, then the bill drafter should have a thorough understanding of the client legislator's objective and ultimately the goal of the legislator's proposal. In taking into account the client's answers to the questions from the bill drafter, he or she will outline the general structure of the bill and how it should be drafted.

For example, which of California's 29 codes will this bill go into? Which provisions would it amend or repeal? Where in the code should they add these new sections of law?

Sometimes a legislative lawyer will have additional discussions to resolve potential policy questions or address specific issues that may arise in the drafting of the language. Perhaps, they may not have anticipated all of these questions during those initial instructions.

Prior to commencing the bill drafting, the legislative lawyer has to research different ways to craft the best possible measure for his or her client.

This research often includes a review of the existing state statutes and regulations, any court cases that have been set forth, comparable laws that exist in other states or at the federal level, reviewing model or uniform laws such as those promoted by the Uniform State Law Commission.

After this research has been conducted, then the bill drafter should be able to visualize how the bill is going to be constructed and what are the necessary law changes or additions that will need to be worked out for this measure to be properly enacted.

This work is benefited by the legislative lawyer's understanding of federal, state, and local government, their processes, different judicial decisions, as well as the area of law with which the attorney works. For example, revenue and taxation, labor and employment, health and safety, the criminal laws found in the penal code, etc.

The attorneys who work for the Office of Legislative Counsel work in specified subject areas. In this manner, they are able to develop an expertise in the laws, as well as the regulations, and of course, relevant court decisions for those areas of law. Of course, they have in-depth experience that they develop over the years in drafting laws in those specific subject matters.

As you might imagine, in some cases, a considerable amount of research and study of the problem and the proposed resolutions in the area of law is required before the legislative drafter actually commences his or her work. Once this research concludes, then the attorney is going to develop the plan for organizing and arranging the proposed content of the legislative measure.

Clarity is a key drafting goal. Clear drafting begins with clarity of one's thought and how it can go in to construct the statute. There actually is an order and a logical sequence for legislation. That generally occurs first with the bill drafter developing an outline of the proposed statute.

After the drafting attorney outlines the proposed legislation, then sometimes a number of drafts of a proposed bill are made in order to ensure accuracy of the legislator's intent.

As a result, the bill drafter will consult with his or her colleagues, will receive feedback on the draft measure, and undoubtedly review the legislative counsel's checklist to ensure that the best possible measure is presented to the client or the legislator.

Some of the questions that a bill drafter will likely include in their form is, will the bill, if adopted, accomplish its intended purpose? Does the bill's title express the subject properly? Is the bill in the proper format? Are cross-references to other code sections either within the bill or other statutes done correctly?

Are provisions of the proposed bill properly integrated with existing statutes? Is the bill language free of ambiguity or any conflicting language? Is it understandable for those who will be bound that law or by those who have to implement or administer the law?

During some of the crunch times of the legislative session, you can probably imagine that a deputy legislative counsel has to do all these different tasks sometimes in less than a day, sometimes in a few hours.

In the end, the work of the bill drafter is to prepare legislative measures that will best accomplish the stated goals of his or her client, the legislative or the executive branch official. That, in a nutshell, is the job of the legislative bill drafter in the California Legislature.

Thanks for joining today's podcast. I hope you enjoyed it.