

Research & Practice Guide: California Legislative History & Intent

Sixth Edition

Carolina C. Rose, J.D.



Research & Practice Guide: California Legislative History & Intent

Practical “How To” Guidance For
Improving Your Advocacy Skills When
Legislative History/Intent is At Issue

Sixth Edition

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CHAPTER 1

CALIFORNIA LEGISLATIVE INTENT

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

In general, the subject of legislative intent is not a particularly well covered aspect of the typical law school curriculum.¹ 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.² 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.³

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)

¹ This is changing however. In the last few years, more and more advanced legal research classes have been including this subject in the course work.

² 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.

³ 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.

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 sources⁴:

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.⁵
2. The use of **extrinsic aids** to reconstruct the legislative history.⁶ The wider historical circumstances surrounding the adoption of statutes can yield extrinsic 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.⁷ 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.

⁴ 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.

⁵ “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. Willow* (1976) 129 Cal.Rptr. 824, 58 Cal.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

⁶ 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.

⁷ “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.

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:⁸

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.⁹
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.¹⁰ 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.”¹¹

One court has even spoken in terms of the judicial “duty” to admit historical legislative documents.¹² As discussed in Chapter 6 of these materials, Evidence Code

⁸ 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).

⁹ 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.

¹⁰ “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]

¹¹ Sutherland, Section 46.07.

¹² “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

Sections 452 and 453 set forth the procedures for judicial notice of legislative records. See Chapter 8 for specific points and authorities regarding the use of extrinsic evidence of legislative intent.

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

As indicated earlier, an advocate who does not appear with an argument based on legislative history is usually considered unprepared.¹³

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.¹⁴

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:

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.

¹³ Stasky, page 119.

¹⁴ For example, evidence of legislative intent was relied upon in this manner in *People v. Bensen* (1998) 18 Cal.4th 24, 34: A committee analysis and ballot arguments accompanying an initiative for the “three strikes” statute. *Stahl v. Wells Fargo Bank* (1998) 63 Cal.App.4th 396, 402-3: A committee analysis, State Bar Report and CEB article on a trust statute. *Department of Water & Power v Energy Conservation & Development Comm.* 2 Cal.App.4th 206, 220-223: A letter by an opponent asking for an amendment and giving the rationale resulted in a subsequent amendment adopting the proposed changes (see Chapter 5 C for a discussion of this case).

- (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).¹⁵ 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 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 permissible. However, it is still wise to take all the necessary procedural steps to preserve the document admission issue for appeal.)

¹⁵ 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.

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.¹⁶

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

- a. What is the **“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?
- 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 Statsky’s question (a) above. The “plain meaning” rule -- again. Ambiguity is not a hard and fast requirement for addressing the legislative history: Under Statsky’s view,¹⁷ “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.

¹⁶ Statsky, pages 35 -42.

¹⁷ Statsky, pages 36, 75-76, 81.

Regarding Statsky's questions (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.

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 serious a 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 Statsky's question (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:** A general rule of statutory construction is that unpassed bills have little value as evidence of the intent underlying the legislation of an earlier legislative session. *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 735, fn.7; *Bell v. Department of Motor Vehicles* (1992) 11 Cal.App.4th 304, 313. However, there are exceptions: “[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 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 and *Tyler v. California* (1982) 134 Cal.App.3d 973, 977. The California Supreme Court will consider legislation that is ultimately vetoed as an aid for interpreting the Legislature’s understanding of the unamended, existing statute. *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 823-833.
- 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.”

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]

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:¹⁹

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:²⁰
 - (1) “The preamble of the statute.” (Look for a statement of purpose.)²¹
 - (2) “The legislative history of the statute.” (The subject of this research guide. See Chapter 2 for a list of documents comprising a legislative history and Chapter 8 for related points and authorities.)
 - (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.)

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.

- (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 association.” *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519, 43 S. Ct. 428, 430.
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.

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.

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.

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 procedures generally, see the Public Records Act, Government Code Section 6250 et seq. In general, for tracing or reconstructing prior administrative law, see the published *Administrative Registers* referenced in the official code (*California Administrative Code* which became *Barclays California Code of Regulations*). See also the published “Z” *Registers* for intent and commentary on regulations adopted after 1979. See LRI companion “California Regulatory Research Guide” available on the LRI web page, www.lrihistory.com. The Office of Administrative Law makes the official, annotated Barclays regulations available online: www.calregs.com.
- b. **With regard to invalidating an agency regulation:** See LRI’s webpage: www.lrihistory.com for “The Morgue: Case Law Invalidating California Regulations, Recent Decisions,” compiled by Mike Ibold, Law Librarian.
 - (i) **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.)

- (ii) **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.
3. **With regard to local ordinances:** See “How to Find Local Law: A California Paradigm” Marc A. Levin, 14 *Legal Reference Services Quarterly* (1994, Nos. 1 and 2) 79.
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, <http://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 compiled 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.

CHAPTER 2

THE LEGISLATIVE PROCESS: A QUICK OVERVIEW

A. Introduction

This chapter supplies a “quick and dirty” overview of the legislative process. It provides a summary of each of the *twelve* 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.

Two research tools provided at the end of this chapter can further round out your exposure to this subject: (1) A general list of the types of documents comprising a legislative history. NOTE: See Chapter 8 which provides related points and authorities.) (2) An annotated chart which visually outlines the steps that a bill goes through before it is adopted in the California State Legislature (“How a Bill Becomes Law”).

