Research & Practice Guide
CALIFORNIA
LEGISLATIVE HISTORY
AND INTENT

Practical "how to" guidance for improving your advocacy skills when legislative history/intent is at issue

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CHAPTER 1

CALIFORNIA LEGISLATIVE INTENT

A. Introduction: The Benign Neglect of Legislative Intent in Law School Curriculums

The subject of legislative intent is not a particularly well covered aspect of the typical law school curriculum. Heavy emphasis on the case method of studying law tends to restrict the discussion of legislative purpose to what the courts say on the subject.\(^1\) But, as addressed in this chapter judicial opinions are only one facet of a thorough multi-faceted approach to properly construing a statute.

These materials provide information and guidance for the practitioner who wishes to utilize evidence of California legislative history as an aid for interpreting statutes.\(^2\)

\(^{1}\) In the last part of the 19th century in the United States, the case method of studying law rose in ascendancy and was part of a movement to improve the legal profession. The codification movement began in the United States in the middle of the 19th century in New York through the work of the New York Code Commissioners, whose dominant member was David Dudley Field. A prominent draft of the Field Code Commissioners known as the New York Civil Code or Field Code greatly influenced California's codification efforts in 1872. Field Code Commissioner commentary accompanying the predecessors of early California statutes are recognized evidence of legislative intent. Future versions of this guide will address the Field Code and summarize the historical development of the use of extrinsic evidence of legislative intent by the courts dating back to early English common law.

\(^{2}\) These materials focus on the work of the California State legislature and do not include state administrative law, adopted ballot initiatives which did not originate with a state legislative proposal (statutory and constitutional), local ordinances or federal code research. Limited information on these other areas of legal research is provided at the end of this chapter under part F.
B. The Primary Sources of Legislative Intent: Intrinsic Analysis and Extrinsic Aids. Two Schools of Thought Regarding the Necessity of Ambiguity.

In California, the primacy of legislative intent is established by both statute and case law:

In the construction of a statute the intention of the Legislature ... is to be pursued, if possible ... California Code of Civil Procedure Section 1859 (Enacted 1872)

As we have often noted, our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent. Laurel Heights Improvement Association v. Regents of U.C. (1993) 6 Cal. 4th 1112, 1127 [Sample citation]

In general, evidence of legislative intent can be derived from two primary sources:3

1. An intrinsic analysis of the statute and its surrounding statutory context. The intrinsic method works within the four corners of the adopted language, including the surrounding statutory context, turning to interpretative case law when available, and utilizing the principles of statutory construction.4

2. The use of extrinsic aids to reconstruct the legislative history.5 The wider historical circumstances surrounding the adoption of statutes can yield extrinsic

3 See parts D and E of this chapter for additional details regarding the various categories of intrinsic and extrinsic methodologies available to the legal practitioner.

4 "In order that legislative intent be given effect, the statute should be construed with due regard for the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part." California State Restaurant Assoc. v. Wilow (1976) 129 Cal. Rptr. 824, 58 CA.3d 340. Parts D and E of this chapter also provides additional guidance in this area which rely heavily upon Legislative Analysis and Drafting, 2nd Ed., William P. Statsky, West Publishing Co., (hereafter "Statsky"), Chapter 3 entitled "The Legal Environment of a Statute: Methods of Understanding Legislation" pages 35 - 42; and Chapter 6 entitled "Canons of Construction: Customs in the Use of Language", pages 83 - 95

5 For points and authorities regarding the admissibility of extrinsic evidence of legislative intent see Chapter 8 of these materials for a sample legislative history with accompanying points and authorities for gaining admission of the various documents. See also the exhaustive case notes accompanying CCP Section 1859, Evidence Code Section 452 (c) (judicial notice of "official acts" of the legislature) in West's and Deering's annotated codes.
evidence of legislative intent that is outside the four corners of the statute itself. Such evidence is broadly inclusive of relevant historical background including identification of the problem addressed, the chronology of events and the presumption that the legislature is aware of prior law. As discussed below, such evidence may even contradict any so-called "plain reading" of the statute which contradicts persuasive, extrinsic evidence of legislative intent. These materials focus on the effective use of extrinsic aids in the reconstruction of legislative history.

A review of the case law and commentary reveals two schools of thought on when the use of extrinsic evidence of legislative intent is appropriate:

1. **Restricted use:** Only if statutory ambiguity prohibits an intrinsic, "plain meaning" interpretation. One view is that extrinsic evidence of legislative intent is only appropriate if the intent cannot be determined from the "plain meaning" of the statute because there is ambiguity in the statute's terms.

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6 “One ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the character and context of the legislation in which the particular words appear, the public policy enunciated and vindicated, the social history which attends it, the effect of the particular language on the entire statutory scheme." *Santa Barbara County Taxpayers Assoc. v. County of Santa Barbara* (1987) 194 Cal.App.3d 674, 680. See, generally, *Sutherland on Statutory Construction*, Chapter 48 (hereafter "Sutherland"). "These extrinsic aids may show the circumstances under which the statute was passed, the mischief at which it was aimed and the object it was supposed to achieve. ... knowledge of circumstances and events which comprise the relevant background of a statute is a natural basis for making such findings." *Sutherland*, Section 48.03. Generally, the drafters who frame an initiative state and the voters who enact it may be deemed to be aware of the judicial construction of the law that served as its source." *In re Harris* (1989) 49 Cal.3d 131, 136.

7 See Statsky, pages 3, 40, 75, 76, 118, 119, 152, 153; *Sutherland*, Section 46.07 on the "Limits of Literalism"; and the points and authorities cited in Chapter 8 of these materials as well as the case notes following CCP Sec. 1859 and Evidence Code Sec. 462 (c).

8 The primary rule in this regard was articulated in *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1916) "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which ... [it] is framed, and if that is plain, ... the sole function of the of the courts is to enforce it according to its terms." California courts have concurred. Example: "If there is doubt as to the intent of the legislature, the court may resort to extrinsic aid to interpret a statute, such as its contemporary history, circumstances under which it was passed and mischief at which it was aimed." [Emphasis added] *Koenig v. Johnson* (1945) 163 P. 2d 746, 71 C.A.2d 739.
2. **Unrestricted use:** To avoid absurd results or to uphold "clear, contrary" intent. However, the courts have come to acknowledge that problems can occur in applying the plain meaning rule, especially when adherence to the strict letter of the statute would trigger an absurd result or contravene clear evidence of the legislature's intent. In such cases, "...contrary to the traditional operation of the plain meaning rule, courts are increasingly willing to consider other indicia of intent and meaning from the start rather than beginning their inquiry by considering only the language of the act."

One court has even spoken in terms of the judicial "duty" to admit historical legislative documents. As discussed in Chapter 6 of these materials, Evidence Code Sections 452 and 453 set forth the procedures for judicial notice of legislative records.

The literature also speaks of the onus on the legal practitioner to offer such evidence.

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9 "The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to allow a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read to conform to the spirit of the act." Sutherland, Section 46.07. "Even the literal language of a statute may be disregarded to avoid absurdities or to uphold the clear, contrary intent of the legislature." Disabled and Blind Action Committee of California v. Jenkins (1974) 118 Cal. Rptr. 536, 44 Cal.3d 74.

"The golden rule [a canon of statutory construction] ... inclines us to avoid an interpretation of a statute to which an application of the plain meaning rule would otherwise lead us. We must presume that the legislature did not intend any interpretation of the statute that would lead to absurd or ridiculous consequences, no matter how 'plain' the meaning of a statute appears to be." Statsky, page 81. "In construing a statute, the intent of the legislature must be ascertained if possible, and, when once ascertained, will be given effect though it may not be consistent with the strict letter of the statute. People v. Minter (1946) 167 P.2d 11, 73 [Emphasis added] "We disagree, however, with respondent's sweeping assertion that in all cases 'ambiguity is a condition precedent to interpretation.' Although this proposition is generally true, the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to the manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole." Silver v. Brown (1966) 63. 2d 841, 845; County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 849. [Emphasis added]

10 Sutherland, Section 46.07.

11 "In the case at bench, the extrinsic evidence in dispute was highly relevant to show the legislative intent underlying the statute. It follows that the trial court was not only free, but also duty bound to admit the challenged extrinsic evidence to ascertain the true intent of the Legislature and to effectuate the purpose of the law." Pennisi v. Fish & Game (1979) 97 Cal. App. 3d 268, 275.
As indicated earlier, an advocate who does not appear with an argument based on legislative history is usually considered unprepared.  

The trend is growing. Statutory ambiguity is not always a necessity. More and more we see the courts resorting to extrinsic evidence of legislative history that supports a “plain meaning” interpretation of the statutes.

C. Possible Strategy for Dealing With The "Reluctant Court"

The dilemma: As suggested above, some courts may not take kindly toward the use of extrinsic legislative history materials in the absence of statutory ambiguity. Thus, in spite of the overwhelming trend disavowing the necessity for ambiguity, you may find yourself before such a court or you may be uncertain as to which school of thought your particular court adheres to. However, you believe that the statute at issue lends itself to an unambiguous, plain reading interpretation in your favor, and you have obtained a very helpful legislative record that you wish to gain judicial notice of.

Should you stipulate to statutory ambiguity as a way of gaining notice of the extrinsic legislative records? Or, should you try to find a way to preserve your argument of statutory clarity while at the same time try to convince the court to allow the use of extrinsic legislative records?

Possible Strategy -- arguing in the alternative: *This statute isn't ambiguous ... However, in the alternative, if the statute is ambiguous ...* This is the classic "just in case" approach that lawyers are accustomed to. When dealing with the use of extrinsic evidence of legislative history/intent, you may wish to employ the following approach:

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12 Stasky, page 119.

(1) An unambiguous or plain reading interpretation favoring my client can be read from the statute as follows..., and

(2) The overwhelming judicial trend in California is to allow extrinsic evidence of legislative intent for interpreting a statute whether or not the statute is ambiguous. (Citations, see above and Chapter 8) and,

(3) The legislative history supports the plain reading of the statute as follows.... (Cite specific excerpts from the legislative record). \(^{14}\) However,

(4) Opposing counsel argues for an opposite interpretation of the statute. This presents the court with the dilemma of determining which interpretation to adopt, raising the issue of ambiguity from the court's standpoint. Should the court determine that the statute is ambiguous, it is well recognized that ambiguity is a basis for admitting extrinsic evidence of legislative intent. (Citations)

This approach is based upon the following premise: An operating principle to keep in mind is that ambiguity is in the eyes of the beholder. Language is an imprecise method of communication. What may seem clear and unambiguous to one can be unclear to another. As a result, it is not unusual to find a "plain reading" or unambiguous interpretation of a statute for both sides of an argument. This makes the statute sound ambiguous, doesn't it? This can serve as the gateway for admission of extrinsic legislative records without having to stipulate to statutory ambiguity.

In most cases it is going to be better to assert statutory clarity on your issue whenever possible. It is difficult to imagine when it would be advantageous to concede that the statute is ambiguous if a reasonable "plain reading" interpretation in your client's favor is possible.

Of course the court may agree with your interpretation of the statute and still deny admission of the legislative record. But in that case you have prevailed on the

\(^{14}\) As stated in Chapter 7 of these materials, your strongest use of the extrinsic legislative history record is to allow the legislative records "to speak for themselves." Just like curiosity can skin the cat, too much analysis and opining without supportive excerpts from specific legislative records can skin your case. Keep it simple.
appropriate interpretation of the statute without recourse to the extrinsic record. There could be worse results and you've preserved your "plain reading" arguments and request for judicial notice of the extrinsic legislative record in the event of an appeal. (NOTE: In my experience, first time offering of legislative intent research at the appellate level is not unheard of. However, it is still wise to take all the necessary procedural steps to preserve the document admission issue for appeal.)

**D. A Framework for Understanding Legislation: How to See the Forest and Avoid Becoming Lost in the Trees**

The importance of establishing a context for statutory construction through the use of well established methodologies including, but not limited to, legislative intent research, cannot be understated. As the discussion in this part demonstrates, legislative intent research provides a fulcrum by which much of this context is established. Retired California Supreme Court Justice Armand Arabian underscored this reality when he stated that the practitioner who "shows the court the forest" or the big picture through the legislative history of a statute has the advantage. Otherwise, he added, one risks the appearance of being "lost in the trees."

Statsky summarizes a useful approach for understanding and applying a statute as follows.\textsuperscript{15}

Five interrelated questions must be asked whenever you are trying to understand and apply a statute.

a. What is the "\textit{plain meaning}" of the language in the statute? To what extent is the meaning self-evident?

b. Why was the statute adopted? What needs prompted it? What mischief or evil was the legislature trying to correct?

c. What happened in the legislature during the process of adoption? What is the statute's legislative history?

d. What was the law prior to the adoption of the statute?

\textsuperscript{15} Statsky, pages 35 -42.
e. What has happened since the statute was created? What has been the response of the courts, the agency charged with administering the statute, the legislature, the public, scholars, etc.?

These questions constitute the foundation of the methods of understanding any statute. The answers to the questions will place the statute in context within the legal system. Without this context, any application of the statute is on potentially dangerous ground. [Emphasis added]

Regarding (a) above. The "plain meaning" rule -- again. Ambiguity is not a hard and fast requirement for addressing the legislative history: Under Statsky's view,16 "the plain meaning rule ... is but a point of departure and a guideline which cautions us not to go too far in finding meaning that may not be there." However, as summarized in part B of this chapter, the well established trend is that the plain meaning rule does not prohibit resort to extrinsic evidence of legislative intent when ambiguity is not an issue.

