



# League of California Cities

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## **ANALYZING A BILL: KEY ELEMENTS AND RULES OF STATUORY CONSTRUCTION, NAVIGATING THE LEGISLATIVE PROCESS AND LEGISLATIVE HISTORY**

State legislators introduce hundreds of bills each year. Many of these bills affect how cities conduct their activities. Knowing how to find these bills, what the jargon means and how to analyze a bill will make any city official a more effective analyst and advocate.

This document is accompanied by a glossary of legislative terms and is designed for city attorneys who are asked to interpret legislative language. While this document should be useful for other city officials, it is just a starting point and describes bills generally. Specific questions about how a bill will affect a particular city should always be directed to the city attorney.

### **Finding the Bill**

The traditional way of contacting the Legislature's bill room is giving way to the Internet. Bills are also available online. The League's web site (<http://www.cacities.org>) provides access to bills by bill number, author or subject matter back to the 1999-2000 session. Information regarding the League's position on legislation, the status of legislation and sample letters to legislators is also available on the League's web site under "Legislative Advocacy" and "Legislative Tracking."<sup>1</sup> Only registered users may access the legislative tracking part of the web site.

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<sup>1</sup> Legislator tracking, *Priority Focus* (during the legislative session, the League's weekly legislative publication discussing League legislative priorities and activities), legislative schedules, and legislative staff information is also available on the League's web site under "Legislative Advocacy."

The California State Senate's web site (<http://www.sen.ca.gov> under "Legislation") allows a user to search for legislation back to the 1993-1994 session. A user can search by bill number, keyword or author. Both the League and the State Senate web sites provide a bill's current status, history and the bill's text. To view the "actual" bill, choose to see the bill in "PDF" format. This requires Adobe Acrobat, which can be downloaded from the Internet for free (<http://www.adobe.com/>). The PDF version displays the bill in the same way as the printed version, including page and line numbers. Use of the PDF version facilitates analysis; hence references to page and line numbers are easy. Please contact League lobbying staff about problems locating a bill.

The traditional way of locating a bill is through the Legislature's bill room, located in the basement of the Capitol. Any member of the public may call (916/445-2323) or visit the bill room to get a copy of any bill or resolution (up to five different bills or resolutions).

## **Reading the Bill**

Each bill has several intricacies that may not be apparent at first blush.

### **Author**

The author's or authors' name(s) appear on the front of the bill. The author is the legislator who is "carrying" the bill. Even though more than one legislator's name may be on the bill, there is only one legislator who assumes primary responsibility for the bill by carrying it. This legislator is the one who "introduced" the bill. A bill is typically introduced at the request of a constituent or sponsor (usually a lobbyist) on behalf of a client; sometimes a bill is the legislator's (or the legislator's staff's) original idea.

### **Date**

If just one date appears on the face of the bill, this is the date the bill was introduced. The process of introduction involves the preparation of a digest by Legislative Counsel and being assigned a number. Bills are assigned numbers in chronological order as they are introduced. Successive dates of amendments are indicated at the top of the bill, along with the house (either the Senate or the Assembly) the bill was amended in and the date the bill was amended.

### **Legislative Counsel's Digest**

The Legislative Counsel's Digest typically appears on the first page of the bill. The digest explains the existing law the bill covers and the changes to the law the bill would make. Some

committee consultants advise reading the text of the bill before reading the digest.<sup>2</sup> It is always important to remember that the bill text, not the digest, becomes law.

Four additional items follow after the summary of the bill's provisions.

The first item is a notation of whether the bill requires a majority or a two-thirds vote. Most bills require a majority vote. A bill that asks the voters to amend the state constitution or has an urgency clause (the bill goes into effect when the Governor signs it, rather than on January 1 of the following year) requires a two-thirds vote.<sup>3</sup> Additionally, bills that change state tax rates and the "budget bill," among others, require a two-thirds vote.<sup>4</sup>

The second item indicates whether the bill contains an appropriation of money. The third item indicates whether the bill will go to a fiscal committee, either the appropriations or budget committee of the respective house in addition to the appropriate policy committee in each house. A bill is referred to the appropriations committee if it appropriates money, imposes new responsibilities or duties on the state, liberalizes any state function, program or responsibility or results in substantial loss of revenue or reduction in state expenditures.<sup>5</sup>

The fourth item indicates whether the bill imposes a state-mandated local program.<sup>6</sup> This statement by the Legislative Counsel, however, does not necessarily mean the Commission on State Mandates deems the program in the bill to be a reimbursable state mandated local program.<sup>7</sup>

### What does the Legislative Counsel do?

The Legislative Counsel serves as chief counsel to the State Legislature and its members. A staff of over eighty attorneys drafts legislation and prepares opinions when asked by members of the Legislature. Only legislators or legislative staff may contact the Legislative Counsel, but staff may authorize a lobbyist (or anyone for that matter) to work with Legislative Counsel on a bill.