B. In a nutshell, the twelve 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
- State 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

Bill Becomes Law

Stage 12. Operative, effective and operative dates.

C. Description of each stage, noting documents generated at each stage:

GUIDING COMMENT: Amendments 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.²³ 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).

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.²⁴ 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.) (Committees of the whole consist of the floor deliberation, addressed below.)

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 Fund²⁵ 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 available for committee review prior to voting. The Department of Finance and the Legislative Analyst also prepare fiscal analysis reports.²⁶

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 \$160,000. 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 (e.g., state tort liability under the Government Code, etc.), these footprints can guide you to the fiscal analyses that may assist you.

²⁶ The Department of Finance (DOF) drafts analyses on behalf of the administration (the governor). 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 operate as additional consulting staff to the Senate and Assembly fiscal committees (depending upon the year). Their analyses are a critical part of the reviewing committees’ deliberations (again, depending upon the year).

Stage 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 available for member review prior to voting, a floor statement by the author, state agency analyses and perhaps background memoranda, etc.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

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

²⁷ The earliest date that floor records are available for is 1973. These are for the Senate Republican Caucus.

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 legislative 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.

Bill becomes law

Stage 12. This is a date sensitive item. For a discussion on operative vs. effective dates and retroactivity, see Chapter 5.

Types of documents generated at this stage: The final chaptered law.

Again, not every bill goes through all the stages outlined above and amendments can occur through stage 9. The above twelve stages are the primary steps that a bill is potentially exposed to in the California Legislature.

D. Extrinsic Evidence of Legislative Intent: List of the Types of Legislative Documents Comprising Legislative History

Following is a list of the types of records that you may encounter in your research under the category of “California Legislative History.” It is not intended to be exhaustive, but does cover the major categories of extrinsic records that exist.²⁸

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
- c. Legislative *Journal* entries addressing substantive (vs. procedural) matters (Senate and Assembly)

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.

²⁸ See Chapter 9 for points and authorities regarding the judicial use of specific documents from the legislative history for purposes of construing legislative intent. See Chapter 1 for related points and authorities.

4. Governor (Enrolled) Documents

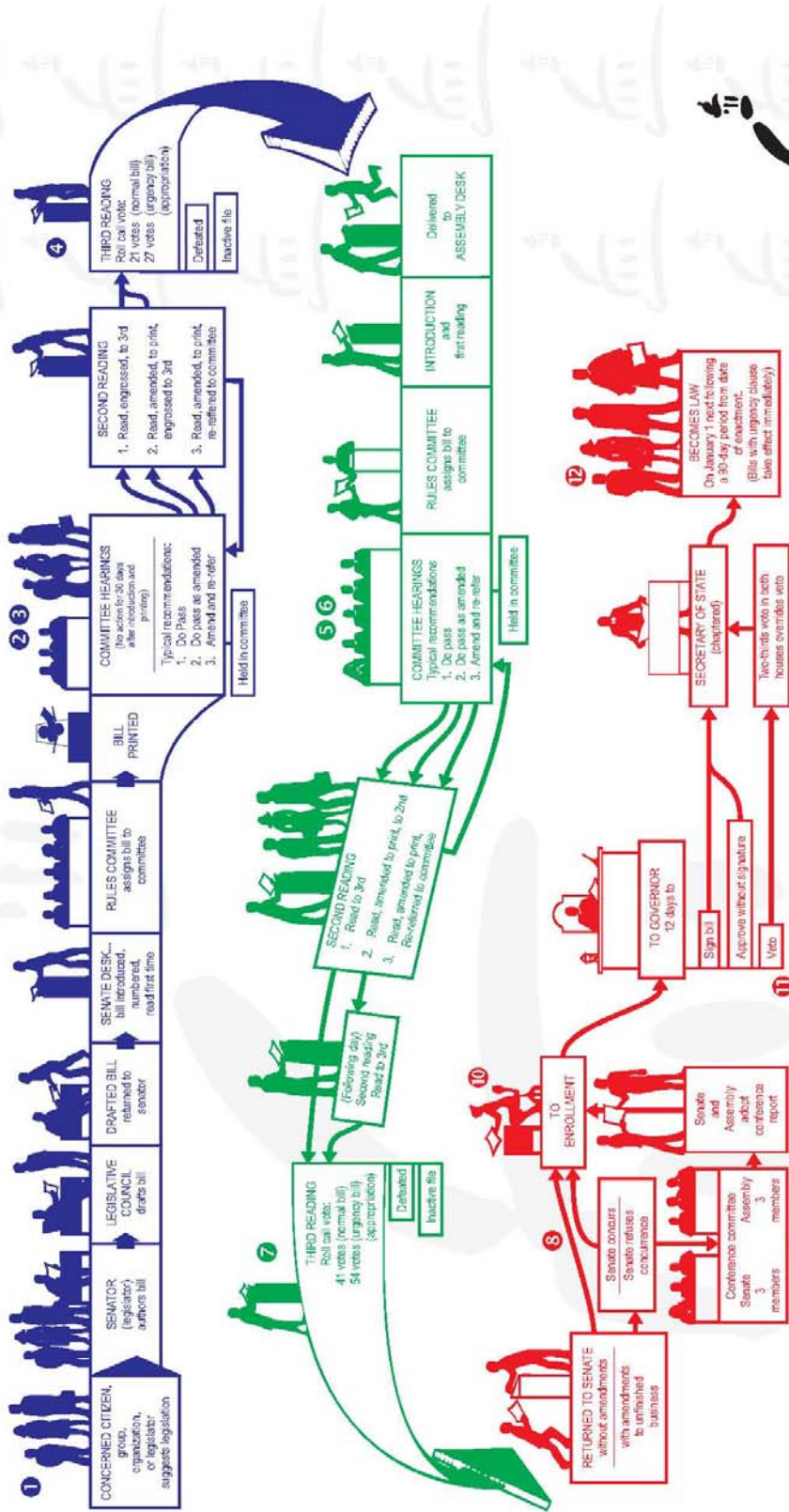
- a.** Enrolled reports to the governor from various state entities (Legislative Counsel, agencies and departments, the governor's staff)
- b.** Author's letter to the governor
- c.** Other correspondence or materials submitted to the governor
- d.** Governor's messages (press release, veto message, etc.)