Regarding (b) - (d) above. The role of legislative history research in establishing a contextual framework for understanding a statute: It is significant that three of the above five criteria for establishing the all important context for applying a statute involve legislative history research: These are (b) ("mischief or evil"), (c) ("what happened in the legislature") and (d) (prior law).

Mischief or evil. Part E. below summarizes the standard methodology for determining the "mischief or evil" addressed in a statute. One method includes findings from the legislative history, the primary subject of this research guide.

Legislative "happenings". It should be clear by now how central this type of research is in construing statutes.

Prior law.

16 Statsky, pages 36, 75-76, 81.
#1. Statutory. A major aspect of uncovering the legislative history of an enactment is to examine the then existing statutory law which the legislature sought to revise or repeal. Prior or derivative statutory annotations appear in West's and Deering's annotated codes. Comparing the evolution of statutory language can yield vital information regarding the interpretation of a statute. For example, if the prior law used the word "may" and the subsequent amendment or repeal and recodification used the word "shall" instead, any effort to place a discretionary operation of the statute will face a serious challenge.

#2. Statutory and Judicial. "[T]he Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them." People v. Overstreet (1986) 42 Cal. 3d 891, 897.

Regarding (e) above. Subsequent action: A few cautions in this regard are as follows:

Administrative agencies. While interpretations by the state agency charged with a statute's implementation carry great weight, they are not conclusive or binding upon the court. Furthermore, if the subsequent rule or regulation exceeds its statutory authority, it is invalid. (See part F. of this chapter.)

Courts. Similarly, court opinions must yield to legislative intent. This view is strongest within the modern trend which provides that ambiguity is not a necessity for recourse to extrinsic evidence of the legislative purpose. See, for example, Marina Village v. California Coastal Zone Conservation Commission (1976) 61 Cal. App. 3d 338, 392 "The primary rule of statutory construction, to which every other rule as to interpretation of particular terms must yield, is that the intention of the Legislature must be ascertained if possible, and when once ascertained, will be given effect, even though it may not be consistent with the strict letter of the statute." (Emphasis added) Arguably then, a court opinion could be overturned if the opinion was refutable in light of extrinsic legislative evidence subsequently brought to light.
Subsequent legislative action. There are at least two categories here:

#1. Expressions by subsequent legislature as to the intent of a prior act: "[T]he Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But, it has no legislative authority simply to say what it did mean. Courts do take cognizance of such declarations where they are consistent with the original intent. '[A] subsequent expression of the of the Legislature as to the intent of the prior statutes, although not binding on the court, may properly be used in determining the effect of a prior act." Del Costello v. State of California (1982) 135 Cal. App. 3d 887, 893. See also Eu v. Chacon (1976) 16 Cal. 3d 465, 470.

#2. Rejection or deletion of specific provisions: This addresses subsequent legislative revisions of prior law which are granted significant weight. See, for example, Royal Company Auctioneers v. Coast Printing (1987) 193 Cal. App. 3d 868, 873 "When the Legislature deletes an express provision of a statute, it is presumed that it intended that to effect a substantial change of the law."17

E. The Canons of Statutory Construction: A Brief Overview

There are eight primary canons of statutory construction that the practitioner should be well versed in. However, prior to reviewing them, it is important to understand that:

The canons are guidelines suggesting a certain meaning of statutory language which can be adopted unless it is clear that the legislature intended a different result.18

[Emphasis added]

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17 Future versions of this guide will include an analysis of points and authorities dealing with subsequent failed attempts to amend.

18 Statsky, pages 83-84.
Thus, the canons are not canons. Statsky points out that while some of the canons have "imposing latin names which give the impression that you deviate from them at your peril" "[n]o court is required to apply [them]." Furthermore, in some situations "the canons will be of no help; indeed, different canons might even suggest opposite interpretations of the same statute. You can use the canons for what they are worth: potential guidelines to probable or possible meaning." Statsky guides the practitioner to explore all methods of discovering legislative intent and meaning without relying upon any single method or technique in isolation.

The so-called rules of interpretation are not rules that automatically reach results, but [are] ways of attuning the mind to a vision comparable to that possessed by the legislature. J. Landis, A Note on "Statutory Interpretation," 43 Harv. L. Rev. 886, 892 (1930)

In summary, the eight canons of statutory construction are:

1. The plain meaning rule (see parts B - D of this chapter).

2. The mischief rule. "If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense." K. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed, 3 Vand. L. Rev. 395, 400 (1950). Statsky provides guidelines for identifying the evil or mischief the legislature was trying to remedy:

   (1) "The preamble of the statute." (Look for a statement of purpose.)

   (2) "The legislative history of the statute." (The subject of this research guide. See Chapter 8 for sample documents comprising a legislative history.)

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19 The summary provided here is not intended to be an exhaustive treatment of the subject which can be found in the Statsky treatise and the sources he relies upon.

20 Statsky, page 78.

21 Also, look for statements or findings of legislative intent, often appearing in uncodified general law statutes. Annotated codes most often carry such provisions in the historical notes following the statute.
However, there are limits to the doctrine which grants great weight to the construction of a statute by the state agency responsible for its interpretation and enforcement. (See, for example, National Muffler Dealers Assoc. v. U.S. (1979) 440 U.S. 472, County of Alameda v. State Board of Control (1993) 14 Cal. App. 4th 1096.) "... the Supreme Court in Whitcomb Hotel, Inc. v. Cal. Emp. Com. (1944) 24 Cal. 2d 753, 757 where in discussing the extent of the court's authority to review the Board's legal determinations, the court stated: 'Whatever the force of administrative construction ... final responsibility for the interpretative practice is a weight in the scale, to be considered but not to be inevitably followed .... While we are of course bound to weigh seriously such rulings, they are never conclusive. [Citations, emphasis added] An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment. [Citations, emphasis added]" State Board of Equalization v. Board of Supervisors (190) 105 Cal. App. 3d 813, 819.

(3) "The four corners of the statute itself." (The purpose may be apparent from the statute itself.)

(4) "Court opinions interpreting the statute." (Statsky points out that the court will often utilize the above three methodologies in making conclusions regarding the legislature's purpose underlying a statute.)

(5) "Agency interpretations of the statute in regulations and administrative decisions."22

(6) "Scholarly comment on the statute.... Such comment will draw on all five of the above guidelines."

3. The golden rule (Modifies the plain meaning rule. See part B of this chapter on the two schools of thought regarding the necessity of ambiguity as a gateway for admitting extrinsic evidence of legislative intent.)

4. Expressio unis est exclusio alterius. (The mention of one thing is the exclusion of the other.) When the writer specifically mentions one item we can assume the intent to exclude some other item. Thus, an exclusive definition, etc. can be strictly construed. (Note that terms such as "including but not limited to" cut against this outcome.)

5. Noscitur a sociis. (Something is known by its associates.) Context, context, context. However, "[a] word is known by the company it keeps is ... not an invariable rule, for a word may have a character of its own not to be submerged by its

\[\text{\underline{22}}\] However, there are limits to the doctrine which grants great weight to the construction of a statute by the state agency responsible for its interpretation and enforcement. (See, for example, National Muffler Dealers Assoc. v. U.S. (1979) 440 U.S. 472, County of Alameda v. State Board of Control (1993) 14 Cal. App. 4th 1096.) "... the Supreme Court in Whitcomb Hotel, Inc. v. Cal. Emp. Com. (1944) 24 Cal. 2d 753, 757 where in discussing the extent of the court's authority to review the Board's legal determinations, the court stated: 'Whatever the force of administrative construction ... final responsibility for the interpretative practice is a weight in the scale, to be considered but not to be inevitably followed .... While we are of course bound to weigh seriously such rulings, they are never conclusive. [Citations, emphasis added] An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment. [Citations, emphasis added]" State Board of Equalization v. Board of Supervisors (190) 105 Cal. App. 3d 813, 819.

6. **Ejusdem generis.** (Of the same kind.) General, catch-all phrases such as "Oil, gas and other minerals", etc. can be difficult to interpret. We must presume that the legislature intended to give meaning to every part of the statute. However, a too literal interpretation of such phrases could potentially lead to a huge category of items. Ejusdem generis provides a method for limiting the class or category of items in such cases: The general phrase is limited in meaning to the same category or classification found within the specific items in the list.

7. **In pari materia.** (On the same subject.) Statutes in pari materia are to be interpreted together even though they may have been passed at different times. The courts seek to harmonize the statutes, but when unable to, the courts will allow the more recent or particular statute to control over a later or more general statute.

8. **Terms of art.** Statutory language is to be interpreted according to the ordinary and common meaning of the words used unless it is clear that the legislature intended a different meaning.

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**F. Notes Regarding Rulemaking, Ballot Initiatives, Local Ordinances, Federal & Sister-State Research**

As stated at the beginning of this chapter, these materials focus on the work of the California State legislature and do not include state administrative law, adopted ballot initiatives which did not originate with a state legislative proposal (statutory and constitutional), local ordinances or federal or sister state code research. Limited information on these other areas of legal research is provided below:

1. **California State Agency Regulations**
   
a. **With regard to rulemaking research in general:** See the Administrative Procedures Act, Government Code Section 11347.3 for the requirement that rulemaking records be made available to the public and the courts and for the designation of the mandatory content of such files after 1979. For public access

b. **With regard to invalidating an agency regulation:** See LRI’s www.lrihistory.com “Research Aids” Dead California’s Regulations”.

(1) **Exceeds the scope of authority.** See the rule articulated in State Board of Equalization v. Board of Supervisors (1980) 105 Ca. App. 3d 813, 819 which reigns in the administrative rulemaking power as follows: "An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment." (NOTE: Legislative research into the underlying authorizing statute should define the scope of the administrative authority.)

(2) **Not supported by "substantial evidence".** See Government Code Section 11350 for obtaining a judicial declaration as to the validity of any regulation. In particular, an agency's determination that a regulation is "reasonably necessary" to "effectuate the purpose" of the authorizing law must be supported by "substantial evidence" or it can be invalidated under 11350 (b) (1). One court in an unpublished opinion interpreted this to mean "substantial evidence" in the rulemaking record (California for Safe Dental Regulations et al v. Board of Dental Examiners of California, et al, Sacramento County Superior Court No. 336624, 2/3/89). There the agency's failure to produce the relevant 1976 rulemaking file caused the court to rule that it did not have sufficient basis to determine the need and authority for the challenged rule under 11350 (b) (1). (NOTE: It is not uncommon for agencies to lose these files.)
2. **With regard to non legislative ballot initiatives:** The primary research tools include the official ballot arguments, contemporaneous commentary published in news reports, articles, governmental reports, etc., information from the files of the sponsor and opponent files. See also failed, predecessor legislative initiative proposals and the accompanying legislative history.


4. **With regard to federal research:** The referenced law guide cited below provides excellent references in this area as well as a comprehensive guide on California legal research in general (hard copy and major databases). Also, law review articles and compiled bibliographies can be very useful (see references below for some good cites to well-used compilations). As to what’s available on the internet, there are number of online research check off lists published by a variety of colleges and universities. Lastly www.thomas.loc.gov/, the congressional, online data base (1973 to current) is an excellent resource and very user friendly.

[References: Henke's California Law Guide, 3rd Edition, revised and edited by Daniel W. Martin, Director of the Law Library and Associate Professor of the Law, Pepperdine School of Law. Published by Michie Butterworth, a division of Parker Publications, P.O. Box 7587, Charlottesville Virginia, 22907-6094. (800) 562-1197. (To order use code "PB2".) The 2nd edition, now out of print, provides "how - to" information on federal research, not contained in the 3rd edition; Sources of Compiled Legislative Histories: A Bibliography of Government Documents, Periodical Articles, and Books 1st Congress - 105th Congress, Compiled by Nancy Johnson, AALL Publ Series NO. 14; Federal Legislative Histories: An annotated bibliography and index to officially published sources, compiled by Bernard D. Reams, Jr., 1994]

5. **With regard to sister-state research:** Much is available on line these days for more recent sessions. But a still-good resource is the AALL compendium complied in 1988 by Mary L. Fisher entitled Guide to State Legislative and Administrative Materials, 4th Ed., AALL Publ Series NO. 15. The state archives and state law libraries are usually quite helpful as well.
In a nutshell, the eleven major legislative enactment stages are:

**Introduction and Consideration in the House of Origin**
- Stage 1. Proposal development & formal introduction
- Stage 2. Policy committee consideration
- Stage 3. Fiscal committee consideration
- Stage 4. Floor debate

**Consideration by the Second House**
- Stage 5. Policy committee consideration
- Stage 6. Fiscal committee consideration
- Stage 7. Floor debate

**Return to the House of Origin**
- Stage 8. Concurrence on amendments adopted in the 2nd house

**When Concurrence Fails: Conference**
- Stage 9. Joint house conference committee

**Enrolled (governor) consideration**
- Stage 10. Governor action: approval by signing or inaction, or veto

**Veto override**
- Stage 11. A veto can result in a 2/3’s override vote by the legislature

**Description of each stage, noting documents generated at each stage:**

GUIDING COMMENT REGARDING AMENDMENTS WHICH CAN OCCUR THROUGHOUT MOST STAGES: Each stage generates a variety of legislative documentation as noted below. After stage 1 (introduction), the bill can be amended throughout the process until the bill is sent to the governor in the final
stages. These amendments trigger replacement bill versions which include summary Digests prepared by the Office of Legislative Counsel in later years. The replacement versions are easy to spot because they say at the top of the first page "AS AMENDED .... [date]. New additions show in italics, new deletions show in strikeout. All documents must be reviewed in light of the amended bill version addressed or in existence at the time the document was created.