<sup>2</sup> See [http://www.sen.ca.gov/ftp/sen/committee/standing/loc\\_gov/\\_home/dozensteps](http://www.sen.ca.gov/ftp/sen/committee/standing/loc_gov/_home/dozensteps).

<sup>3</sup> Cal. Const. art. XVIII, §§ 1, 4; Cal. Const. art. IV, § 8(d).

<sup>4</sup> Cal. Const. art. XIII A § 3; Cal. Const. art. IV, § 12(d).

<sup>5</sup> See Joint Rule 10.5 (Joint rules are adopted each biennial session by the Legislature and often retain the same rule number). See also Senate Rule 12(2).

<sup>6</sup> Cal. Const. art. XIII B § 6 ("Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service . . ."); Cal. Gov't Code §§ 17500-17630 (procedure for determining whether a particular statute imposes state-mandated costs on a local entity).

<sup>7</sup> See *City of San Jose v. State of California*, 45 Cal. App. 4th 1802, 1817, 53 Cal. Rptr. 2d 521, 530 (6th Dist. June 3, 1996), rev. denied (Sept. 18, 1996) (the findings "are not determinative, however, of the ultimate issue, whether the enactment constitutes a state mandate under section 6. . . The legislative scheme . . . makes clear that this issue is to be decided by the Commission.").

## Amendments

In the initial version of a bill, ~~strikeout text~~ indicates amendments that remove language from an existing statute. *Italicized language* indicates an amendment that adds language to an existing statute or creates a new statute.

The tricky part arises when reading a bill that has been amended several times, or even twice. Any language that appeared in the introduced version of the bill will become standard type, *even though it is not part of the existing statute*. Thus, any changes to the last version of the bill are indicated with italicized text, and any language removed from the last version of the bill is indicated by strikeout text.

*Practice Tip: Always compare the bill's language to the existing statute(s). Read (or at least skim) all versions of the bill in order to determine what changes have been made throughout the process. If all versions are not available, at least use the introduced version and the most recent version of the bill. It is important to remember that new language to a statute may not be in italics in subsequent versions of the bill. Be sure to carefully read the plain text of the language and be careful to pay attention to whether the bill adds or amends existing language.*

*Also, The California Municipal Law Handbook, a League publication, is a good resource.<sup>8</sup> To find out what parts of existing law the bill addresses, review the original version of the bill.*

Even though the language in a bill may have been carefully crafted and well thought out prior to a bill being introduced, the language may quickly change. The author may decide to change the bill's language prior to or during a committee hearing. The changes may occur in response to questions by legislators, issues raised during testimony or in response to the committee consultant's analysis. The chair accepts these amendments, which are often taken orally and recorded by committee staff, as author's amendments. Committee staff is responsible for bringing the amended language to Legislative Counsel for drafting.

Additionally, a legislator may have the bill amended in a committee if a change is suggested by someone on the committee. It is different from an author's amendment because the author may not want the amendment but will accept it. A committee amendment also differs from a hostile amendment, which is inserted into the bill over the author's objection.<sup>9</sup>

*Practice Tip: If assisting in drafting proposed language for a bill, do not become too tied to the bill's specific language. Endeavor to write the clearest language possible, but also focus on the overall goal of the bill and how to most effectively try to reach that goal with the legislation.*

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<sup>8</sup> To order *The California Municipal Law Handbook*, either a new book or an update, please see "Legal Publications" at [www.cacities.org/attorneys](http://www.cacities.org/attorneys) for more information and an order form.

<sup>9</sup> For more information about the legislative process, see *Navigating the Legislative Process: Deadlines, Procedures and Common Terms*, published by the League of California Cities in 2000. Please call 916/658-8257 to order a copy.