5. Post Enactment Materials

- a.** Law review commentary
- b.** News articles, etc.
- c.** Summary Digest descriptions of the bill by Legislative Counsel

How a Bill Becomes Law

(A simplified example of the path a bill takes through the California Legislature)



12 Major Legislative Enactment Stages

- Introduction and Consideration in the House of Origin**
1. Proposal development and formal introduction
 2. Policy committee consideration
 3. Floor committee consideration
 4. Floor debate
- Consideration by the Second House**
5. Policy committee consideration
 6. Floor committee consideration
 7. Floor debate

- Return to the House of Origin**
8. Concurrence on amendments adopted in the 2nd house
- When Concurrence Fails: Conference**
9. Joint house conference committee
- Enrolled (Governor) consideration**
10. Governor action: approval by signing or inaction, or veto

- Veto Override**
11. A veto can result in a 2/3rds override by the legislature
- Bill Becomes Law**
12. Effective date subject to Government Code § 9600

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CHAPTER 3

SOURCES OF CALIFORNIA LEGISLATIVE HISTORY

A. Published sources for California Legislative Intent Research²⁹

- (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)
- (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

²⁹ These materials address both “hard copy” and online sources of legislative intent. Regarding computer information, see Evidence Code Sections 1500 et seq, Best Evidence Rule, in particular 1500.5.

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. Visit the LRI website www.lrihistory.com. ("Complimentary Resources" and "Research Links") for updated information regarding free sources of legislative history online, including tips on how to use them.
- (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.)

B. 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.) Archives also has a spotty collection of legislative and floor audio and video recordings. (They are only rarely transcribed.)

- (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 & Intent LLC 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

A. Introduction: Five Steps to Doing Your Own Legislative History Research

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*³⁰ will help 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).)³¹
- (2) 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 from *West's* and *Deerings*. (Again, use both since sometimes one or the other will miss citations.) 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

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.

³¹ It's a good idea to have the original chaptered law from the *Statutes and Amendments to the Codes* in front of you if you cannot determine from the annotated descriptions of the amendments when your terms of interest first came in. Chances are they came in when the section was added. *West's* and *Deerings*, sometimes (but not always) reprint the original act.

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.)

B. Location, Location, Location: Where to Find the Documents You Need

i. 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):** 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):

- 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 and state agency offices
- Identification and research of failed predecessor or concurrent legislation, and other research leads.

ii. 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 & Intent LLC 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.³² 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.

LEGISLATIVE COUNSEL’S DIGEST SB 1507, Petris. Legislature: Public records: retention.

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

³² SB 1507 of 1996 also addressed problems with the preservation of rulemaking files

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.

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.

Beware – LORA does not cover legislative author bill file. Also, the legislative fiscal committee staff jumped and screamed so loudly over the “burdens” the bill imposed on them that they succeeded in obtaining amendments so that they only have to make their *analyses* available (unlike the 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 C)

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.

iii. 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. Either find the state agency on the internet or obtain a copy of the recent State Directory from the Secretary of State in Sacramento which lists each state agency. Call the director's office or the legislative deputy (or equivalent) for access to agency legislative files. (See part F. of Chapter 1.)

iv. 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.

v. Online Research, 1993 – Current

See LRI's webpage www.lrihistory.com for research links to online sources of California legislative bill information and related tips. For example, the California Legislature has preserved bill versions, voting records, veto messages and most of the legislative and committee analyses from 1993 to date. Also, the *Statutes and Amendments to the Code* (the collection of all chaptered laws, except for the 1872 Code enactments) are available from 1850 – 1993.

CHAPTER 5

NUTS & 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.³³ 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.

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.

³³ 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 9 for specific examples.)

4. **There was relevant prior law?** Always review the terms of predecessor language, often found under previous code section numbers. Citations can be found as follows:
 - a. Cross check the legislative annotations in both *West's* and *Deerings*. Look for prior law citations.
 - 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.³⁴

5. **Give yourself plenty of time.** If you are doing your own research, give yourself time to find the records, as opposed to contracting with a research firm.
 - 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. **Regarding 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 & Intent LLC, 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.

³⁴ 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.