**Introduction and Consideration in the House of Origin**

**Stage 1. Proposal development & formal introduction**

*Notes:* The idea for a statute can come from many sources such as: 1) an administrative proposal submitted through the governor; 2) a study commission, 3) private citizens, 4) private groups, 5) legislative initiative (individual legislators or legislative committees). The elected legislative author submits a request to the Office of Legislative Counsel for formal drafting of the bill proposal. That draft becomes the first, introduced version of the bill.

*Types of documents generated at this stage:* Correspondence from proponents and opponents, proposals, draft statutes, studies & accompanying recommendations, committee hearing transcripts and related reports, first introduced (in print) bill version with Legislative Counsel's Digest in the preamble, agency analyses, media related documents (author's press release & news coverage).

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23 The governor acts in a legislative capacity when acting on legislation sent to him by the Senate or Assembly. *Lukens v. Nye* (1909) 156 Cal. 498. As a result, his statements can be reflective of legislative intent. *People v. Tanner* (1979) 24 Cal. 3d 514.
Stage 2.  Policy committee consideration

Notes: The California Legislature's major deliberations are committee driven. The primary committees with voting powers are called "standing" committees.  Sometimes large standing committees, or committees with responsibility for numerous policy areas will create "subcommittees" with the power to hear bills and recommend action to the parent standing committee. The committees fall into two primary categories: policy and fiscal. All bills, except for the annual budget bill, are assigned to at least one policy committee for a formal hearing where public notice is given and testimony is heard prior to a vote. (Depending upon the subject matter, sometimes more than one policy committee assignment is made, although this does not occur very often.)

Types of documents generated at this stage or available from committee files: Same as item 1 above, with the addition of committee background work sheets for author completion and official committee analyses prepared by committee consultants for committee review prior to voting.

Stage 3. Fiscal committee consideration

Notes: Bills with a significant impact on the State General Fund are also assigned to a fiscal committee. Policy review is not officially the order of business, but it is rarely excluded from consideration.

Types of documents generated at this stage or available from committee files: Primarily correspondence from proponents and opponents as well as official committee analyses prepared by committee consultants for committee review.

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24 Stage 8 describes the rarer conference committees.

25 Usually some cutoff amount is assigned. I have seen it range from between $60,000 to $100,000. Also, Legislative Counsel's Digest on the various bill versions (later years) will say at the end "Appropriation: [yes or no] ... Fiscal committee: [yes or not] ... State mandated local program: [yes or no] ...". If your issue relates to potential state costs (i.e., state tort liability under the Government Code, etc.), these footprints can guide you to the fiscal analyses that may assist you.
prior to voting. The Department of Finance and the Legislative Analyst also prepare fiscal analysis reports.26

State 4. Floor debate

Notes: The bill with its accompanying report(s) then goes to the floor of the house of origin where it is debated. At this time questions are asked by members, and statements are made for and against the measure prior to voting. The approved measure is then sent to the second house for identical review proceedings.

Types of documents generated at this stage or available from floor analysis files: Primarily correspondence from proponents and opponents, official floor analyses prepared by committee consultants, a floor statement by the author, and perhaps background memoranda.27

Consideration by the Second House

As stated above, identical review steps occur here as follows:

Stage 5. Policy committee consideration

Stage 6. Fiscal committee consideration

Stage 7. Floor debate

26 The Department of Finance (DOF) drafts analyses on behalf of the administration (the governor) and the Legislative Analyst's Office (LAO) drafts analyses on behalf of the Joint Legislative Budget Committee for whom it works and to whom it reports. Both entities have permanent chairs in the fiscal committees of both house and operate as additional consulting staff to the committees. Their analyses are a critical part of the reviewing committees' deliberations.

27 The earliest date that floor records are available for is 1973. These are for the Senate Republican Caucus.
Return to the House of Origin

Stage 8. Concurrence on amendments in 2nd house

Notes: This action takes place on the floor of the house of origin. Concurrence results in the bill being sent on to the governor (see stage 10). Nonconcurrence forces the convening of a joint house conference committee (see stage 9).

Types of documents generated at this stage: See stage 4.

When Concurrence Fails: Conference

Stage 9. Joint house conference committee

Notes: If the house of origin refuses to concur on the amendments adopted in the second house, a joint house conference committee is called. That committee holds a hearing and adopts a report recommending amendments to resolve issues. That report is then taken to a vote on the floors of both houses. Failure to produce a report or failure to obtain joint house approval can trigger another conference committee. Passage results in referral to the governor.

Types of documents generated at this stage: See stage 4.

Enrolled (governor) consideration

Stage 10. Governor action

Notes: The bill becomes law if the chief executive signs it or allows it to become action without his/her signature (i.e., the statutory time for consideration tolls and it is not signed or vetoed).

Types of documents generated at this stage: Correspondence by the proponents (including the author) and opponents, state agency enrolled bill reports and a press release by the Governor.
Veto override

Stage 11. A veto can result in a 2/3's override vote by the legislature

Types of documents generated at this stage: See stage 4.

Again, not every bill goes through all the stages outlined above. The above eleven stages are the primary steps that a bill is potentially exposed to in the California Legislature.
CHAPTER 2

The Legislative Process: A Quick Overview

INTRODUCTION

This chapter supplies a "quick and dirty" overview of the legislative process. It provides a summary of each of the eleven critical stages of the enactment process beginning with the bill's introduction and ending with action by the governor. Each stage addressed is accompanied by a description of the types of documents that may have been generated along the way.

The chapter is followed by two appendices which can further round out your exposure to this subject:

**First appendix:** A general list of the types of documents comprising a legislative history. (NOTE: See Chapter p which provides a sample index of many of the major documents listed here along with points and authorities for gaining judicial notice of them.)

**Second appendix:** A chart which visually outlines the steps that a bill goes through before it is adopted in the California State Legislature ("How a Bill Becomes A Law").
CHAPTER 2 APPENDIX

LIST - TYPES OF LEGISLATIVE DOCUMENTS COMPRISING LEGISLATIVE HISTORY

INTRODUCTION

Following is a list of the types of records that you may encounter in your research under the category of "California Legislative History". Samples of many of the documents listed below are provided in Chapter 8 of this manual which contains a sample, abbreviated legislative history, including points and authorities for gaining judicial notice of the records on Code of Civil Procedure Section 2033 (a) as amended by Statutes of 1987, Chapter 86, Assembly Bill 361 - Harris. Relating to Request for Admission.

LIST

1. Preenactment Documents
   a. Previous related, unenacted legislation
   b. Interim hearing study and/or transcript and related files
   c. Other, formal study and/or recommendation (as by the California Law Revision Commission or a state agency)

2. General Enactment Documents
   a. Final History (bill calendar) excerpt
   b. All versions of the bill (as introduced, amended, chaptered) with Legislative Counsel's Digest on the face of the bill (not all years) – always note when your language of interest came in and relevant amendments)
3. Other Legislative Enactment Documents

a. Bill Background Worksheet (requested by the committee and filled out by the author's office, sometimes with attachments)

b. Policy committee analyses (partisan and nonpartisan)

c. Fiscal committee analyses (partisan and nonpartisan)

d. Floor analyses for third reading (partisan and nonpartisan)

e. Floor analyses for concurrence purposes (partisan and nonpartisan)

f. Conference committee reports and related floor analyses (partisan and nonpartisan)

g. Statements by the author for committee and floor purposes

h. Statements by proponents and opponents (letters, testimony, position papers, etc.)

i. Analyses by state agencies

j. Internal committee and author's office memoranda, letters, etc.

k. Opinions by Legislative Counsel

l. Letters of intent published in a house journal (usually by a committee, the author or an interested legislator)

m. Concurrent, failed legislation from the same session.

4. Governor (Enrolled) Documents

a. Enrolled reports to the governor from various state entities (Legislative Counsel, agencies and departments, the governor's staff)

b. Author's letter to the governor

c. Other correspondence to the governor

d. Governor's messages (press release, veto message, etc.)

5. Post Enactment Materials

a. Law review commentary

b. News articles, etc.

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28 This list includes the Governor's enrolled records as a part of the legislative enactment process. (See Chapter 2, page 1 commentary regarding the governor's role.)
Chart: How A Bill Becomes A Law
HOW A BILL BECOMES LAW
HOW A BILL BECOMES LAW

(A simplified chart showing the route a bill takes through the California Legislature)

1. CONCERNED CITIZEN, group, organization, or legislator suggests legislation
2. SENATOR (legislator) authors bill
3. LEGISLATIVE COUNSEL drafts bill
4. DRAFTED BILL returned to senator
5. SENATE DESK bill introduced, numbered, read first time
6. RULES COMMITTEE assigns bill to committee
7. BILL PRINTED
8. COMMITTEE HEARINGS (30 days after introduction and printing)
   - Typical recommendations: Do pass, Do pass as amended, Amend and re-refer
9. SECOND READING
   - Read, amended to 3rd
   - Read, amended to print, engrafted to 3rd
10. SECOND READING
    - Read, amended, to print, re-referred to committee
11. THIRD READING
    - Read, amended, to print, engrafted to 3rd
    - Read, amended, to print, re-referred to committee
12. THIRD READING
    - Read, amended, to print, engrafted to 3rd
    - Read, amended, to print, re-referred to committee
13. THIRD READING
    - Read, amended, to print, engrafted to 3rd
    - Read, amended, to print, re-referred to committee
14. THIRD READING
    - Read, amended, to print, engrafted to 3rd
    - Read, amended, to print, re-referred to committee

NOTE: This chart depicts the flow of a bill originating in the Senate, except for some differences in Senate procedures if originating in the Assembly.
Published sources for California Legislative Intent Research: 29

(1) *West's* or *Deerings* Annotated Codes (check the legislative annotations at the end of the statute to identify relevant enactment(s) and citations: "Stat. [year], c. [chapter number]")

(2) *Statutes and Amendments to the Codes* (to review prior law, to compare statutory language changes, to obtain a final version of the legislation in its enacted context)

(3) Assembly *Final History*, usually the last volume (to specifically identify Senate or Assembly legislation, i.e., tables convert "Stat. [year], c. [chapter number]" to a bill number.

(4) *Assembly* and *Senate Final History*(ies) (to identify author, committees, etc.) (Also called *Final Calendar* in earlier years, up through 1972.)

(5) All versions of the legislation (available on microfilm and/or hard copy at various depository libraries)

(6) *Assembly* and *Senate Journals* (up to 1970, the appendices contain published reports either by state agencies or committees; also useful for letters of petition and intent, legislative counsel's opinions, governor's messages & vetoes)

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29 These materials largely address "hard copy" sources of legislative intent. Future versions of this guide will include online sources. See, in general, Evidence Code Sections 1500 et seq, Best Evidence Rule, in particular 1500.5 (computer information).
(7) Law review articles (Pacific Law Journal (PLJ) published by McGeorge Law School, provides an annual "Review of Selected Legislation"; West's and Deerings annotations will sometimes reference an article that sheds light on the legislative history and intent of a particular enactment). See also the post enactment descriptions provided by the Continuing Education of the Bar (C.E.B.) for pre PLJ reviews and the State Bar Journals as appropriate.

(8) The published studies/reports and recommendations of the California Law Revision Commission (for background information on legislation sponsored by the commission) (West's or Deerings will usually supply the lead cites) and legislative committees (including committee transcripts sometimes). Depository libraries also receive hard copy of the commission's unpublished memoranda, minutes, and studies.

(9) Newspapers, magazines, trade journals, books

(10) For legislation falling between 1993- current, online access to legislative analyses, bill versions, final calendar, votes and veto messages are available. Journals are available as well. The Assembly’s even go back to 1850 online. A session is two years long and always starts in the odd year, www.leginfo.ca.gov.

(11) The State Archives sells microfilm cassettes of legislative documents by source and session year.

(12) Online databases, public libraries: Access them through LRI’s links: www.lrihistory.com. These can lead you to published studies, hearings, etc.. However, not all holdings are uniform at each library. Melvyl will tell you which library has your document of interest. Many indexed holdings are located in the California State Library in Sacramento (Government Publications Section, California Room, or the Law Library). Try interlibrary loan through your local county public library.

(13) Bill versions can be obtained in a combination of microfiche and hard copy through the State Law Library, the larger County Law Libraries and most ABA accredited law school libraries. (At least the period of 1975 to date can be found at most County Law Libraries on UMI microfiche.)
Unpublished sources for California Legislative Intent Research: Original documents

(1) The California State Archives has a vast collection of original legislative papers that can be accessed by *source and session year* (e.g., authors' files, committee and study files, Governor's Chaptered Bill Files, partisan caucus files, Senate Floor analyses files, agency files, Law Revision Commission Study Files). You can phone in research requests to Archives at ((916) 653-2246), but be prepared to wait as their backlog is quite extensive. Give yourself at least three weeks advance time apart from shipment. (See Chapter 4 for guidance on conducting research through State Archives.)

