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BUDGET-MINDED RESEARCH: CALIFORNIA LEGISLATIVE HISTORY

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Free, online research. It is great that the free online legislative database at <http://www.leginfo.ca.gov/bilinfo.html> provides key legislative history materials on California bills enacted from 1993 to current. More and more attorneys and researchers are turning to this exciting and easy-to-access resource. Westlaw and LexisNexis are also downloading and reselling the data² which generally consists of:

- (1) the final calendar (procedural developments),
- (2) all proposed bill versions (introduced, amended, enrolled/Governor),
- (3) the final chaptered/session law,
- (4) Assembly and Senate legislative committee analyses (policy and fiscal),
- (5) Assembly and Senate Floor analyses,
- (6) voting records, and
- (7) veto messages.

However, additional critical research is available from offline sources as well.

Unfortunately, some researchers make the mistake of thinking that if the legislative history of a bill is not available on the free website or from Westlaw or LexisNexis, that the records simply do not exist. Nothing could be further from the truth. *There are many other records that are not included in these databases that can be obtained from other offline sources and that the courts routinely rely upon.* For example, in one case I worked on the court relied upon two records to support its plain reading of a statute: (1) An unpublished letter from Pacific Gas and Electric Company dated March 8, 1974, found in Assemblyman Charles Warren's author's bill file, and (2) a subsequent bill version apparently incorporating the amendment that had been

¹ Carolina Rose's background statement is available at <http://www.lrihistory.com/Expert.Witness.htm> and details how she worked in the California Legislature from 1976 – 1984 and was responsible for over 200 bills. Afterwards she founded her legislative research firm in 1983.

² I know from personal experience that Westlaw renegotiates its contracts based on prior usage, so it is wise to steer clear of the portions of their database that can be accessed for free elsewhere.

proposed and explained in the letter.³ Notably, legislative authors' bill files – among other source files – are not available on the free legislative website or from Westlaw or LexisNexis.

Here is a thumbnail sketch of the available offline research sources that the serious researcher should not overlook:

Before 1993. All bills dated before 1993 generally require onsite research in Sacramento for similar information.⁴ The State Archives, State Capitol Building and the State Library are the primary go-to depositories of the key records. (Although selected collections can be found in other libraries as well.) For example, unpublished *source files* such as authors' bill files, partisan caucus bill files, committee bill files (policy and fiscal), floor bill files, Governor's chaptered bill files and agency bill files can yield critical information that the courts routinely rely upon, including legislative committee bill analyses, partisan caucus bill analyses, agency bill analyses, Governor enrolled bill reports, correspondence, background materials, etc. Government Code §9080 establishes that the specified legislative source files are appropriately relied upon by the courts to divine legislative intent.⁵

1993 forward. Ditto – onsite Sacramento research is generally *de rigueur*. In particular, unpublished source files that are not included in the online databases can be obtained the old fashioned way, from offline research sites – most of them in Sacramento.

Help for the budget-minded. Whenever possible, it is best to assemble a legislative history research report that includes all available offline source files such as those listed above.⁶ (The last thing you want is to be blind-sided by opposing counsel's use of them.) However, here are suggestions for accessing more expansive research within severe budget constraints.

Do your-own research. Plenty of research guides abound for the do-it-yourselfer who has the time to follow up on all the leads. For example, my company, Legislative Research & Intent LLC (LRI), publishes a free, how-to-do-your-own research manual on the "Resources" page accessed at <http://www.lrihistory.com/Resources.htm>. Keep in mind that phone orders at State Archives take a second seat to walk-ins, and often must stand in line behind a backlog of requests.

³ *Department of Water and Power v. Energy Resources Conservation & Development Commission* (1991) 2 Cal.App. 4th 206,222-223 (1991)

⁴ Research methodologies vary for different epochs. In particular, legislation dated before 1943 suffers from very poor record keeping practices. Additionally, there are other sources of legislative history besides primary source files such as Senate and Assembly Journal statements of intent, bill versions, contemporaneous commentary – especially by proposing commissions, etc. (See LRI's complimentary online research manual at <http://www.lrihistory.com/Resources.htm>.)

⁵ Government Code § 9080 was added by Stats. 1996, c. 928, § 2, S.B. 1507. This section has not yet been applied by the court in a published opinion, so it is somewhat of a sleeping giant. (Again, per footnote 4 there are other sources of legislative history research as well.) On a personal note, I proposed this statute to the California law librarian community and helped guide it through to successful enactment under the authorship of my former boss, Senator Nicholas C. Petris.

⁶ Again, per footnote 4 there are other sources of legislative history research as well.

Explore special commercial pricing options. Contracting with a commercial research company for a full blown report⁷ at the standard rates may not be an option when budget constraints are a problem. In that case, you might want to consider finding out if any of them are offering any special pricing programs. A few companies – my own included – offer discounted rates for pre-compiled reports. Currently, in response to these tough economic times, LRI is also offering select budget-minded research. It is aimed at providing you with an *affordable head's up* regarding the legislative history surrounding your statutory terms of interest

- Governor's Chaptered Bill Files, 1943-2003: \$50 each: LRI will supply you with an authenticated, digital Governor's Chaptered Bill File for session laws dated 1943 - 2003. (The sitting Governor's bill files are not available to the public.) The Governor is considered part of the legislative enactment process and these materials often supply a level of detail that the official legislative analyses do not. The courts are especially fond of the enrolled reports by state agencies and correspondence to the Governor.
- Bill Versions, 1850-1992:⁸ \$50 each: Understanding how your bill of interest evolved over time in the enactment process can be extremely valuable. For example, if opposing counsel is trying to read terms into the statute that had one time been proposed but were later deleted, you might be able to persuade the court that the Legislature did not intend for the stricken terms to apply. Additionally, Legislative Counsel's Digest appearing on the face of each bill from 1959 forward operate as mini-bill analyses that the courts are quite fond of.

Follow-up: The above two avenues can provide a budget-minded “sneak peak” of what you might expect from a fuller legislative history. After reviewing these select materials, you may find that additional research is justified. If so, you can either do-it-yourself with complimentary, hand's-on guidance from LRI⁹; or LRI will roll the above \$50 fee(s) into our standard Custom, Core or precompiled Digital research rates¹⁰. LRI will also match any other comparable research price quotes for bills from 1943 forward.

In short, free online California legislative history research from 1993 to current can be a boon to the budget-minded researcher, but it can also give a false sense of security. Additionally, the absence of valuable legislative history materials from the free online website or the costly, subscription-based online services does not mean that they do not exist. It is important to be aware of and access additional research avenues that can yield valuable information for your client's case and that the courts are comfortable relying upon. But when budget is a problem, you can either give yourself plenty of time to do your own research, or consider seeking out special commercial pricing options and services.

⁷ There are a number of commercial research services operating in California. State Archives has compiled a list you can ask for. My company, LRI, has been providing in-depth legislative history research services since 1983 and will match any other comparable research price quotes for bills from 1943 forward.

⁸ To obtain free bill versions from 1993 forward go to <http://www.leginfo.ca.gov/bilinfo.html>.

⁹ As a start, see LRI's complimentary online research manual at <http://www.lrihistory.com/Resources.htm>.

¹⁰ Listed at <http://www.lrihistory.com/Services.And.Fees.htm>