B. FAQ'S on California Statutes

i. Effective, Operative & Retroactive dates

- 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. (Carolina Rose, J.D., President, Legislative Research & Intent LLC (800) 530-7613, carolina.rose@lrhistory.com . www.lrhistory.com)

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 (subsequent January 1st)?

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:

ii. 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 Codes 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 Deerings/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.)

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 1st of the following year instead of the normal January 1st *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.

C. Sample Use of a Legislative History to Support a “Plain Reading” Interpretation of a Statute

Department of Water & Power v Energy Resources Conservation & Development Comm. 2 Cal.App.4th 206, 220-223; 3 Cal.Rptr.2d 289 [Dec. 1991]

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 pages 220-220).
2. The court interpreted the statute via an intrinsic analysis (statutory language only) (see 221-222).
3. The court affirmed its intrinsic analysis via an analysis of extrinsic evidence of legislative intent (see pages 222-223):
 1. A March 8, 1974, letter requesting an amendment to provide a definition (and giving the rationale), and
 2. A subsequent March 28, 1974, amendment providing for the requested amendment.

Immediately following are the relevant excerpts from the case, the March 28th bill version and the March 8th letter.

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.)

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

I

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], italics added.) 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.

(6) 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: "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. [¶] . . . 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. . . ."

#1

page 1, pt. 2.

page 2, pt. 3

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.)

#2

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

PACIFIC GAS AND ELECTRIC COMPANY

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FREDERICK W. MIELKE, JR.
VICE PRESIDENT AND
ASSISTANT TO THE CHAIRMAN

March 8, 1974

*TO: Gary
Review & comment
[initials]*

RECEIVED
MAR 11 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.

O.K.

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.

O.K.

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

O.K.

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.



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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.

We could give
 them an immediate
 right of entry.

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.

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O.K.

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.

AMENDED IN SENATE MARCH 28, 1974 ✓
AMENDED IN SENATE FEBRUARY 19, 1974
AMENDED IN SENATE JANUARY 9, 1974
AMENDED IN ASSEMBLY AUGUST 6, 1973
AMENDED IN ASSEMBLY MAY 29, 1973

CALIFORNIA LEGISLATURE—1973-74 REGULAR SESSION

ASSEMBLY BILL

No. 1575

Introduced by Assemblyman Warren
(Coauthor: Senator Alquist)

April 25, 1973

REFERRED TO COMMITTEE ON GOVERNMENT ADMINISTRATION

An act to amend Section 21100 of, and to add Division 15 (commencing with Section 25000) to, the Public Resources Code, AND TO ADD CHAPTER 4.5 (COMMENCING WITH SECTION 900) TO PART 1 OF DIVISION 1 OF THE PUBLIC UTILITIES CODE, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST ✓

AB 1575, as amended, Warren (Gov. Adm.). Energy resources.

Requires specifically that an environmental impact report prepared pursuant to the Environmental Quality Act of 1970 include a statement of measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

Enacts the Warren-Alquist State Energy Resources Conservation and Development Act.

2 1575 15 14

#2

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~~ *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.

1 the commission finds and acknowledges as having a real
2 and direct interest in any proceeding or action carried
3 on, under, or as a result of the operation of, this division.

4 25115. "Permit area" means the "permit area" as
5 defined in Section 27104.

6 25116. "Person" means any person, firm, association,
7 organization, partnership, business trust, corporation, or
8 company. "Person" also includes any city, county, public
9 district or agency, the state or any department or agency
10 thereof, and the United States to the extent authorized by
11 federal law.

12 25117. "Plan" means the Emergency Load
13 Curtailment and Energy Distribution Plan.

14 25118. "Service area" means any contiguous
15 geographic area serviced by the same electric utility.

16 25119. "Site" means any location on which a facility is
17 constructed or is proposed to be constructed.

18 25120. "Thermal powerplant" means any stationary
19 or floating electrical generating facility using any source
20 of thermal energy, with a generating capacity of 50
21 megawatts or more, and any facilities appurtenant
22 thereto.

23 25121. *"Fuel" means petroleum, crude oil, petroleum*
24 *product, coal, natural gas, or any other substance used*
25 *primarily for its energy content.*

26 25122. *"Gas utility" means any person engaged in, or*
27 *authorized to engage in, distributing or transporting*
28 *natural gas, including, but not limited to, any such person*
29 *who is subject to the regulation of the Public Utilities*
30 *Commission.*

31 25123. *"Modification of an existing facility" means*
32 *any alteration, replacement, or improvement of*
33 *equipment that results in a 50-megawatt or more increase*
34 *in the electric generating capacity of an existing thermal*
35 *powerplant or an increase of 25 percent in the peak*
36 *operating voltage or peak kilowatt capacity of an existing*
37 *electric transmission line.*

1 25500. In accordance with the provisions of this
2 division, the commission shall have the exclusive power
3 to certify all sites and related facilities in the state, except
4 for any site and related facility proposed to be located in
5 the permit area, whether a new site and related facility
6 or a change or addition to an existing facility. The
7 issuance of a certificate by the commission shall be in lieu
8 of any permit, certificate, or similar document required
9 by any state, local or regional agency, or federal agency
10 to the extent permitted by federal law, for such use of the
11 site and related facilities, and shall supersede any
12 applicable statute, ordinance, or regulation of any state,
13 local, or regional agency, or federal agency to the extent
14 permitted by federal law.