(2) A wide variety of state legislative offices (i.e., legislator offices, committee offices, partisan offices, floor analysis offices) (especially for more recent legislation) and agency analyses/bill files. Access to records held by these offices varies widely (depending on personalities involved, etc.). Recent legislation (Stats. 1996, Chapter 928, SB 1507 - Petris) drafted and advanced by Carolina Rose, President, Legislative Research Incorporated in partnership with the northern and southern California law librarian associations (NOCALL and SCALL) now requires legislative committee and floor analysis offices to preserve their bill files, either in-house or at State Archives. (Previously many files were either tossed, given away or were simply lost track of. The bill did not affect author's bill files.)
CHAPTER 4

Research Steps

"How To" guidance for doing your own research
When it is not convenient to hire a commercial research firm

If you have the time, patience and the guidance, you can do your own research in this area. Expert guidance is provided in these materials. You are on your own with regard to time and patience.

STEP 1: You must first identify the legislation that affected your language of interest.

Start with statutory annotations (West's & Deerings Annotated Codes)\textsuperscript{30} to determine when your language of interest was added. Purpose: You will look for a cite that looks like this "Stats. ___ [year], c. ___ [chapter number], Sec. ___ [number], page ___ [number].

(1) Identify enactment(s) of interest by reading the legislative annotations (immediately following the code section) which describe what the various amendments did. (NOTE: West's and Deerings do not carry these handy, descriptive annotations for the legislative history of a section's prior law (discussed below).)

\textsuperscript{30} Check both West's and Deerings because, on occasion, one will miss prior law citations that the other will pick up. West's calls them "derivations" and Deerings calls them "prior law". By cross checking both code series you can avoid researching the wrong legislation.
If prior law is involved (formerly a different code section, etc.) there are two ways to trace when your language of interest entered the code section.

(a) Go to the Statutes and Amendments to the Codes for the prior law versions, armed with the above Statute (year), Chapter (number), etc. annotations. Starting with the earliest version first, compare one version with another, until you determine when your language of interest came in and was amended. (NOTE: Also, be on the look-out for interesting language developments. For example, were discretionary terms replaced by mandatory terms?)

(b) A short cut you can take is to find a collection of old annotated codes. (A good large county or law school library might have them.) Look for the prior law code section for full, descriptive annotations. (Again, try to check both West's and Deerings.)

STEP 2: Turn your "Stat. [year], c. [chapter number], Sec. [number] cite into a cite for specific Senate or Assembly legislation. (Senate Bill [number], Assembly bill [number], etc.) In most cases, you will do this by going to the Assembly Final History, last volume, and find the table that converts chapter numbers into Senate and Assembly bill numbers. But sometimes finding the charts can be a big fat headache (locations can change from year to year). So an easier method is to go to the Statutes and Amendments To the Codes, California book for your year. (These are the books that publish all the chaptered laws by session in chronological order). Find the conversion chart at the beginning after the constitution. (The chapter #’s convert to bill numbers.)

STEP 3: Once you have identified the specific Senate or Assembly legislation at issue, you are ready to dig into the research sources for historical information on that legislation.

Important information to "get you going" from the Final History publication:
The Final History publication provides cumulative calendars on actions taken on each piece of legislation by legislative session. (Regular sessions are two years long with odd-even years. Extraordinary sessions can occur at any time.) This calendar summary for each bill is important primarily because it tells you
(1) the author's name,

(2) the committees the bill went to (policy as well as fiscal),

(3) the dates and circumstances that any amendments took place (i.e., amended one "date" in "X" committee, or on the floor, etc.),

(4) whether the bill went to one or more joint house conference committees to reconcile differences.

STEP 4: Obtain available, relevant history from published sources (See Chapter 3)

STEP 5: Obtain available, relevant history from unpublished sources (See Chapter 3, and/or contact a commercial research service such as LRI at (800) 530-7613.)

A. State Archives

1. Call (916) 653-2246 and ask for a Reference Archivist. Cut and paste this URL into the internet address line for their home page for their collections: http://www.ss.ca.gov/archives/archives.htm. For a finding aid collection go to this URL: http://dynaweb.oac.cdlib.org/dynaweb/ead/csa.

2. Give Archives the bill identification: Statute year, chapter number, bill number. They will then check the Final History for author and committee identification.

3. Archives will use its "finding aids" to see if they have the records in hard copy or microfilm. Finding aids are: Card catalog, microfilm list, accessions list (documents received but not processed). They look for author, committees, caucuses (Assembly Republican Caucus (ARC), Senate Democratic Caucus (SDC), Senate Republican Caucus (SRC)) and the Governor's Chaptered Bill Files (GCBF). BE AWARE: Archives does not include all available sources in its standard research (e.g., The Senate Floor Analysis bill file (only if specifically
asked), relevant state agency files (such as Department of Finance for fiscal bills), any California Law Revision Commission files housed with them or the Governor's Press Release file, topical card index research, etc.

4. **Regarding legislative authors:** If the author is currently in office or in another state post, all files are restricted. Patrons must obtain an official permission letter signed by the author. It can be faxed to Archives at (916) 653-7363 to initiate research. However, the patron will not be able to see the file until the original letter arrives at Archives. The files are unrestricted for legislative authors that are retired, deceased or not in state office. Beware: Author’s are not required by statute to make their files available – so be nice. (See part B. below re: State Legislative Open Records Act (LORA), Government Code Section 9070 et seq.)

5. **Regarding Governor Chaptered Bill Files (GCBFs):** Reagan years require a letter from Bob Williams (his former law office handles these requests) at (916) 446-6552. They can fax authorization directly to Archives and original authorization is not necessary to insure access. Sitting governor bill files are not available until after that person leaves office.

6. **Service:** Archives charges 25 cents per page. Walk-ins receive priority treatment (over phone-ins) on a first come, first serve basis. Their copies are made immediately. Copies for phone orders can take more than three weeks from the time the research request is first placed. On phone orders, it takes two days to one week to receive a call back from Archives with the number of pages of research and to obtain authorization for copy. 200 pages or more can take up to more than two weeks for actual copying. Payment in advance is required. Again, walk-in copy orders "get in line" ahead of phone orders.

7. **Missing from Archives' standard research (gaps to fill in elsewhere):**

- Office of Senate Floor Analysis files
- Topical search in Archives and State holdings card catalogs
- Special commission files (e.g., Law Revision Commission, CA Constitutional Revision Commission)
- Publications: Documents from Government Publications, State Library and CA Room; old newspapers, journals, etc.
- All published history (see previous chapter)
Agency & sponsor files  
Assembly Floor Analyses  
Files at legislative offices  
Identification and research of failed predecessor or concurrent legislation, and other research leads.

B. State Capitol

1. The State Legislative Open Records Act (LORA), Government Code Section 9070 et seq, guarantees public access to the specified legislative records – both at the State Capitol and through State Archives. In 1996 Legislative Research, Inc. proposed a strengthening of LORA. I, Carolina Rose, LRI President, persuaded my former boss, Senator Nicholas C. Petris, to introduce the bill on behalf of two major law librarian groups in California: NOCALL and SCALL. Senate Bill 1507 (Petris) became Statutes of 1996, Chapter 928. Here is what Legislative Counsel had to say on the final bill version:

An act to add Sections 9080 and 12223.5 to, and to amend Sections 9075, 11347.3, and 14755 of, the Government Code, relating to public records.


Existing law provides that the public may inspect legislative records, as defined, but does not require the disclosure of preliminary drafts, notes, legislative memoranda, or specified correspondence.

This bill would require each committee of each house of the Legislature, as specified, and each joint committee to maintain legislative records, as defined, relating to legislation assigned to the committee in official committee files. The bill would require each committee to preserve those records that are in its custody or to lodge the records with the State Archives.

The bill would require the Rules Committees of the Assembly and Senate, or the Joint Rules Committee, to provide for storage of official committee files that are not maintained by the committee or lodged with the State Archives.

The bill would require each committee, having custody thereof, to adopt written procedures for public access to official committee files not lodged with the State Archives. Records in official committee files, including preliminary drafts, notes, legislative memoranda, or specified correspondence would be open to inspection by the public, other than certain confidential communications.
Existing law requires every agency of the state to maintain a file with specified documents related to the adoption, amendment, or repeal of a regulation, and requires that the rulemaking file be available to the public.

This bill would prohibit an agency from removing, altering, destroying, or otherwise disposing of any item contained in a rulemaking file, as specified, and would require the agency to maintain any rulemaking file not sent to the State Archives.

The bill would provide that a state agency may transmit the rulemaking file to the State Archives, together with instructions to the Secretary of State not to remove, alter, or destroy or otherwise dispose of any item contained in the file.

The bill would permit the Secretary of State to designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

The bill would specify that certain of its changes relating to preservation of and public access to, rulemaking files are declaratory of existing law.

Sec. 2 of the bill reads, in part:

SEC. 2. Section 9080 is added to the Government Code, to read:

9080. (a) The Legislature finds and declares that legislative records relating to bills, resolutions, or proposed constitutional amendments before the Legislature provide evidence of legislative intent that may be important in the subsequent interpretation of laws enacted in the Legislature. The Rules Committee of each house of the Legislature and the Joint Rules Committee shall inform each committee of the Senate and Assembly, and each joint committee of the Legislature, of their responsibility to preserve legislative records and make them available to the public.

Be aware: Author’s files are not covered by this bill. And the fiscal committee staff jumped and screamed so loud over the burdens the bill imposed on them that they succeeded obtaining amendments so that they only have to make their analyses available (unlike policy committees that must make all records available).

1. The legislature’s online database covering 1993 to the present is great: www.leginfo.ca.gov. It has bill versions, final calendars, bill analyses, votes, veto messages, journals, directories for legislator and committee offices with phone numbers and addresses, etc. But be aware: not all legislative analyses are online—especially the partisan caucus analyses, neither are the contents of the author’s, committee, floor, partisan office, governor or agency files.

I was involved in a case where the court relied upon a single letter to interpret the meaning of some statutory terms, Dept. of Water & Power v. Energy Resources
Conservation & Development Com. 2 Cal.App. 4th 206. (See discussion here Chapter 5, page 8.)

2. Make arrangements with the offices of the legislative authors, committees, Office of Senate Floor Analyses and the caucuses.

Beware of high traffic periods (heavy committee and floor schedules) and give yourself plenty of time to collect research using this method. Be prepared also to hire a bonded copy service to expedite and ensure timely access.

C. State Agencies

As summarized in the next chapter, Government Code Section 6250 et seq is the Public Records Act and sets forth all other state and local governmental entities responsibilities for providing access to public records. A two week's "response" period is set forth. But they can respond by saying we need more time. Many agencies are willing to provide access to its legislative records on an expedited basis without resort to the Public Records Act, some are not. Obtain a copy of the recent State Directory from the Secretary of State in Sacramento. Each state agency is listed. Call the director's office or the legislative deputy (or equivalent) for access to agency legislative files. (See part F. of Chapter 1.)

D. Outside Sponsors

Once you have determined who the outside sponsor of the bill was, you can seek to contact them for access to their files. Public agencies are covered under the Public Records Act (see above). Private agencies have no obligations to share their files with you -- so be nice.

A note regarding the CA State Bar: As of January 2003, they have not adopted a policy for public access; and they are exempt from the State Public Records Act.
CHAPTER 5

Nuts and Bolts Advocacy Tips

A. Pitfalls to Avoid

1. Ambiguous, or not ambiguous? That is the question. As covered in Chapter 1, some courts may prefer to limit the use of "extrinsic" evidence of legislative intent to cases involving statutory ambiguity even though much broader resort to such evidence is well acknowledged at all levels of the judiciary. See Chapter 1 Part C entitled "Possible Strategy for Dealing With The "Reluctant Court".

Along these lines, Supreme Court Justice Anton Scalia has gone on record as opposing the reliance upon extrinsic aids to determine legislative intent (preferring the "four corners of the statute itself") because of his basic distrust of the legislative process and presumed ease which intent can be "planted" by unscrupulous staff, etc. While this may be a legitimate concern in lengthy Capitol Hill analyses, the subject of his concern, it is much less so for documents produced at the statehouse level. Scalia's concern may give aid and comfort to the "reluctant court" addressed in parts B and C of Chapter 1. You just need to be aware of this development and prepared to address it if necessary.

As covered in Chapter 1, the proverbial "bottom line" is that the barn door to the use of extrinsic evidence of legislative intent has been open for some time and there is no indication of a contrary, overshadowing trend to close it.

31 Ample authority for the use of extrinsic evidence of legislative intent in the absence of statutory ambiguity can be found in: (1) The preeminent multi-volume treatise, Southerland on Statutory Construction, (2) Witkins, (3) Legislative Analysis and Drafting by William P. Statsky, (4) the West's and Deerings case annotations for Code of Civil Procedure Section 1859 as well as Evidence Code Sections 452 - 455. Furthermore, as these sources indicate, there are numerous cases allowing for the use of specifically identified documents for consideration by the court. (See Chapter 8 for specific examples.)
2. **Context, context, context.** If your opponent is offering *selected* legislative documents as evidence of intent, you should obtain the *full* legislative history to see if anything has been taken out of context or has been misconstrued. The same holds true if your opponent is citing or offering expert witness testimony to aid his or her case. Always check to see if that testimony is supported by specific documents in the history and not on the expert's own speculations or slanted reading of the documents.

