

CALIFORNIA LEGISLATION: A BASIC PRIMER

Revised January 2017

The new 2017-18 California Legislature continues its digression from past years. There are now 55 Democrats and 25 Republicans in the 80-seat Assembly; and in the 40-seat Senate, 27 Democrats and 13 Republicans. Thirty are new legislators with no record in state legislation. Animal bills historically were partisan based on party of the author. This may have been as much a function of political strategy of animal activists' electioneering as party philosophy, because nationally a wide array of animal bills can arise anywhere across the partisan spectrum. The same issue can appear as an activist animal protection measure in one venue but a law-and-order one elsewhere. While many Democrats might favor issues appearing to promote "social justice," Republicans favor use of government police power to reduce government costs and preserve public safety, i.e. "law and order." In California, Democrats usually can and do check the most egregious civil rights infringements promoted by activists, but this may be less certain as their majorities increase. More certain is Democratic check on Republican efforts or excesses in animal bills, even if the provisions are reasonable and needed. Successful Republican bills lean farther left or require bi-partisan authors. This leaves little interest in scrutiny of or debate on animal bills. Hearings are perfunctory, if not sloppy, with many unanimous votes. Tactics to amend or stop bills play out behind the scenes.

In addition to historic non-competitive districting, Republican voter registration in the state is at a low. Few districts are competitive. Term limits, in place since 1990, continue to bring in new legislators with little or no voting history on statewide animal issues. However, increasingly California politicians circulate among local, state and national offices, as well as agency appointments, and many now have considerable history with animal issues and interests regardless of individuals' current political agendas.

At the end of any day, legislation is a numbers game:

California legislators use the "not voting" option to avoid recording a specific vote. Critics decry this practice, but this is reality and the equivalent of voting no. Only 41 and 21 votes are needed to pass most bills the respective houses. The only effective strategy to prevent passage of a bill that is moving is to prevent it from obtaining the required votes whether this happens at a hearing or is so apparent that the bill is not heard. Authors try to avoid a failing vote, but some will keep a failed bill alive as long as possible trying to get the required votes either by amendment or persuasion. Never assume that any vote is a given. This same strategy applies in committees with the number of votes needed based on a simple majority of committee members as of the day of the vote.

Policy committees of each house conduct hearings on bills assigned to them. Hearings are subject to postponement, assorted amendment issues and an author's decision not to proceed. Each committee has staff controlled by the chair, all Democrats. Committees have Republican Vice-Chairs and varying minority percentages of Republican members. Bills are assigned to a committee consultant, who prepares an analysis including a list of support and opposition based on express requests for listing. Organizations are listed by name and individuals by numerical count if noted at all. The analysis is available on the day of the hearing (or sometimes before) and must be reviewed immediately to assess the author's and supporters' arguments and rebut these at the hearing. If a hearing is postponed and the bill amended prior to hearing, the deadline for listing is extended and there is an opportunity to change position or restate and address any new issues. Once the bill is out of committee, the Bill Analysis is not amended, even for erroneous listings, and remains on the bill's permanent record. The published Assembly Floor Analysis does not include the support/opposition list (readily available in the bill

documents.) The Republican Caucuses also analyze bills for their members, but this is not a public process although it does include support/opposition lists.

The hearing process is critical:

Prior to a hearing, contact with members' staffs or the members should give an idea of concerns or members' willingness to pursue issues at the hearing. For example, a member might ask specific questions about a bill with technical or enforcement issues. Committees schedule many bills on the same day, especially early in the year, and the bills are heard in the order of author sign in, usually depending on the author and his witnesses' availability. The author presents the bill followed by his prepared witnesses, varying in number, sometimes limited by the committee and followed by additional supporters merely stating name and affiliation – depending on the committee directive. Then the opposition presents its arguments and is more likely to be limited in the number of witnesses allowed to present testimony. Depending on the time of day and other bills, a hearing can be very rushed. Members may be distracted or out of the room. The tendency is to read prepared statements as is done in Congress, but it is also important to rebut supporting arguments, particularly when these involve questions of fact. If the author is relying on experts, their testimony ideally would be rebutted by an opposing expert or reference to submitted written opposition if the person is not available as is often the case. Then, additional opponents are able to state name and affiliation, again depending on committee directive at the hearing. Committee members may ask questions or make offhand remarks that need response. Simple amendments may be agreed to in committee or the bill deferred for further work. Otherwise, an immediate vote is taken. If the bill does not get the required votes, it is placed “on call” with the bill’s fate uncertain. Committee members may be unwilling to commit themselves initially, think things over, talk to the author during the day, talk with staff or others including opposition. Committee members also go in and out of the meeting to attend to other business or may only return to vote. Toward the end of the hearing, the on call bills are taken off call for an additional vote. What may have looked promising earlier can change very quickly amid mumbled confusion as votes change in ways that may or may not make sense. Authors of on call bills may request reconsideration or not, and if so, the committee usually grants this unanimously as a courtesy. This means that even a failed bill can come back on a later date for another vote. Nothing is over until it is **really** over, sometimes months later or the following year for 2-year bills.

Most bills, unless designated as “non-fiscal,” then go to the house’s appropriations committee. Bills without state money appropriation typically pass without fiscal issues, but votes on controversial or very partisan bills begin to reflect this and might be placed in the suspense file for further consideration and later release or a quiet death, or if passed give a clue about the floor sentiment. Bills then go the house’s “floor” for a vote of the entire house. This process can be quick or long, because an author tries to line up the required votes before the bill is actually voted. If the bill fails on the first vote, the author may request and be granted reconsideration for another floor vote before the calendar deadline. The Assembly floor Analysis for each bill is prepared and controlled by the consultant for the policy committee that heard the bill. Senate policy committees have their own consultants who prepare their own analyses. Until the end of 2014, the Senate Floor had its own, separate Office of Senate floor Analyses that prepared entirely new analyses. Then the entire staff was eliminated and the floor analyses were those of the policy committees. There has been some improvement in updating the senate floor analyses by the policy committee consultant but not the fresh look by new eyes. As a bill progresses, each committee vote is included in the progressing analyses, and these are an indication of strength or weakness. A strong bill can progress quickly through the entire process, but a weak bill that survives can struggle through the summer or become a “2 year bill” to be heard again next year. (This only happens in the first year of the 2-year legislative sessions, i.e. 2017-2018 Legislature.) The veto request process is the final step for opposition (unless there is a viable veto override possibility in a

second year). Each step in the process presents an opportunity for timely and strategic action by opposition to present, build and strengthen its position.

Floor votes in recent years have been unproductive for opposition but should always be analyzed for potential late amendments or view to veto potential if appropriate. Authors strive to have sufficient support lined up before presenting a bill on the floor, so that the bill's strength, the author's priorities with other bills and the sessions remaining for voting are factors affecting when a bill will actually be presented after it is eligible under the house's rules. After passage, if concurrence of the other house is necessary, it returns to the house of origin for a final analysis and vote. If changes have been substantial, such as a gut and amend, it may require an additional committee hearing within the applicable rules deadlines before a final house vote.

Resources:

All documents and history for each bill are available on the Legislature's new web site,

<http://leginfo.legislature.ca.gov/faces/home.xhtml>

You can subscribe to updates on each bill followed and also send a message to a bill author's directly from the bill information page for that bill. The tracking system no longer includes as many notification points, so that more frequent surveillance is required for some bills.

Previous portals are still accessible for materials up to November 2016 but are no longer updated:

<http://www.leginfo.ca.gov> or <http://www.legislature.ca.gov>

The Rules for each house as well as the "Joint Rules" are available under the Publications tab or at <http://leginfo.legislature.ca.gov/faces/publicationsTemplate.xhtml>

Bill histories may reference rule provisions for specific procedural and calendar considerations.

* *CALIFORNIA CONSTITUTION, ARTICLE 4, LEGISLATIVE*

SEC. 2. (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. No Senator may serve more than 2 terms.

The Assembly has a membership of 80 members elected for 2-year terms. No member of the Assembly may serve more than 3 terms. Their terms shall commence on the first Monday in December next following their election.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding the election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.