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

20 25500.5. The commission shall certify sufficient sites
21 and related facilities which are required to provide a
22 supply of electric power sufficient to accommodate the
23 ~~demand consistent with all of the following:~~ *demand*
24 *projected in the most recent forecast of statewide and*
25 *service area electric power demands adopted pursuant to*
26 *subdivision (b) of Section 25309.*

27 ~~(a) The forecast of statewide and service area electric~~
28 ~~power demands adopted pursuant to Section 25309.~~

29 ~~(b) The conservation measures adopted by the~~
30 ~~commission pursuant to this division.~~

31 ~~(c) Any conservation measures imposed or adopted~~
32 ~~under any provision of law.~~

33 25501. The provisions of this division do not apply to
34 any site and related facility: (a) for which the Public
35 Utilities Commission has issued a certificate of public
36 convenience and necessity before the effective date of
37 this division, provided that such facility shall not provide
38 capacity on its planned operating date exceeding the
39 estimated number of megawatts of needed capacity for
40 the year of that planned operating date as stated in the

CHAPTER 6

IN THE COURTROOM

A. 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.³⁵

B. 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 of this research guide for excerpts of correspondence to Legislative Research & Intent LLC, 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.³⁶

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

³⁵ For example: "Courts will take notice of legislative history." *Monk v. Ehret* (1923) 192 Cal. 186, 219 P. 452. "Under statute authorizing judicial notice of legislature's 'public and private official acts,' the District Court of Appeal could examine the legislative history of acts." *People v. Sterling Refining Co.* (App. 2 Dist. 1927) 86 Cal.App.558, 261 P. 1080. Also *Belio v. Panorama Optics, Inc.* (App. 2 Dist. 1995) 39 Cal.Rptr.2d 737, 33 Cal.App.4th 1096, 34 Cal.App.4th 199C, as modified. See Chapters 1 and 8 for additional points and authorities.

³⁶ 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.

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.

C. Costs Are Recoverable

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

CHAPTER 7

EXPERT WITNESSES

A. Tips For Evaluating Their Strengths and Weakness

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 benefited 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.

CHAPTER 8

POINTS AND AUTHORITIES

Chapter 2 D listed the primary records which can be generated during the enactment process of a California bill. Following is a brief sampling of the available points and authorities for gaining admissibility of *specific documents* from the legislative history for purposes of construing legislative intent. (See Chapter 1 for related points and authorities.) The most commonly relied upon records are designated with an asterisk* (i.e., bill versions, legislative committee and floor analyses, governor's enrolled records). In addition to the sampling of p's and a's provided here, ample authority for the use of extrinsic evidence of legislative intent 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) and the *West's* and *Deerings* case annotations for Code of Civil Procedure Section 1859 and Evidence Code Sections 452 - 455.

1. Preenactment Documents

a. Previous related, failed legislation

The history of predecessor failed bills can be considered relevant when the legislative effort spans multiple sessions. See, for example, *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 (re: the history of "nearly identical" failed predecessor legislation). See also *People v. Jenkins* (1987) 196 Cal.App.3d 394, 404; and *People v. Munoz* (2001) 87 Cal.App.4th, 1190, 1199.

b. Interim hearing study and/or transcript and related files

"... excerpts from testimony at public legislative hearings which preceded the enactment of a statute may be of some relevance in ascertaining legislative intent." *Pacific Bell v. California State Consumer Services Agency* (1990) 225 Cal.App.3d 107, 115. See also *People v. Tanner* (1979) 24 Cal.3d 514, *Flesker v. W.C.A.B.* (1979) 23 Cal.3d 382 and *Youngblood v. Gates* (1988) 200 Cal.App.3d 1302, 1340.

c. Other, formal study and/or recommendation (as by the California Law Revision Commission or a state agency)

"...interpretative comment of the Law Revision Commission on this section is enlightening. Such comments are well accepted sources from which to ascertain legislative intent." *Davis v. Cordova Recreation and Park District* (1972) 24 Cal.App.3d 789, 796. "Reports of commissions which have proposed statements that are subsequently adopted are entitled to sustainable weight in construing the statements. This is particularly true where the statement proposed by the commission is adopted by the Legislature without any change whatsoever and where the commission's comment is brief, because in such a situation there is ordinarily

strong reason to believe that the legislators' votes were based in large measure upon the explanation of the commission proposing the bill. *Van Arsdale v. Holinger* (1968) 68 Cal.2d 245, 250.

2. General Enactment Documents

a. *Final History* (bill calendar) excerpt

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.

*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

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.

c. Legislative *Journal* entries addressing substantive (vs. procedural) matters (Senate and Assembly). Letters of intent by the author, committee and legislative counsel are rare but exciting finds. Committee reports also appear from time to time.

See *Woodman v. Superior Court* (1987) 196 Cal.App.407, 413 for admissibility here.

3. Other Legislative Enactment Documents

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

These worksheets are generated by the committees and are filled out and submitted by the author's office. These forms supply background information utilized by the committee consultants in preparing the committee analyses. They are frequently filled out by the bill's outside sponsor. See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 899-890; 16 Cal.Rptr.2d 214 for admissibility of a completed committee background information form.