3. **Uh oh.** You mean the bill was amended *after* the date of the document I'm relying upon in a way that nullifies my argument? If the bill has been amended in the process of enactment, be sure to read the legislative history in light of those amendments. In particular, an analysis or letter may seem particularly helpful to your case, but a subsequent amendment could nullify the benefit and even work against you.

4. **There was relevant prior law?** Always review the terms of repealed predecessor language. Citations can be found as follows:

   a. Cross check the legislative annotations in both *Wests* and *Deerings*.

   b. Do not assume that the code annotations are always correct. Sometimes both series miss relevant citations. *Read the case annotations which may cite prior statutes and scan the bill versions' for references to repealed or amended statutes.*

5. **Give yourself plenty of time if you are doing your own research, as opposed to contracting with a research firm.**

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32 A particularly nasty example of this problem can be found in the annotations for current Business and Professions Code Section 17200 et seq (Unfair Competition: Enforcement) -- a heavily trafficked series of statutes. The annotations show that the series was added by Stats. 1977, c. 299. Not noted in either *West’s* or *Deering’s*, however, is the fact that Civil Code Section 3369 was *amended* in 1977 to create 17200 et seq. Section 3369's relevant history here began with Stats. 1933, c. 953. Look to the Section 3369 annotations for the complete history of 17200 et seq.
a. **Archives.** Be certain to give yourself at least 5 - 6 weeks lead time. The State Archives is seriously backlogged in processing requests and tracking down other sources of documentation can be time consuming. Furthermore, some files are on "restricted access" and you must first get written permission from the donor to access the files. In particular, all of Governor Reagan's files are restricted as are all currently sitting legislators or former legislators still employed by the state.

b. **Public Records Research.** Government Code Section 6250 et seq is the Public Records Act and sets forth all other state and local governmental entities' responsibilities for providing access to public records. A two-week "response" period is set forth. But they can respond by saying we need more time. Many agencies are willing to provide access to its legislative records on an expedited basis without resort to the Public Records Act, some are not.

6. **Give yourself plenty of time even if you are contracting with a research firm.** 
   **Time = money.** Most commercial research services base their charges on the amount of time you give them to do the work for you. It costs your client more the less time you give them.

7. **Misc. re: Public Records Research:** Government Code Section 9070 et seq sets forth the legislature's requirements for providing access to its documents (the Legislative Open Records Act). Previously (before 1/1/97) it basically exempted everything except for analyses and bill versions. The act did not provide official access to letters, memoranda, background studies, position papers, testimony submitted to the committee, etc. Now, after recent amendments drafted and advanced by Legislative Research Incorporated, such previously shielded documents are officially accessible to the public. Nevertheless, cordial relationships with the various offices and the willingness to do your own copying can yield the greatest results.
A. FAQ’S on California Statutes

Effective, Operative and Retroactive dates
And Ghostly Uncodified, General Law Statutes

When does a particular California code section “take effect” or apply?

When does a statute apply retroactively?

Occasionally the annotated codes will give a special “operative” or “effective” date in the annotations following a statute. Why does this happen and what does it all mean?

What is “uncodified general law”? (.. and how can it hurt me?)

Over the 20 odd years that I have been involved in this work, these questions have come up more times than I care to remember. I have finally summarized the answers in writing. (What a good idea!) The following “quick tips” provide a quick overview rather than an exhaustive coverage of the subjects addressed. Please feel free to call, write or e-mail me with any questions or comments.

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1. The primary governing law

(1) Constitution Art. 4, Sec. 8, subdiv. (c) as amended eff. June 6, 1990;
(2) Constitution Art. 4, § 10, subdivision (b), as amended June 6, 1990.
(3) Government Code § 9600 (as last amended by Stats. 1973, c. 7, Sec. 17) reads as follows:
(a) Except as provided in subdivision (b), a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(b) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the state, and urgency shall go into effect immediately upon their enactment.

(4) Government Code § 17580 as added by Stats. 1988, c. 1179, Sec. 4 reads as follows:

No bill, except a bill containing an urgency clause, introduced or amended on or after January 1, 1989, that mandates a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution shall become operative until the July 1 following the date of on which the bill takes effect, unless the bill specifically makes this section inapplicable or contains an appropriation for the reimbursement or a specification that reimbursement be made pursuant to Section 17610.

2. Excellent “effective date” resource

West’s Annotated Code pocket supplements provide an excellent resource tool entitled “Effective Dates”. The governing law is excerpted and a chart is provided showing the effective dates for each of the sessions from 1955 to date.

3. January 1 following the year of enactment is the most common effective date for legislation enacted in 1973 or later.

The question “when did this statute become the law?” usually occurs in the context of a relatively new statute that has changed the legal landscape. In such cases it serves to know that most California code section additions, amendments, repeals, renumberings, etc. enacted from 1973 to date commonly take effect the January 1st following their enactment by the legislature. Most often such enactments occur during the regular session (as opposed to a special session or by initiative), do not provide for a special operative date (different from the Gov. Code § 9600 effective date, see discussion below) and are not a § 9600 (b) statute (election, urgency, tax levy, etc.). In that case they always take effect on the January 1st following the year
of enactment. (Example: Stats. 1969, c. 122, Sec. 7 amending Gov. Code § 9600 was approved by the Governor May 27, 1969, but took effect Jan. 1, 1970.)

4. How can you be sure that your statute falls into this common, general category?

Assuming §9600 subdivision (b) does not apply (election, urgency, tax levy, etc.) and the annotations following the code are “silent” on the issue of when the statute takes effect or is operative – it is usually safe to assume that the law takes effect (i.e., “speaks” or is applicable) on the January 1st following the year of enactment. Lastly, both West’s and Deering’s annotated codes are very good at citing any special effective or operative dates. In the absence of any such annotations, the applicable effective date (post 1973) is usually the January 1st following the date of enactment.

5. But what about possible retroactivity?

Indicia of retroactivity to be aware of include:

**Ghostly Uncodified General Law. (What’s that and how can it hurt me?)**

Retroactivity as well as substantive terms of law can be specified in provisions of uncodified general law simultaneously in connection with the adoption or amendment of a statute. This means that the terms of a law have not been assigned to a specific code book (like the Civil Code or the Revenue & Taxation Code, for example.) Rather, they merely appear as a section of a chaptered law and are published in the California Statutes & Amendments to the Code according to the year and chapter of enactment. The annotated code publishers pick up on these uncodified terms and insert them as appropriate following the statute(s) that they are linked to (West’s/Westlaw and Deering’s/LexisNexis.

Real estate professionals stress “location, location, location”. I stress “Use an annotated code book. Use an annotated code book. Use an annotated code book.” Unannotated desk references only provide the statutory terms in a compact size and little else. They do not provide provisions of uncodified general law linked to a statute which may provide relevant “intent” language on retroactivity or other legal issues.

I was once involved in a case where the entire controversy was over the interpretation of provisions of an uncodified general law statute on a tax matter with millions of tax revenue dollars at stake for the County of Fresno.
Remember, uncodified general law is still the law – even though it might not appear in an unannotated desk reference. You don’t want to be caught without it. Again, uncodified general law is published in the chaptered enactments affecting your section of interest (Statutes and Amendments to the Codes) and is usually excerpted in the annotations following the code sections in both West’s and Deering’s annotated codes. The relevant citations follow each statute to the annotated codes.

Example: Water Code § 35470.5 “Delinquent charges [by water districts]; penalties; interest” (see attached West Code excerpts).

• West annotated codes says under “Historical Note” Stats. 1982, c. 287 as declaratory of existing law, see Historical Note under § 35423.

• The § 35423 “Historical Note” says:

Section 2 of Stats. 1982, c. 287 provides:

The Legislature finds and declares that the provisions of Section 35423 of the Water Code, as amended by Section 1 of this act and the provisions of Section 35470.5 of the Water Code, as added by Section 2 of this act, are declaratory of and do not constitute a change in existing law. [Emphasis added]

See the discussion immediately following about the relevance of such findings and declarations/intent.

“Declaratory of existing law” translates to “retroactive”. Beware, in particular, of uncodified intent provisions that describe an act as being “declaratory of existing law”. (Sometimes these terms appear in the statute itself.) The argument can be made that the associated statute was intended to apply retroactively since it was merely restating or clarifying the existing law. I have personally inserted such language in bills I was responsible for with the specific intent of triggering retroactivity.

(a) Retroactivity can be specified in the terms of the statute itself.

(b) Strictly procedural vs. substantive statutory changes have been applied retroactively. (The case the law development here is substantial.)

6. Operative vs. effective statutory dates.

“A statute may be worded so as to provide for an operative date other than its effective date” 28 Ops. Atty. Gen. 20 (1956). Example: I once inserted language in a bill (SB 1493 (Petris), Stats. 1980, c. 1394, amending Corporations Code §§ 9142 and 9690 and adding and repealing Corporations Code § 9230) to make the bill
become **operative** on June 1\(^{\text{st}}\) of the following year instead of the normal January 1\(^{\text{st}}\) **effective** date that would have otherwise kicked in. The West’s annotations following the section say “Stats. 1980, c. 1324, p. 4616, Sec. 2, operative June 1, 1981”. This delayed operative date was specified in Sec. 6 (uncodified general law) of the 1980 act. **Just remember, an effective date is the date that is triggered by the operation of Gov. Code Sec. 9600** (excerpted above). A specifically designated **operative date** overrides § 9600 because it is designated in the chaptering law affecting your section of interest, often in uncodified, general law provisions.

Lastly, don’t be confused by the earlier date an act was approved or enacted. These dates will show up in the chaptered laws. Unless the bill or act specifically names the date of enactment or passage as also being the effective or operative date (words often used interchangeably, unfortunately), Gov. Code Sec. 9600 applies.

__________________________________________

**Carolina Rose** is President of Legislative Research, Inc. (est. 1983), a firm that specializes in the historical research surrounding the adoption of California statutes, constitutional provisions, regulations and ordinances. A graduate of Stanford University (English, B.A., 1973 and Juris Doctorate, 1976), she worked in the California Legislature for approximately 7 years – 1 year as Assembly Fellow, right out of law school, and 6 years as Chief of Staff for Senator Nicholas C. Petris (Dem. Oakland) where she was responsible for his entire legislative program – over 200 bills during that time period. Ms. Rose qualifies as an expert witness in the reconstruction of California legislative histories. She also provides consulting services for the purposes of enacting or opposing legislation. Her MCLE seminars on legislative history are popular with attorneys, law librarians, law students and professors.
§ 35470. Delinquent charges; penalties; interest

The district may, by resolution, provide that a penalty not in excess of 10 percent shall be added to water, standby, facility, or other charges which are delinquent, and the delinquent charges shall bear interest at a rate not in excess of 1 1/4 percent per month.

(Added by Stats.1982, c. 287, § 2)

§ 35471. Disposition of proceeds; sinking fund

Any funds derived pursuant to Section 35470 in excess of the amount necessary for operating or maintenance expenses and other lawful district purposes shall be applied by the treasurer upon the payment of interest on general obligation bonds or to create a sinking fund.

WATER DISTRIBUTION

§ 35423. Sale and distribution of water; rules and regulations; withholding water

A district may establish, print, and distribute equitable rules and regulations for the sale and distribution of water. A district may provide therein that water shall not be furnished to (1) persons who violate the rules and regulations or against whom there are delinquent water, standby, facility, or other charges, or penalties or interest on any such charges, or (2) land against which there is a delinquent assessment.

(Added by Stats.1951, c. 390, p. 1202, § 1. Amended by Stats.1982, c. 287, § 1.)

Historical Note

The 1982 amendment inserted "sale and" in the first sentence and added the second sentence.

Section 3 of Stats.1982, c. 287, provides:

"The Legislature finds and declares that the provisions of Section 35423 of the Water Code, as amended by Section 1 of this act and the provisions of Section 35470.5 of the Water Code, as added by Section 2 of this act, are declaratory of and do not constitute a change in existing law."

Derivation: Stats.1913, p. 819, § 7; Stats.1929, c. 758, p. 1471, § 2.

Cross References

Administrative rules and regulations, see Government Code § 11342 et seq.

§ 35424. Violation of rules and regulations; misdemeanor

After equitable rules and regulations for the distribution of water have been published once a week for two weeks in a newspaper of general circulation published in each affected county, any violation thereof is a misdemeanor and the violator shall, upon conviction thereof, be subject to a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200).


Historical Note

The 1983 amendment increased the minimum fine from $25 to $50; and increased the maximum fine from $100 to $200.


Cross References

Administrative rules and regulations, see Government Code § 11342 et seq.

Misdemeanors, see Penal Code §§ 171, 19, 19a.

Publication in newspapers of general circulation, see Government Code §§ 6000 et seq., 6040.

Library References

Newspapers § 3(3, 4).
C.J.S. Newpapers § 7.

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C. Sample Use of A Legislative History To Support A “Plain Reading” Interpretation of A Statute


In this case a letter from an objecting party and a subsequent amended bill version provided dispositive evidence of legislative intent to the 2nd District Court in favor of the Los Angeles Department of Water and Power. LRI provided both legislative history research and expert witness services by LRI President, Carolina Rose, to the Department in this matter.

The code sections at issue were: California Public Resources Code Sections 25500 & 25123 as added by Stats. 1974, c. 276, Sec. 2, Assembly Bill 1575 – Warren. (The legislative history takes up approximately 3.5 inches of records - but only 4 pages were relied upon by the court.)