*Recognize that the bill will probably be amended at some point during the legislative process. Monitor the bill's progress for substantive changes that diverge from the original goals of the legislation. In addition, Legislative Counsel often is helpful in transforming concepts on goals into clear legislative language.*

## **Interpreting a Statute**

Once a bill becomes a law, controversies may arise concerning what the Legislature meant when it enacted the statute. Thus, understanding how the courts interpret legislation is valuable when reading and analyzing a bill.

As a general matter, the court's job is to interpret provisions of a statute and attempt to ascertain the intent of the Legislature. Courts generally endeavor to effectuate the purpose of the law rather than write (or rewrite) it.<sup>10</sup>

This document is not intended to provide a complete guide to the rules of statutory construction, just a starting point. For a more detailed discussion of statutory interpretation, a treatise such as *Sutherland's Statutory Construction* should be consulted.

## **General Statutory Guidance**

A good rule of thumb is that if you can't understand a statute's language, the public and the courts will probably have difficulty understanding the language too. The Government Code does contain a number of instructions regarding how to interpret the Legislature's handiwork.<sup>11</sup> Rules of construction are also found in the preliminary provisions of the different codes. *See* Cal. Gov't Code § 9603. The preliminary provisions of codes and even of acts within codes will usually have definitions sections.

Generally, if the Legislature chose to include language, it must be given some meaning. Courts endeavor to interpret statutes to avoid rendering some words surplusage, null or absurd.<sup>12</sup> Given that, when analyzing statutes or drafting statutory language, it is advisable to pay attention to every word and to endeavor to make the language as clear as possible (despite the inevitable amendments throughout the process).

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<sup>10</sup> *See Moyer v. Workmen's Comp. Appeals Bd.*, 10 Cal. 3d 222, 230, 110 Cal. Rptr. 144, 148 (1973).

<sup>11</sup> *See, e.g.*, Cal. Gov't Code §§ 9604 (effect of restatements and continuations of statutes), 9607 (effect of repeal of repealing statute), 9609 (effect of amending section of repealed statute), 9611 (effect of temporary suspensions or repeals of law).

<sup>12</sup> *See Ingredient Communications Council, Inc. v. Lungren*, 2 Cal. App. 4th 1480, 1492, 4 Cal. Rptr. 2d 216, 224 (3d Dist. 1992), *rev. denied* (April 23, 1992).

## Looking to the Words Used (the “Plain Meaning” Rule)

A basic rule of statutory construction is called the “plain meaning rule,” which means giving words their ordinary meaning. The Code of Civil Procedure actually directs courts to do this exact thing. *See* Cal. Civ. Proc. Code § 1858 (“In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . .”). Words of a statute, even an uncodified statute, are to be given their common and ordinary meanings.<sup>13</sup>

Thus, the threshold inquiry is whether the words of the statute provide the answer. If the statute’s language is clear and unambiguous, the court will not (and should not) engage in further statutory construction analysis. In these situations, the language controls, and the court has nothing to interpret or construe.<sup>14</sup> Oftentimes, the statute itself provides a definition for a term, even if that term is not in the bill. The definition is often in existing law, and a definition that declares what a term means is generally binding on the court.<sup>15</sup>

If the statute is not clear, courts may look to external aids. When the Legislature has not provided statutory definitions for the terms it uses in a statute, the court looks to the words themselves, giving them the usual, ordinary import of the language employed. The dictionary is the obvious starting point for defining a term in a statute.<sup>16</sup> However, courts will decline to follow the plain meaning rule if it would inevitably frustrate the express purpose of the legislation or lead to absurd results.<sup>17</sup> Thus, when analyzing a statute, it can be helpful to point out ambiguous language.

The goals of a statute can be important in resolving disputes over meaning. The preamble to a bill frequently consists of statements, sometimes uncodified, of legislative intent. These are sometimes called “legislative findings and declarations.” This language may be useful in discovering the intent of the Legislature in the event that the language of the text is called into doubt. From an analyst’s standpoint, it is important to read this section of the bill carefully. A court may look to findings as a justification for an expansive view of the statute.

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<sup>13</sup> *See Rancho Bernardo Development Co. v. Superior Court*, 2 Cal. App. 4th 358, 363, 2 Cal. Rptr. 2d 878, 880 (4th Dist. 1971), *reh’g denied* (Jan. 28, 1992).

<sup>14</sup> *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1238, 8 Cal. Rptr. 2d 298 (4th Dist. 1992), *rev. denied* (Aug. 27, 1992).