***b.** Policy committee analyses (partisan and nonpartisan)

Such records are among those most commonly recognized by the courts as evidence of legislative intent along with bill versions. See, for example, *Hutnick v. U.S. Fidelity and Guaranty Company* (1988) 47 Cal.3d 456, 465 (footnote 7); *Reimel v. Alcoholic Beverage Control Appeals Board* (1967) 254 Cal.App.2d 340, 345; *In re Marriage of Brigden* (1978) 80 Cal.App.3d 380, 391. See *Youngblood v. Gates* (1988) 200 Cal.App.3d 1302, 1343; *People v. Martinez* (1987) 194 Cal.App.3d 15, 22 for admissibility of partisan caucus analyses.

***c.** Fiscal committee analyses

Partisan and nonpartisan legislative committee analyses:

- Same as b.

Legislative Analyst fiscal reports:

- *Shippen v. Department of Motor Vehicles* (1984) 161 Cal.App.3d 119

Department of Finance fiscal reports:

- *Reimel v. Alcoholic Beverage Control Appeals Board* (1967) 254 Cal.App.2d 340, 345 for admissibility of departmental analyses.

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

Office of Assembly Floor Analyses:

- *Preston v. State Board of Equalization* (2001) 25 Cal.4th 197, 217.

Office of Senate Floor Analyses:

- *People v. Frazer* (1999) 21 Cal.4th 737, 753.

Senate partisan caucus floor analyses:

- *Youngblood v. Gates* (1988) 200 Cal.App.3d 1302, 1343; *People v. Martinez* (1987) 194 Cal.App.3d 15, 22. See also Gov. Code Sections 9075 and 9080 for committee/floor file materials.

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

Same as d.

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

Same as d.

g. Statements by the author for committee and floor purposes

Complex. In general, the California Supreme Court has articulated confusing and guarded rules regarding the relevance of statements by individual legislators, including those made by the bill's own author. See especially *California Teachers Assoc. [CTA] v. San Diego Community College District* (1981) 28 Cal.3d 692, 698, 699 (author's letter to the governor) which looks askance at admitting statements of individual legislators regarding their personal intent but allows consideration of statements that tend to reconstruct legislative developments, etc. rather than reflect upon individual beliefs, etc. However, one year after the CTA case, the

Supreme Court used legislator statements that are expressive of individual intent without bothering to reconcile its earlier suspicions of such statements. For example, an author's letter to the governor was accepted in *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219, fn. 9. See also *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 and *County of Los Angeles v. State* (1987) 43 Cal.3d 46, 54, fn. 6; *People v. Snyder* (2000) 22 Cal.4th 304, 311; *Mercy Hospital & Medical Center v. Farmers Insurance Group of Companies* (1997) 15 Cal.4th 21, 222; and *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572.

Additional confusing developments at the Supreme Court level occurred in *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893; 16 Cal.Rptr.2d 214, footnotes 3 and 6, where the court declined to take judicial notice of an author's letter to the Governor offered as evidence of the historical circumstances of the adoption of the legislation in question. Here the court expanded its approach in *People v. Overstreet* (1986) 42 Cal.3d 891, 900; 231 Cal.Rptr. 213, where it recognized that such letters may not be used to construe the statute. However, the *Sherwin-Williams* opinion did not discuss any of the following cases:

- (1) Use of an author's letter to the Governor to cast light on the history of a measure and if a reiteration of legislative discussion and events, not merely as an expression of personal opinion, *California Teachers's Association v. San Diego Community College District* (1981) 28 Cal.3d 692, 698-701 and *County of San Diego v. Superior Court* (1986) 176 Cal.App.3d 1009.
- (2) Use of an author's letter to the Governor if it confirmed intent derived from other historical documents, *Rogers v. Alvas* (1984) 160 Cal.App.3d 997, 1003.
- (3) Use where there are other legislative documents upon which the court can rely, *People v. Cherry* (1989) 209 Cal.App.3d 1131, 1135.
- (4) Use of an author's letter published in the *Assembly Daily Journal*, *County of Los Angeles v. State* (1987) 43 Cal.3d 46, 51 (footnote 2).

Regarding case notes (2) and (3) above, in *Sherwin-Williams* the author's letter was not offered along with other legislative documents which confirmed *all* key information contained in the author's letter. Thus, use of an author's letter to the Governor was not addressed where it is offered as *corroborative* evidence of the historical developments surrounding a measure.

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

See *Woodman v. Superior Court* (1987) 196 Cal.App.3d 407, 414 for admissibility of statements by proponents and opponents. See *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401 for statements of sponsors. See also *Department of Water and Power City of Los Angeles v. State Energy Resources Conservation and Development Commission* (1991) 2 Cal.App.4th 206, 223, for admission of a letter to an author which resulted in an amendment. [NOTE: This last cite involves records supplied by LRI.]. See Gov. Code Sections 9075 and 9080 for committee file materials.

- i. Analyses by state agencies

Reimel v. Alcoholic Beverage Control Appeals Board (1967) 254 Cal.App.2d 340, 345.

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

Gov. Code Sections 9075 and 9080 for committee file materials. See *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219 for admissibility of items from the author's file.

- k. Opinions by Legislative Counsel

Zipton v. W.C.A.B. (1990) 218 Cal.App.3d 980, 988

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

White v. Ultramer Inc., (1999) 21 Cal.4th 563, 581 fn. 2. *People v. Ramos* (1996) 50 Cal.App.4th, 810, 821 fn. 12.