Facts: AB 1575 of 1974 implemented an extensive citing process to be administered by the Energy Commission for energy generating facilities, public and private. The L.A. Department of Water and Power repowered a facility that did not generate a net increase of 50 megawatts. The Commission sought jurisdiction over the plant’s repowering under the terms of AB 1575.

Issue & holding: Did the Energy Commission have modification jurisdiction over the subject Los Angeles Department of Water and Power repowering project? The Court said it did not, relying on a plain reading interpretation of the statutes at issue and on supportive evidence from the legislative history: A single letter and a subsequent amendment to the subject legislation. The court held

• That since the statutes plainly stated that thermal power plant modifications generating less than a fifty megawatt increase in the electrical generating capacity were not included in the Energy Commission’s modification jurisdiction and
• Since L.A.’s subject repowering project generated less than the required fifty megawatts it was outside the Commission’s jurisdiction, then

• The Legislature clearly did not intend to grant the Commission jurisdiction over the subject repowering.

The court’s reasoning provides a roadmap for similar cases where the statutes speak “plainly” but your opponent begs to differ:

1. The court articulated the principles of statutory construction to be utilized in its opinion (see attached pages 220-220).

2. The court interpreted the statute via an intrinsic analysis (statutory language only) (see attached pages 221-222).

3. The court affirmed its intrinsic analysis via an analysis of extrinsic evidence of legislative intent (see attached pages 222-223):

   #1. A March 8, 1974, letter requesting an amendment to provide a definition (and giving the rationale) (attached), and

   #2. A subsequent March 28, 1974, amendment providing for the requested amendment (attached).
Here the court relies on two documents from the legislative history of AB 1575 (Cal. Stats. 1974, c. 276) to support its interpretation of the statute at issue (pages 222 & 223):

#1. A March 8th letter asking for a definition (and giving the rationale).
#2. A subsequent March 28th amendment providing the definition.

(The legislative history research was provided by Legislative Research, Inc. to the L.A. Dept. of Water & Power, the prevailing party. Expert witness services by LRI President, Carolina Rose, were also provided at the administrative level.)

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DEPARTMENT OF WATER & POWER v.
ENERGY RESOURCES CONSERVATION & DEVELOPMENT COM.
2 Cal.App.4th 206; 3 Cal.Rptr.2d 289 [Dec. 1991]

The Energy Commission appeals from the judgment.

CONTENTIONS ON APPEAL

The Energy Commission contends that (I) its finding of modification jurisdiction was reasonable and is supported by substantial evidence; and (II) its finding of construction jurisdiction was reasonable and is supported by substantial evidence.12

DISCUSSION

1

The Energy Commission contends that we must defer to its administrative interpretation of sections 25500 and 25123 (citing Industrial Indemnity Co. v. Workers' Comp. Appeals Bd. (1985) 165 Cal.App.3d 633, 638 [211 Cal.Rptr. 683]), and accept its finding that it has modification jurisdiction over the repowering project under the substantial evidence rule. We disagree.

(2) The "contemporaneous construction of a new enactment by the administrative agency charged with its enforcement" is entitled to great weight. (Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1388 [241 Cal.Rptr. 67, 743 P.2d 1323].) Since the Energy Commission claims that this is a case of first impression, it cannot seriously contend that its ruling of July 25, 1990, was contemporaneous with the 1974 enactment of sections 25500 and 25123. The Energy Commission's administrative decision, which came 16 years after the Act's passage, is not entitled to great weight. (See Dyna-Med, Inc. v. Fair Employment & Housing Com., supra, 43 Cal.3d at p. 1389.)

(3) Moreover, the final interpretation of a statute is a question of law and rests with the courts. (Dyna-Med, Inc. v. Fair Employment & Housing Com., supra, 43 Cal.3d at p. 1389; Public Utilities Com. v. Energy Resources Conservation & Dev. Com., supra, 150 Cal.App.3d at p. 443.) We therefore follow the established principles of statutory construction in construing sections 25500 and 25123.

(4) "[O]ur first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves,

12In order to facilitate our discussion of the issues, we have stated the Energy Commission's contentions in reverse order.
giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.] A statute should be construed whenever possible so as to preserve its constitutionality. [Citations.”] (Dyna-Med, Inc. v. Fair Employment & Housing Com., supra, 43 Cal.3d at pp. 1386-1387.)

With these principles in mind, we turn to the relevant statutes in determining whether the Energy Commission has modification jurisdiction over the repowering project.

Section 25500 provides that the Energy Commission has certification jurisdiction over the “modification of any existing facility.” (§ 25500.) Section 25123 explains that “‘[m]odification of an existing facility’ means any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant . . . .” (§ 25123.)

The Act’s definitions of “facility” and “thermal powerplant” are circuitous. The Act defines a “facility” as any “thermal powerplant” (§ 25110), and then turns around to define a “thermal powerplant” as “any . . . electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto . . . .” (§ 25120, italics added.)

We hold that “facility” in sections 25500 and 25123, as the term applies here, collectively refers to the entirety of the existing powerplants at the Harbor Generating Station. (5) The plain, commonsense meaning of sections 25500 and 25123 is that any alteration, replacement, or improvement of equipment that results in a 50-megawatt net increase in an existing station’s total generating capacity is subject to the Energy Commission’s certification jurisdiction. Nothing in the statutes authorizes the Energy Commission to ignore a station’s former generating capacity in making the section 25123 increase calculation.

By ignoring the station’s former generating capacity in this case, the Energy Commission has significantly expanded its modification jurisdiction
to encompass upgrading projects which improve the technology, efficiency, and emissions controls of an older station without causing a 50-megawatt increase in the station’s total generating capacity. Such an expansion of jurisdiction contravenes the plain meaning of sections 25500 and 25123. By imposing the threshold 50-megawatt increase requirement, the Legislature clearly did not intend to give the Energy Commission certification jurisdiction over repowering projects, such as this one, which actually decrease a station’s total generating capacity.

The undisputed evidence in this case plainly demonstrates that the repowering project will decrease the station’s generating capacity. Even though the SCAQMD permits for units 1 and 2 were exchanged for another station’s offset credits, units 1 and 2 remained operational. Their capacity did not vanish even though they were not regularly operated. Accordingly, their generating capacity was improperly ignored by the Energy Commission in making the section 25123 increase calculation.

Moreover, even if the generating capacity of units 1 and 2 is excluded from the section 25123 increase calculation, the repowering project will not result in a 50-megawatt increase in the station’s capacity. The station’s repowered capacity of 316 megawatts will result in only a 6-megawatt increase over the station’s former 310-megawatt capacity.

In addition, even if we viewed each unit as a separate “facility” or “powerplant,” we would reach the same result. As properly found by the trial court, the record demonstrates that the repowering project will not result in a 50-megawatt increase even if each unit is treated as a separate powerplant. (See ante, fn. 11.)

Although we believe that our statutory interpretation disposes of the issue, we nevertheless address the legislative history issue addressed by the parties, which supports our construction of sections 25500 and 25123. (See Dyna-Med, Inc. v. Fair Employment & Housing Com., supra, 43 Cal.3d at p. 1393.) As originally proposed, the Act did not include a definition of the term “modification” as used in section 25500. Thereafter, the Legislature adopted section 25123 which defines “modification” in an amendment dated March 28, 1974. (7) By adopting the 50-megawatt increase test in section 25123, the Legislature prohibited the Energy Commission from asserting jurisdiction over any alteration, replacement, or improvement of equipment that does not result in a 50-megawatt increase in an existing station’s generating capacity.
We find further support for our view of the Legislature's intent in the March 8, 1974, letter of Frederick W. Mielke, Jr., vice-president and assistant to the chairman of the Pacific Gas and Electric Company, to Assemblyman Charles Warren, coauthor of the Act. (See Public Utilities Com. v. Energy Resources Conservation & Dev. Com., supra, 150 Cal.App.3d at p. 450.) That letter states in relevant part: "Plants 'modifications' should not be subject to the extensive siting requirements of the bill (Sec. 25500). 'Modification' is nowhere defined. Any external or internal plant adjustment, no matter how necessary, even those required to accommodate environmental requirements, could be delayed by the extensive siting process. [¶] . . . The lengthy 'notice' procedure should apply only to new sites and not to existing sites where a plant has already been located; it should not result in an appealable decision; and it should not require 'at least three alternative sites' at least two of which must be found acceptable (Sec. 25503 and Sec. 25516). These provisions lengthen the siting process unduly and are not necessary for environmental protection or adequate public review. . . ."

As the appellate court stated in Public Utilities Com. v. Energy Resources Conservation & Dev. Com., supra, 150 Cal.App.3d at page 450, "We consider it significant that the critical amendment changing the limits of the Energy Commission's jurisdiction (by adding section 25123's 50-megawatt increase test) was adopted on March 28, 1974, shortly after receipt of and in apparent response to this letter." (Fn. omitted.)

We conclude that the Energy Commission lacks modification jurisdiction over the repowering project.

II

The Energy Commission contends that we must defer to its administrative interpretation of section 25500, and accept its finding that it has construction jurisdiction over the repowering project under the substantial evidence rule. We disagree with the Energy Commission's administrative deference and substantial evidence rule contentions for the reasons previously stated.

Turning to the words of the statute, we find that the Legislature has vested the Energy Commission with certification jurisdiction over the "construction of any facility" with a generating capacity of 50 megawatts or more. (§§ 25120, 25500.) The Act defines "construction" as "onsite work to install permanent equipment or structure for any facility." (§ 25105.)

Under the Energy Commission's interpretation of section 25500, the DWP's installation of two new 80-megawatt combustion turbines constitutes
March 8, 1974

The Honorable Charles Warren
State Capitol
Sacramento, California 95814

Dear Mr. Warren:

We understand that you and the Governor's staff are considering possible amendments to AB 1575 which might remove some serious objections which have been raised to that bill without in any way detracting from its worthwhile objectives such as conservation of energy and more expeditious power plant siting.

During your deliberations, we hope that you will review and give serious consideration to the suggestions we have made before with respect to AB 1575, particularly those relating to power plant siting. Without going into all of the detailed reasons which we have previously stated, I would like briefly to summarize the major suggestions for your convenience.

1. The definition of "electric transmission line" (Sec. 25107) should be confined to lines connecting a power plant to a transmission system. The procedures which would be established by the bill are not appropriate for transmission lines and would inhibit rather than enhance our ability to provide adequate service.

2. Plant "modifications" should not be subject to the extensive siting requirements of the bill (Sec. 25500). "Modification" is nowhere defined. Any external or internal plant adjustment no matter how necessary, even those required to accommodate environmental requirements, could be delayed by the extensive siting process.

#1
3. The lengthy "notice" procedure should apply only to new sites and not to existing sites where a plant has already been located; it should not result in an appealable decision; and it should not require "at least three alternative sites" at least two of which must be found acceptable (Sec. 25503 and Sec. 25516). These provisions lengthen the siting process unduly and are not necessary for environmental protection or adequate public review. A reasonable alternative to the "three site" provision might be to allow rejection of the "notice" upon a finding that no good faith effort was made to find reasonable alternative sites. "Site" should be defined to distinguish between new and existing sites, and known geothermal resource areas should be defined as existing sites to encourage development of geothermal energy.

4. The "grandfather clause" (Sec. 25501) is too rigid. The size of plant should not be tied precisely to the long range G.O. 131 forecasts which are not "required" of publicly owned utilities in any event. For example, the efficient course might well be to build a large plant which will have more capacity than the exact system requirement on its operating date to provide adequate margin or to avoid building several smaller, less efficient plants. The requirement that construction actually start within three years also destroys any flexibility in planning and makes no allowance for the possibility of law suits which could delay construction for extended periods of time.

5. The requirement that "development rights" be acquired (Sec. 25528) would make a shambles of the planning process and could make the cost of a power plant prohibitive. "Development rights" are not defined; the "rights" to be acquired would not be known until the certification process was completed; the acquisition would then entail condemnation proceedings which could take years to complete, and the cost could make a whole project uneconomical.

