

Hi, this is Chris Micheli, a principal with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is researching the legislative history of an enacted California statute. Basically, for those who need to research the legislative history of a bill that was enacted into law in the State of California, you need to look at a number of options to conduct your research. And on today's podcast, I want to briefly describe some of the avenues that you can take for researching legislative history.

First, be sure that you're generally familiar with how bills are enacted in California. In other words, do you have a general understanding of the legislative process? Do you know the differences between Senate and Assembly policy and fiscal committees? The floor analyses are meant to do et cetera, and perhaps even the role of non-legislative entities like state agencies and the Department of Finance, because these are some of the documents that you're going to find in the legislative history. And if you don't know their role and the process, it may be hard for you to utilize them.

So, basically, we want an understanding of what legislative history research consists of and where to look for that sort of information. And so that's why you want to be generally familiar with the process. The second thing is you got to decide how much time you have to spend. In other words, is this an urgent request that has to be done within hours? Or do you have a little bit of time? Because sometimes particularly for those items that are older than the 1993 legislative session, you might have to spend some significant time and even a visit with the State Archives.

Like in most states, legislative history is kind of elusive. And California certainly isn't an exception. You know, the federal level, they have the Congressional Record, which is basically a verbatim transcript of Federal Legislative proceedings, committee hearings, the floors of the US Congress, the House and the Senate. But the California doesn't publish any transcripts of floor debates or committee hearings. And so, there isn't too much valuable material that's available and you've really got a hunt to find good insights into legislative intent. Which means it can often be time-consuming and frankly it may not always be productive.

And so in order not to get overly frustrated or too far into the process, until you realize that you're not finding anything, you basically want to try and determine how much time you could put into the legislative research effort. Now, the next step is, is to check California legislative history resources. There's a lot of material online since 1993. If it's prior to 1993, then you have to check with the State Archives. So online at the leginfo website, that's maintained by the Legislative Counsel's office in California. That's available from 1993 on. And that has the bill, all the versions of the bills, texts the committee and for analysis, the votes and the history at the California State Archives, they have author files, committee files, governor's chapter bill files, some of the party files, including the Assembly Republican Caucus, the Senate Floor analysis files, sometimes agency files, at times outside groups like the California Law Revision Commission – their studies.

Now you can phone in requests at the State Archives, but they do often have backlogs, plus you pay 25 cents per page for any photocopy documents. Next, you want to consult the annotated codes because in the codes it'll have a description of the bill that enacted the statute or made changes to your code section. This also allows you to examine what the law was prior to the adoption of the changes you're interested in. And of course you can ascertain, did that bill add a vendor repeal sections of law that you're looking at? And following the text of the statute and the annotated code, you find references to the statute and the session in which it was enacted. And you'll need that information, primarily the bill number.

It's also helpful to review the text of the session laws. For example, you might have some odd uncodified language like legislative intent, which we often find as findings and declarations in the bill. Sometimes there's a preamble that includes like a statement of purpose that might help ascertain what was the

legislature's intent. You also want to compare different versions of the bill as it was amended through the legislative process, so that you understand how the changes were made. In other words, look at what words, phrases or entire code sections changed as a result of the bill, as it made its way through the legislative process. Note that the courts have determined that contemporaneous unpassed legislation may be a significant indicator of the intent underlying legislation passed during the same session. So you also want to check whether or not there were any similar or related bills that didn't pass that legislation.

Well, some of these legislative history databases, LexisNexis, Westlaw, these online research tools can be awfully helpful. There are also some commercial providers that do legislative history and intent research like Legislative Research & Intent LLC. And again, they conducted their research and they certify all the documents that they find, and they can provide expert testimony in court regarding the documents that they research and find. You also want to examine the Senate journals to see what happened in the legislature. Although this isn't a transcript, it does explain the history of the bill and what committees it went to, et cetera. They may not always have that much value, but for example, the journals would publish any letters of intent by the Bill's author, as well as committee reports and information outside information. So you want to check those journals to see if there's anything helpful. And then you want to look at the websites of the Assembly and Senate.

Again, particularly if it's post 1993 and note that from January 2018 to the present, as a result of Prop 54, California Constitution, the Assembly and Senate have to make a video and audio recordings of all legislative committee hearings and floor sessions. So that's now available from January 2018 on. It might also be helpful to look at any media coverage at the time of the statutes' debate and adoption. Was there something at the news that helps explain what the purpose of the bill was, or what ill or problem or particular issue the legislature was trying to correct or address with the bill? It may be helpful to review some of that coverage prior to, during, and even after the enactment of the statute that you're looking at, because it might give some insights into the intent of the Legislature. Next, you want to contact the Assembly member or state Senator who's the author of the bill, as well as the committees, through which the bill traveled so that you know that history and can check those.

Was there anything out of those files that gave particular insights into what the Legislature was intending to do? These include correspondence with the author's office, the committee offices, perhaps the party offices, like the Republican caucuses or outside groups, et cetera. There's also the Legislative Open Records Act. And the Government Code that starts with Section 9070, which provides a process by which the public can access legislative records that are held by whether the author's office or committee offices, et cetera. And then just for your note, the courts in California have put together a list of key documents that are generally accepted as evidence regarding legislative history and intent. Including things like any interim hearing studies, any other formal studies or recommendations say by the Law Revision Commission, some of the committee materials like the committee background materials, the worksheets, the policy, and fiscal analyses, the department of finance analysis, the floor analyses for when the bills are on the third reading file, perhaps any statements by the author to committee or on the floor, even the statements by proponents and opponents might give some insights. And of course, any analyses done by state agencies that were considered by the legislature are all helpful. And although this list isn't exhaustive, it does give you a number of avenues to utilize, to try and find a relevant information regarding legislative history and intent of that statute.

So thanks for joining. I hope you got some helpful information and some guidance on when you're conducting legislative research. Thanks for joining.