- m. Concurrent, failed legislation from the same session.

See 1 a above.

4. Governor (Enrolled) Documents

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

The governor acts in a legislative capacity when acting on legislation. *Lukens v. Nye* (1909) 156 Cal. 498. In general, see *Tafuya v. Hastings College of Law* (1987) 191 Cal.App.3d 437, 444; *Post v. Prati* (1979) 90 Cal.App.3d 626, 634; *Bell v. Superior Court* (1989) 215 Cal.App.3d 1103, 1109 (footnote 2) for use of enrolled bill memoranda and reports.

- b. Author's letter to the governor

See 3 g. above.

- c. Other correspondence or materials submitted to the governor

See *Karlin v. Zalta* (1984) 154 Cal.App.3d 953, 968 (footnote 9) for admissibility of correspondence directed to the Governor's Office.

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

See *Knighten v. Sams Parking Valet* (1988) 206 Cal.App.3d 69, 77 for use of the Governor's press release.

5. Contemporaneous, unpassed legislation.

Contemporaneous unpassed legislation may be a significant indicator of the intent underlying legislation passed at the same session. *Dyna-Med. Inc., v. Fair Employment & Housing* (1987) 43 Cal.3d 1379, 1396 [simultaneous passage of legislation empowering one government agency to award damages and rejection of legislation that would have similarly empowered another agency to withhold the authority from the latter]; cf. *Silva v. Superior Court* (1993) 14 Cal.App.4th 562, 570 [Legislature's rejection of specific provision contained in act as originally introduced indicates act should not be construed to include omitted provision.]

CHAPTER 9

ABOUT LEGISLATIVE RESEARCH & INTENT LLC (LRI)

A. FAQ's About Legislative Research & Intent LLC (LRI)

1. How long has LRI been around and what do you do?

LRI was co-founded in 1983 by Carolina Rose, a Stanford Law School graduate. This was preceded by 7 years of intense, hands-on work in the California State Legislature, during which time she had personal responsibility for over 200 bills. After answering countless questions about the legislative history and intent of her office's legislation, she decided to start her own legislative research company with a strong focus on quality and depth. Ms. Rose directs a talented team of researchers and personally designs and oversees all of LRI's research methodologies. Her commitment to excellence remains the driving force behind every LRI research report today.

Customized Research

LRI provides high quality, custom research to attorneys, law librarians and paralegals on the history and intent of:

- Constitutional provisions
- Statutes & codes
- Rules & regulations
- Local ordinances

Our service reach is broad. We research the laws of all states as well as of all local and federal jurisdictions.

Related Consulting Services

LRI's clients benefit from Carolina Rose's rich depth of experience. 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 in-depth, high quality research reports and to meet any associated statutory construction consulting needs. In addition, she provides:

- Points and authorities for gaining judicial notice of the records
- Expert witness services
- MCLE services
- Complimentary research and advocacy aids

Our Mission Statement

LRI is committed to providing high quality custom research at affordable rates, user-friendly report formats and excellent customer service.

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. Also, LRI's work has been instrumental in numerous published decisions which do not specifically mention LRI. For example, LRI kudos include this thanks from prevailing counsel in *Courtesy Ambulance Service of San Bernardino v. State Compensation Fund* (1992) 8 Cal.App.4th 1504:

Please accept our gratitude for the terrific research and analysis you provided us ... [The Courtesys] court, relying heavily upon your analysis, ... ruled [in our favor].

Better yet, they said this victory paved the way for two others (*Maxon Industries, Inc. v. State Compensation Fund* (1993) 16 Cal.App.4th 1387, and *Security Officers Service, Inc. v. State Compensation Ins. Fund* (1993) 17 Cal.App.4th 887).

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.

3. **Who are your clients?** LRI serves law offices and corporate legal offices of all sizes – large, medium and small – in and out of California. We also serve the legal divisions of local, state and federal governmental offices. (E.g., the State Attorney General's Office, the Department of Transportation and the Los Angeles City Attorney's Office.)
4. **How does LRI compare with its competitors?** Quite favorably. Clients who have compared our research reports with others express strong satisfaction with the high caliber of LRI's research. These same clients also express high appreciation for LRI's user-friendly report formats – including fast internet access – and competitive pricing.

We recommend you ask these questions 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 and extensive research and consulting experience of our “hands on” research director, Carolina Rose, J.D., *LRI is unique in this regard.* (See the answer to FAQ 1 above and part B below for more details.)

- b. **What is the firm's commitment to your cost savings on each project?** This is a top priority at LRI.

Always compare the service provided with the rates offered. LRI guarantees competitive rates for the high level of integrated, in-depth services we provide. LRI is not a document retrieval company, so our rates reflect the professional research and consulting services we offer. 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? Yes. 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 is the industry leader.

Digital format of reports made accessible online. LRI is committed to providing the most user friendly research services to our clients. First we pioneered the hugely popular, 3-ring binder, book-style format. Then we moved on to pioneer the internet-accessible report. (We e-mail you a link to a special page on the internet and instruct you on how to save the Adobe Acrobat, PDF report to your hard-drive, download and print.)

We also offer a unique combination of other “user friendly” features:

- Optional digital features such as keyword-searchability, bookmarks and links from the index to the referenced documents. Adobe Acrobat even permits you to cut and paste from the records to insert in your document.
 - 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 are bates-stamped numerically to correspond to the index.
- d. **How competitive are your rates.** Very. We urge you to compare. For our current rates see our website: <http://www.lrihistory.com/> (ordering information, fee schedule).