6. The commission should not be required to adopt standards to be met for designing or operating facilities which could be more stringent than local, state or, where allowed, federal standards (Sec. 25216.3), or to prescribe minimum standards of efficiency for operation (Sec. 25402(d)). These provisions should be deleted. There is no reason to apply different standards to power plants than those applied to other industrial plants. Certainly there is no reason to burden utility customers with more stringent standards.
Declares legislative findings relating to energy resources. Establishes the State Energy Resources Conservation and Development Commission and prescribes its membership; powers, and duties. Provides for forecasting and assessment of energy demands and supplies, and for conservation of energy resources by designated methods. Provides for certification of power facilities as facility and site, as defined, certification by the commission. Requires the commission to carry on develop and coordinate a program of research and development of in energy supply, consumption and conservation and the technology of siting facilities resources; and provides for limiting the use of electrical and other forms of energy under designated emergency conditions. Provides for development of contingency plans to deal with possible shortages of electrical energy or fuel supplies. Imposes various fees and requires the money to be deposited in the State Energy Resources Conservation and Development Special Account, which is established in the General Fund. Requires that money from such account be expended for purposes of carrying out the provisions of this act, when appropriated by the Legislature. Requires specifically that an environmental impact report on any project prepared pursuant to the Environmental Quality Act of 1970 include a statement of measures to reduce wasteful, inefficient, and unnecessary consumption of energy. Provides for interconnection of electrical facilities and transmission service, as defined, between public utilities to facilitate development of electric generating facilities that use a source of primary energy other than nuclear energy or fossil fuel. Provides that there are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code. To be operative January 7, 1975. Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no state funding.
the commission finds and acknowledges as having a real
direct interest in any proceeding or action carried
on, under, or as a result of the operation of this division.
25115. "Permit area" means the "permit area" as
defined in Section 27104.
25116. "Person" means any person, firm, association,
organization, partnership, business trust, corporation, or
company. "Person" also includes any city, county, public
district or agency, the state or any department or agency
thereof, and the United States to the extent authorized by
federal law.
25117. "Plan" means the Emergency Load
Curtailment and Energy Distribution Plan.
25118. "Service area" means any contiguous
geographic area serviced by the same electric utility.
25119. "Site" means any location on which a facility is
constructed or is proposed to be constructed.
25120. "Thermal powerplant" means any stationary
or floating electrical generating facility using any source
of thermal energy, with a generating capacity of 50
megawatts or more, and any facilities appurtenant
thereo.
25121. "Fuel" means petroleum, crude oil, petroleum
product, coal, natural gas, or any other substance used
primarily for its energy content.
25122. "Gas utility" means any person engaged in, or
authorized to engage in, distributing or transporting
natural gas, including, but not limited to, any such person
who is subject to the regulation of the Public Utilities
Commission.
25123. "Modification of an existing facility" means
any alteration, replacement, or improvement of
equipment that results in a 50-megawatt or more increase
in the electric generating capacity of an existing thermal
powerplant or an increase of 25 percent in the peak
operating voltage or peak kilowatt capacity of an existing
electric transmission line.

25500. In accordance with the provisions of this
division, the commission shall have the exclusive power
to certify all sites and related facilities in the state, except
for any site and related facility proposed to be located in
the permit area, whether a new site and related facility
or a change or addition to an existing facility. The
issuance of a certificate by the commission shall be in lieu
of any permit, certificate, or similar document required
by any state, local or regional agency, or federal agency
to the extent permitted by federal law, for such use of the
site and related facilities, and shall supersede any
applicable statute, ordinance, or regulation of any state,
local, or regional agency, or federal agency to the extent
permitted by federal law.

After the effective date of this division, no construction
of any facility or modification of any existing facility shall
be commenced without first obtaining certification for
any such site and related facility by the commission, as
prescribed in this division.

25500.5. The commission shall certify sufficient sites
and related facilities which are required to provide a
supply of electric power sufficient to accommodate the
demand consistent with all of the following demand
projected in the most recent forecast of statewide and
service area electric power demands adopted pursuant to
subdivision (b) of Section 25309.

(a) The forecast of statewide and service area electric
power demands adopted pursuant to Section 25200.
(b) The conservation measures adopted by the
commission pursuant to this division.
(c) Any conservation measures imposed or adopted
under any provision of law.

25501. The provisions of this division do not apply to
any site and related facility: (a) for which the Public
Utilities Commission has issued a certificate of public
convenience and necessity before the effective date of
this division, provided that such facility shall not provide
capacity on its planned operating date exceeding the
estimated number of megawatts of needed capacity for
the year of that planned operating date as stated in the
Assembly Bill

No. 1575

Assembly Bill

California Legislature—1972-73 Regular Session

AMENDED IN ASSEMBLY MAY 9, 1973
AMENDED IN ASSEMBLY AUGUST 6, 1973
AMENDED IN SENATE JANUARY 9, 1974
ENDED IN SENATE FEBRUARY 19, 1974

AB 1575, as amended, Watson (Sen. Aghusti).

Assemblyman Watson,Introduced by

State mandated local programs to state funding.
A vote on appropriation to fund committee fees?
To be operated jointly?
1972 Revenue and Taxation Code.
Federal sources.

AB 1575, as amended, Watson (Sen. Aghusti).

Senator Aghusti

Introduced by Assemblyman Watson.

RECOMMENDED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

April 25, 1973

(Chairperson: Senator Aghusti)

SOURCE RESOURCES

THE PUBLIC UTILITIES CODE, RELATING TO ENERGY

CLASSIFIED WITH SECTION 25000) TO THE PUBLIC RESOURCES

provisions for development of conservation plans to deal with

GENERAL ECONOMICS

and other forms of energy under development or provision for

supply, conservation and development of energy resources by

the commission to carry on energy development and cord.

Decrees Legislative findings relating to energy resources.

ENTIRE BILL

ENTIRE BILL
CHAPTER 6

Judicial Notice of Legislative Records

And Use of Expert Witness Testimony

Judicial notice of legislative records:

The trial and appellate courts' authority to grant judicial notice to legislative history records is extremely broad under the statutes, Evidence Code Section 450 et seq. See especially 452, 453, 454 and 455.

Section 452 (c) states:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

... 

(c) Official acts of the legislative, executive, and judicial departments of the United States and any state in the United States.

Numerous cases have held that the courts may take judicial notice of the legislative history of a statute.33

Expert Witness Testimony

Expert witness testimony regarding the reconstruction of the legislative history surrounding the enactment of a statute is admissible under Evidence Code Section 460, 454 (a) (1) and 455 (a).

See Chapter 8 B of this research guide for excerpts of correspondence to Legislative Research Incorporated, attesting to the court's reliance upon expert witness testimony provided by LRI President, Carolina Rose, which was persuasive with the court in a variety of published opinions.

Those objecting to the use of expert witness testimony in the reconstruction of legislative history cite the line of cases standing for the proposition that an expert witness may not properly testify on questions of law or the interpretation of a statute. These cases held that law enforcement officers could not testify as to the culpability of the accused.

However, in People v. Clay (1963) 227 Cal. App. 2d 87, 98, the court ruled as follows:

Nevertheless in this state we have followed the modern tendency and have refused to hold that expert opinion is inadmissible merely because it coincides with an ultimate issue of fact ...

Expert witness testimony which reconstructs the public policy history surrounding legislative enactments is admissible and can be used by the court in determining the ultimate issue of a case.

Furthermore, the costs are recoverable for obtaining difficult-to-obtain legislative research through a commercial service such as Legislative Research Incorporated. Van De Kamp v. Gumbiner (1990) 221 Cal. App. 3d 1260, 1280.

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34 A recent non law enforcement case relying upon the older line of cases is Elder v. Pacific Telephone Co. (1977) 66 Cal. App. 3d. 650, 664.
A few tips for evaluating the strengths and weakness of your own expert witness and for deposing opposing counsel's expert witness:

1. **Access to records:** Have your expert provide you with thorough legislative history research materials in advance of determining whether or not to retain him/her. For deposition, request all records researched and any notes or writings made by your opponent's witness, including computer files.

2. **Study tips:** Study the records closely, keeping in mind the steps involved in the legislative process outlined in these materials and any amendments made along the way. The records can best be evaluated if they are organized in chronological order. Keep your issue in mind as you review the documents. Divide the records into at least the following three categories:

   a. Those that shed light in your favor.

   b. Those that appear contradictory or that pose problems.

   c. Those that are neutral or do not shed light on your issue.

3. **Context is critical:** Be very aware of the context of statements made in the documented history. Expert witness conclusions made without regard to the surrounding context of statements are potential problem areas. Testimony is suspect if it ignores the context of statements and employs selected use of documents -- especially if important documents are ignored that disagree with the expert's conclusions. A reasonable explanation grounded in the context of the full history must be made for any perceived weakness in the documentation. If not, that weakness will come back to haunt you when it counts. If it appears that the
legislative history of a particular enactment does not work on your behalf, you would be benefitted by having an alternative legal theory, if possible, to minimize damage to your case. If that theory calls for applying a statute, you should consider getting a legislative history on it as well.

4. **Heavier weight applied to some documents over others:** Find out which records your expert or the deponent is relying most heavily upon and which he/she is disregarding or paying little attention to. Quiz him/her regarding their reasoning for the weight applied to the various records. In particular, if legislative records most strongly relied upon by the courts (e.g., bill versions, committee and floor analyses, etc.) are being treated lightly or disregarded, find out why. (See case annotations following Evidence Code Section 452 for categories of records.) In general, the bill versions (including Counsel’s Digests on the face of each bill) and all legislative analyses, including the Governor’s enrolled reports, tend to be the most persuasive with the court if the sheer volume of cases citing to them is any testament. But, individual letters and bill versions alone can also be persuasive. (See “Sample Use of A Legislative History”, Chapter 5, page 9.)

5. **Keep it simple.** Ask the expert to show you all the documents that allow him/her to make conclusions. Keep in mind that the expert should be capable of reconstructing the legislative history first and foremost from statements made in the process of enactment. The strongest evidence of legislative intent is to allow the legislative records to "speak for themselves" without a lot of subjective interpretation. Any interpretation should rely upon items in the record. The judge can avoid excessive objections made by opposing counsel at trial if the expert primarily reconstructs the events surrounding the enactment of the statute. Excessive "opining" should be avoided. "Keep it simple" by allowing the history to unfold naturally and tell its own story as much as possible. Exotic interpretations will usually avoid context grounded analyses.
A. Frequently Asked Questions About Legislative Research Inc. (LRI)

1. “How long has LRI been around and what do you do?” Since October 1983 – so we are headed toward our 20th anniversary. During that time LRI has been active in the field of providing customized legislative history and intent research services to attorneys, law librarians and paralegals. We focus on reconstructing the legislative history of California and federal statutes and administrative rules/regulations as well as California constitutional provisions. But we also provide sister state and local ordinance research.

2. “Is LRI cited by name in a published case?” Yes. See Redlands Community Hospital vs. New England Mutual Life Insurance Co., 4th Dist. Ct. Of Appeal, 23 Cal. App. 4th 898 at 906. (See also part C. of this chapter for a sampling of other case cites.)

3. “Who are your clients?” LRI serves all sizes of law offices — large, medium and small — in and out of California. We also serve corporate legal offices and the legal divisions of local, state and federal governmental offices.

6. “How does LRI compare with its competitors?” Quite favorably. Clients who have compared our research reports with others express strong satisfaction with the high calibre of LRI’s research. These same clients also express high appreciation for LRI’s unique “user friendly” report format. Recommended questions to ask when comparing LRI:

a. What is the “hands on” research & consulting experience of the day-to-day research director? LRI’s clients benefit from the unmatched & extensive research & consulting experience of our “hands on” research director – with a
commensurate commitment to indepth, high quality research reports and related consulting. **LRI is unique in this regard.**

- **LRI President, Carolina Rose, J.D. - 26 years experience.**
  Including 7 years as a former top level California legislative staffer (responsible for over 200 bills), LRI co-founder in 1983, a popular MCLE instructor and one of two highly regarded expert witness in the field (California). Ms. Rose ably assists LRI’s clients in framing their statutory issues and defining the most effective scope of research to meet their needs. Her background gives her a unique basis from which to provide indepth, high quality research reports and to meet any associated statutory construction consulting needs.

b. **What is the firm’s commitment to your cost savings on each project?**

  **Always compare the service provided with the rates offered.** **LRI guarantees competitive rates for the high level of integrated & experienced services provided.** In most cases, LRI’s rates are already among the lowest when it comes to projects involving more than one bill when compared to firms with a demonstrated record of service. LRI also offers custom discounts and limited scope research on an as-needed basis.

  **Do you receive help in limiting the scope of research to save you money?**
  LRI helps its clients to quickly narrow their research focus to only those enactments affecting the language of interest. **Why order unnecessary research – especially if it costs you more?** Not all firms offer this service.

c. **How “user friendly” is the final product?**

  **Imitation is the sincerest form of flattery.** LRI pioneered the hugely popular, 3-ring binder, book-style format. But we also offer a unique combination of other “user friendly” features:

  - A court ready, signed authentication of the documents.
  - A chronological organization of the primary records (i.e., bill versions,
analyses & governor records, etc.) followed by chronologically organized documents by source whenever possible for substantial ease in interpreting the record.

- A **helpful annotated index** of the records with **point and authorities** for gaining judicial notice provided as endnotes.
- **Documents tabbed numerically** to correspond to the index.

**New in 2003. Digital format of reports made accessible online.** LRI is committed to providing the most user friendly research services to our clients. Call for details, (800) 530-7613.

e. **Competitive rates** Compare – see B. below.

**B. LRI’s 2003 Research Fee Schedule** [Ask about our digital format of reports made accessible online – new in March, 2003.]

1. **California legislative enactments (bills)**

<table>
<thead>
<tr>
<th>Project periods</th>
<th>1st Bill</th>
<th>Additional Bills ½ price</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 working days</td>
<td>$225</td>
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<td>15 working days</td>
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<tr>
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</tr>
<tr>
<td>Less than 1 working day</td>
<td>$626</td>
<td>$525.00</td>
</tr>
</tbody>
</table>

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35 NOTE: LRI does not charge by the code section. We charge by the number of “bills” or pieces of legislation which impact your language of interest.
NOTE: Every bank of 5 bills adds a $200 surcharge.

2. **Hourly rates:** Hourly rates apply for federal & sister state legislative histories, administrative rulemaking, local ordinances, page-by-page legislative journal searches, and audio/video tape research. (Transcripts available separately.)

<table>
<thead>
<tr>
<th>Project period</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
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<td>1-3 working days</td>
<td>$125/hr.</td>
</tr>
<tr>
<td>10-15 working days</td>
<td>$100/hr.</td>
</tr>
<tr>
<td>20 working days</td>
<td>$75/hr.</td>
</tr>
</tbody>
</table>

3. **Miscellaneous:** Orders placed by 10am trigger that same day in the “count”. Weekends and holidays are not included. Additional costs are: Copies - $0.25/page and shipment (usually Federal Express or 1st Class mail); Scan/e-mail costs: $0.05/page.

**Toll free:** (800) 530-7613  
**e-mail:** intent@lrihistory.com  
**Phone:** (916) 442-7660  
**Web page:** http://www.lrihistory.com  
**Fax:** (916) 442-1529

C. **Carolina Rose, President & Expert Witness Background Statement**

1. **In General:** I am a founder and President of Legislative Research Incorporated (LRI) (established in 1983, formerly Legislative Research Institute), a firm which specializes in the historical research surrounding the adoption and amendment of California statutes, regulations and constitutional provisions pursuant to Code of Civil Procedure Section 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible ...". LRI has been cited by name as the source of records relied upon

2. A graduate of Stanford University (B.A. English, 1973; Juris Doctor, 1976), I worked for approximately seven years in the California State Legislature: a one year appointment as an Assembly Legislative Fellow and six years as Sacramento Chief of Staff for California State Senator Nicholas C. Petris.

3. **During the seven years I worked for the California State Legislature:**

   a. I had primary responsibility for managing and/or supervising all aspects of over 200 legislative measures. My responsibilities included public policy research, formation of legislative proposals, drafting statutory language, negotiating amendments, assisting in the preparation of committee and floor analyses and presenting legislation before legislative committees.

   b. While working for Senator Petris, who was a senior member of the governing Senate Rules Committee and of the Senate Judiciary Committee, it was also my responsibility to study various legislative proposal and prepare recommendations for amending and voting purposes.

   c. Furthermore, I also conferred with Senate leadership offices on gubernatorial appointments and in the development and promotion of legislative policies.
4. As President of LRI:

   a. I have shared primary responsibility for the research of approximately 10,000 enactments for approximately 1,500 clients from a wide variety of firms and governmental entities.

   b. I have submitted written expert witness opinions regarding the reconstruction of legislative history and the surrounding public policy discussions in over 50 cases at the administrative hearing level and at the California Superior, District Appellate and Supreme Court levels. All such declarations were accepted as qualified expert opinions. Such opinions have been instrumental in obtaining favorable court rulings on behalf of clients. For example, counsel for the prevailing parties in *Maxon Industries, Inc. v. State Compensation Fund* 16 Cal.App. 4th 1387 (1993) and *Courtesy Ambulance Service of San Bernardino v. State Compensation Fund*, 8 Cal. App. 4th 1504 (1992) (Sec. Dist. Ct.) stated to me:

   Please accept our gratitude for the terrific analysis which you provided us concerning Insurance Code Section 11873 as it applies to the State Compensation Insurance Fund.... [Emphasis added]

   ... the Fourth District Court of Appeal, relying heavily upon your analysis [emphasis added] of Insurance Code Section 11873, ruled that State Fund is not immune from punitive damages either under the Tort Claims Act or under common law. This decision paved the way for another favorable result in the matter of *[Maxon Industries Inc. v. State Compensation Fund]* ... where the court ruled that State Fund is not immune from tort liability pursuant to the Tort Claims Act. Most recently in *[Security Officers Service, Inc. v. State Compensation Fund,]* ... the Second District Court of Appeals relying on *Courtesy* and *Maxon*, ruled in favor of an insured's causes of action against the State Fund for its over-reserving and claims mishandling practices.

   c. I have provided core legislative research, consulting and witness services for purposes of enacting legislation in the areas of eminent domain (valuation of
special use properties, Stats. 1992, c. 7), exoneration of sureties (Stats. 1993, c. 149) and preservation of public records (Stats. 1996, c. 928). In all three legislative projects, my work was credited by the principals as the primary basis for the projects' success.

d. I have given seminars to attorneys, law professors, law librarians, law students and paralegals regarding the legislative process and legislative history research. Attorney participants receive California Minimum Continuing Legal Education (MCLE) credit.

e. I and other members of my firm have submitted numerous declarations authenticating the nature and source of the documents researched by LRI. Except where otherwise indicated, all documents are obtained from public sources. All are true and correct copies of the originals.

5. Basis and methodology of legislative analyses underlying opinions reached. My expert witness opinions are based upon my background and qualifications as set forth above and my thorough review and analysis of specific legislative history research materials pertaining to the statute(s) and issue(s) under consideration. Such materials are attached to my written declaration and/or are utilized during my oral testimony. Such materials may include, but are not limited to, depending upon availability: (a) all bill versions of the legislation at issue (introduced, amended and chaptered); (b) records from the Legislature’s official collection housed either in the State Capitol offices or at the State Archives in Sacramento, such as: (i) policy and fiscal committee analyses, (ii) floor analyses, (iii) agency analyses, (iv) correspondence and materials submitted to the legislature from supporters and opponents; (c) the governor's enrolled records (agency analyses and correspondence); and (d) committee hearing transcripts.
6. My analysis is limited to a close examination of the specified legislative history materials to determine how they reflect upon the subject statutory issue(s). In this regard my role is one of a statutory historian who reconstructs the legislative history of a statute. My role is to assist the court by presenting the evidence from the legislative history that is reflective upon the intent of statutory terms at issue. This is to be distinguished from offering an opinion on the ultimate issue – the role of the court.

7. In my examination of the legislative records I follow the guidelines set forth in the manual I authored entitled “Research Guide, California Legislative History: Practical ‘how to’ guidance for improving your advocacy skills when legislative history or intent is at issue” (url: http://www.lrihistory.com/seminar.html ). This LRI research guide is the basis for the MCLE seminar I teach. In undertaking an expert witness project, the primary principles I utilize in analyzing the legislative records are as follows:

   a. **Focus upon the chronology of the record and procedural aspects of the legislative process.** I seek to allow the legislative story to "tell itself". This can best be accomplished by reviewing the records in strict chronological sequence keeping in mind the various procedural aspects of the legislative process.

   b. **A context centered analysis of the categorized records.** I divide the records into the following categories: (1) those that shed light on the statutory interpretation(s) at issue, either supporting or opposing the interpretation(s) presented; and (2) those that are neutral or noninstructive on the interpretations at issue. I then closely study all the records in context with each other to arrive at conclusions regarding the light shed on the issues presented.
c. *A neutral assessment determines my role.* If, on balance, I do not believe that the records support the statutory interpretation presented to me, I decline the request to provide expert witness testimony supporting the interpretations at issue. I have had occasion to decline expert witness projects in the past based upon my determinations at this level. If, after following my standard methodology, I determine that the statutory interpretation presented is substantially supported in the legislative history, and that no contrary plausible interpretation can reasonably be supported, I will agree to provide expert witness testimony on behalf of that interpretation.

8. My written declarations are divided into the following parts:

**PART 1.** Background and Qualifications  
**PART 2.** Scope of Research And Authentication of Legislative Exhibits  
**PART 3.** Basis and Methodology of Legislative Analysis Underlying Opinion Reached  
**PART 4.** Issue Addressed  
**PART 5.** Brief Opinion  
**PART 6.** Major Findings Supporting Opinion  
**PART 7.** Overall Summary of the Legislative Record and Attestation

9. A sample declaration and references are available upon request.

January 2003, 2002
CHAPTER 9

Sample Index of a Legislative History Report

Including Points and Authorities for Gaining Judicial Notice of The Records: The controversial new summary judgment bill: Statutes of 2002, Chapter 448, Senate Bill 688 – Burton, An act to amend §§ 340 and 437c of, and to add §§ 335.1 and 340.10 to, the Code of Civil Procedure, relating to Civil Actions and Summary Judgments. ”Civil Protections for Consumers” (call for special rates for an e-mailed report)

The following report prepared by Legislative Research Incorporated is provided as a sample of the type of research that your efforts should be able to duplicate. The documents are largely in chronological order which provides a more efficient format for review. The accompanying annotated list identifies the tabbed documents and provides points and authorities whenever possible for gaining judicial notice of the records.
Legislative History of

An act to amend §§ 340 and 437c of, and to add §§ 335.1 and 340.10 to, the Code of Civil Procedure

STATUTES OF 2002, CHAPTER 448
SENATE BILL 688 – BURTON
Relating to Civil Actions and Summary Judgments.
“Civil Protections for Consumers”

Annotated
ITEMIZED DOCUMENT LIST
And Accompanying Documents
LEGISLATIVE HISTORY

An act to amend §§ 340 and 437c of, and to add §§ 335.1 and 340.10 to, the Code of Civil Procedure

STATUTES OF 2002, CHAPTER 448
SENATE BILL 688 – BURTON
Relating to
Civil Actions and Summary Judgments.
“Civil Protections for Consumers”

By Legislative Research, Inc,
(800) 530-7613
intent@lrihistory.com

GUIDING COMMENTS: SB 688 was a highly controversial, “hijacked” bill that became the vehicle for last minute amendments dealing with civil procedure provisions. This occurred on August 25, 2002 (see item 1) after the bill had passed through the house of origin (Senate) – but dealing with three entirely different subject matters (first education/occupational centers, followed by state government, then construction defects). The August 25th amendments occurred after the bill had been assigned to the Assembly Judiciary Committee for a hearing. At that point the bill was touted as proposing “New Civil Protections for Consumers” (see item 3, Assembly Committee Judiciary Analysis). After the bill passed the Assembly floor and was returned to the Senate for concurrence in Assembly amendments, the bill took a detour and was heard by the Senate Judiciary Committee on August 30th, one day before the end of session. The recommendation for concurrence was made and the bill passed off the Senate floor going to the Governor.

This report only covers the relevant time frames and developments – those dealing exclusively with the subject of SB 688 as adopted.
GENERAL

1. Printed bill materials

2. Calendar or Final History excerpt of the bill and votes

DOCUMENTS GENERATED DURING ASSEMBLY DELIBERATIONS

3. Assembly policy committee analysis(ses) - Judiciary

4. Assembly policy committee Republican analysis(ses) - Judiciary

5. Assembly floor analysis: “Senate Third Reading”

DOCUMENTS GENERATED DURING SENATE DELIBERATIONS

6. Policy committee analysis(ses), including Senate Republican Caucus (sometimes untitled) - Judiciary

SENATE “CONCURRENCE” DOCUMENTS

NOTE: If the bill was amended "in the other house" (i.e., an Assembly Bill amended in the Senate or vice versa) it must return to the house of origin for "concurrence" on the other house's amendment(s). Concurrence results in immediate passage to the enrolled bill file (to the Governor). Nonconcurrence forces the bill into a joint house "conference committee.” Here there was concurrence.

7. Senate floor analysis(ses) – “Concurrence”, Office of Senate Floor Analysis (Senate Rules Committee)

GOVERNOR, ENROLLED DOCUMENTS

NOTE: Governor Grey Davis’ records will not be available until after he leaves office.
8. Items from the author’s bill file (Senator Burton) file

UNITEMIZED MATERIALS/CORRESPONDENCE
BY SOURCE

9. Author’s file

10. Senate policy committee file - Judiciary

11. Assembly policy committee file - Judiciary

12. Senate Republican Caucus file

MISCELLANEOUS

13. Online information pertaining to SB 688, post enactment.

14. Cases cited in the preceding documents

Endnotes

1. GENERAL AUTHORITY FOR THE USE OF LEGISLATIVE INTENT RESEARCH MATERIALS: "A wide variety of factors may illuminate legislative design, such as context, object in view, evils to be remedied, history of the times, and of legislation upon the same subject, public policy, and contemporaneous construction." People v. White (1978) 77 Cal. App. 3d Supp. 17. "In the present instances both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." California Manufacturers Association v. Public Utilities Commission (1979) 24 Cal. 3d 836, 844 (Emphasis added) In general, for statutory authority on the use of "extrinsic" aids for determining legislative intent, see Evidence Code Section 452 (c) ("official acts" of the Legislature) and Code of Civil Procedure Section 1859 (the intention of the Legislature is to be pursued, if possible). For obtaining judicial notice of specified matters, see Evidence 450 et seq and Rules of Court, Rule 323 (b). See also, Government Code Sections 9075 and 9080 regarding access to and the use of legislative records (Senate Bill 1507, Secs. 1 & 2, legislation originally proposed by Legislative Research, Inc. Carolina Rose.)
2. **BILL VERSIONS:** The court attaches great importance to amendments during the legislative deliberations. See *Zipton v. WCAB* (1990) 218 Cal.App. 3d 980, 988. In evaluating the usefulness of a particular document, always keep in mind the 'version' of the bill being addressed, as later amendments could be relevant. See *People v. Quattrone* (1989) 211 Cal.App.3d 1389, 1398 for admissibility of bill versions. See *Maben v. Superior Court* (1967) 255 Cal.App. 2nd 708, 713 for admissibility of Legislative Counsel's Digests on the face of bill versions when applicable. A close review of these Digests may point to preexisting bodies of law upon which the subject statute(s) are modeled after.

3. **FINAL HISTORY OR CALENDAR:** This record operates as a final recording of the official legislative acts surrounding the bill. It records when certain acts took place (introduction, amendments, hearing dates, governor action, etc.). See *Woodman v. Superior Court* (1987) 196 Cal.App. 407, 413 for admissibility of this record.


Pay no mind to the page numbers on these last two pages – a formatting nightmare that refuses to go away.