**B. Carolina Rose, LRI President: Expert Witness Background and Qualifications
Statement, California Legislative History**

1. **Education:** Graduate, Stanford University, 1973, B.A., English; Stanford Law School, 1976, J.D.

2. **Employment & Experience, 1976 To The Present**

a. **1976 – 1983: Employed by the California State Legislature:** Immediately upon graduation from Stanford Law School, I was employed for approximately seven years by the California State Legislature as follows:

- 1976 – 1977. Assembly Rules Committee: A one year appointment to the California State Assembly Fellowship Program assigned to the Vice Chairman of the Assembly Criminal Justice Committee, Terry Goggin (Democrat, San Bernardino)
- 1977 – 1983. Senate Rules Committee: Six years as Sacramento Chief of Staff for California State Senator Nicholas C. Petris (Democrat, Oakland)

During the seven years I worked for the California State Legislature:

- 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.
- 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 proposals and prepare recommendations for amending and voting purposes. Furthermore, I also conferred with Senate leadership offices on gubernatorial appointments and in the development and promotion of Democratic legislative policies.

b. **1983 – Current: Legislative Research & Intent LLC: Co-Founder & Co-Director then President:** In 1983 left the California Legislature to co-found and direct the firm of Legislative Research Institute (LRI). In 1985 LRI was reorganized as Legislative Research & Intent LLC (LRI). In 1998 I became President of LRI.

LRI is 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 also provides research in the following additional categories: California regulations, federal statutes and regulations, sister state statutes and regulations, and local ordinances (all states).

- LRI has been cited by name as the source of records relied upon by the court in *Redlands Community Hospital v. New England Mutual Life Insurance Co.* 4th Dist. Court of Appeal, 23 Cal.App.4th 899 at 906 (1994).
- LRI is also cited as a source of legislative history research in the following two treatises: (a) *Henke's California Law Guide*, beginning with the 3rd edition, 1995, LEXIS Law Publishing, and (b) *Legal Research in California*, beginning with the 3rd edition, 1999, West Group.

Legislative Research & Intent LLC is located at 1107 9th Street, Suite 220, Sacramento, California, 95814. Phone numbers: (916) 442.7660, or toll free (800) 530.7613. Fax: (916) 442.1529. E-mail contact: intent@lrhistory.com or Carolina.rose@lrhistory.com.

As Co-Director, then President of LRI:

- **Research.** I have shared primary responsibility for the research of approximately ten thousand enactments for approximately 1,500 clients from a wide variety of firms and governmental entities. In that regard I have submitted hundreds of 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. I also assist LRI's clients in framing their statutory issues and in defining the most effective scope of research to meet their needs.
- **Legislative consulting.** I have provided core legislative history research and consulting 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.
- **Instructor.** I have given numerous classes/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.

Publications authored within the preceding ten years: As an instructor I utilize the following three publications which I authored within the preceding ten years:

1. *A Research Guide, California Legislative History: Practical "how to" guidance for improving your advocacy skills when legislative history or intent is at issue.* [NOTE: In this connection I also utilize a chart entitled "How a Bill Becomes A Law" which I adapted and edited from a publication issued by the California Legislature.]

2. *Reconstructing Regulatory History and Intent, Valuable Guideposts for Wading Through the Morass That is California Regulatory Research*
3. *California Statutes: "Effective," "Operative" and "Retroactive" Dates*

All of the above publications are self-published, are available at no charge on LRI's website: www.lrihistory.com, and can be found at many county law libraries, law schools and law firm law libraries either in hard copy or as research links to the internet.

NOTE: In 1985 I was the primary co-author of: *The Drive to convene a constitutional convention to balance the federal budget : a two part study examining the major constitutional and economic issues and arguments / prepared by Legislative Research Institute for the California State Senate*. Carolina C. Capistrano (now Rose), Executive Director. Published by The California State Senate, Joint Publications. Call number at the State Library, Sacramento, California. L550.C65

- **Expert witness.** I have submitted written expert witness opinions regarding the reconstruction of legislative history and the surrounding public policy discussions in approximately 60 cases at the administrative hearing level and at the California Superior, District Appellate and Supreme Court levels. Many of my declarations are utilized at the appellate level or contribute to out-of-court settlements. Those that have been used in court 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 "... your well researched and focused analysis was a substantial factor in our obtaining these [favorable] rulings."

Deposition/testimony within the last four years: In the last four years I have provided deposition testimony in two matters: (1) National Association of Optometrists & Opticians, Lenscrafters et al v. Bill Lockyer, Attorney General of the State of California, et al; and (2) A.A. M. Health Group et al v. Scripnet, Inc., et al: Case No.: LC059626, Superior Court of the State of California, Norwest District – Van Nuys.

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, State library system, and/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.

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 which is the role of the court. In my examination of the legislative records I follow the guidelines set forth in the above referenced manual I authored entitled *A Research Guide, California Legislative History: Practical "how to" guidance for improving your advocacy skills when legislative history or intent is at issue*.

In general, the primary principles I utilize in analyzing the legislative records are as follows:

- 1. 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.
- 2. 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 non-instructive 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.
- 3. 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.



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