<sup>15</sup> *U.S. v. Smith*, 155 F.3d 1051 (9th Cir. 1998), *cert. denied*, 119 S. Ct. 804, 142 L. Ed. 2d 664 (U.S. 1999).

<sup>16</sup> *See People v. Siravo*, 17 Cal. App. 4th 555, 560, 21 Cal. Rptr. 2d 350, 352 (2d Dist. July 27, 1993), *rev. denied* (Oct. 21, 1993). *See also City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331, 1339, 1340, 18 Cal. Rptr. 2d 478, 481, 482 (1st Dist. 1993) (noting words of a statute must be given their ordinary meaning and looking initially to a dictionary for that meaning).

<sup>17</sup> *See, e.g., City of Sanger v. Superior Court*, 8 Cal. App. 4th 444, 448, 10 Cal. Rptr.2d 436 (1st Dist. 1992), *rev. denied* (Oct. 16, 1992).

## The Role of Legislative History

Another element of the lawmaking process is legislative history. Courts sometimes turn to the legislative history of the bill when they interpret statutes. The Code of Civil Procedure also provides guidance in this area. *See* Cal. Civ. Proc. Code § 1859 (“In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible . . .”).

### Why is Legislative History Important to Legislative Analysts and Advocates?

Legislative history is important to legislative advocates as a bill goes through the process. By influencing the legislative history of a bill, an advocate can make a bill less objectionable or more beneficial to cities. Since courts will consult legislative history when the language of a bill is unclear, advocates who shape legislative history shape the law. It is also important, as a defensive matter, to be alert to other advocates’ efforts to achieve outcomes through legislative history that they cannot achieve more directly through express legislative language.

### What is Legislative History?

Legislative history can be many things collected from the process of a bill’s life.

Traditional sources of legislative history are:

- All versions of a bill
- Procedural history of a bill
- A committee or floor analysis of a bill
- Legislative Analyst’s analysis of a bill

### *The Legislature’s Voice as Legislative History*

Courts are reluctant to consider a statement from an individual legislator as legislative history since the statement of one legislator is not considered to be the collective intent of the Legislature.<sup>18</sup> This general rule applies to both the author of a bill as well as any individual legislator(s) who voted for the bill.<sup>19</sup> The only exception to this rule is when the statement of an individual legislator: 1) gives some indication of arguments made to the Legislature, and 2) was printed on motion of the Legislature as a “letter of legislative intent.”<sup>20</sup>

Such printing of a letter of legislative intent is usually published in the “journal” of the Senate or the Assembly. The journal is the official record of the proceedings of the respective house.

<sup>18</sup> *See Quintano v. Mercury Casualty Co.*, 11 Cal. 4th 1049, 1062, 48 Cal. Rptr. 2d 1 (1995).

<sup>19</sup> *See Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383, 402, fn. 11, 20 Cal. Rptr. 2d 164 (4th Dist. 1993) (Letter from individual senator to the Senate Journal is not legislative history).

<sup>20</sup> *See California Teachers Assn. v. San Diego Community College Dist.*, 28 Cal. 3d 692, 700, 170 Cal. Rptr. 817, 721 (1981).

During the legislative session, the journal is published in pamphlet form but is eventually indexed and bound into a final version. If both houses of the Legislature authorize a letter to be published in the journals that explains the author's intent in proposing a piece of legislation, the courts are more likely to view this type of letter as expressing legislative intent.<sup>21</sup>

While courts may consider the publication of a letter of intent if it is published in only one journal, it is more likely to consider the letter if both houses have the letter printed in the journal. Additionally, courts are more likely to consider these letters to be legislative intent if they convey “more than merely a personal view of the proponent of the bill.”<sup>22</sup>

### *The Role of Correspondence From Interests Outside the Legislature*

Correspondence from lobbyists and others interested in the passage or defeat of a bill may be considered a part of a bill's legislative history. One goal of a legislative advocate may be to endeavor to have the interested parties speak with one voice. At least one court has recognized that several letters written about a bill that all explain the intent of the bill in a similar manner lends more credence to the proponents' argument than a single letter ordinarily would.<sup>23</sup> Another lesson from the courts is that there truly may be strength in numbers and that persuading cities and divisions to weigh in on legislation can pay off.<sup>24</sup>

Courts have been reluctant to consider correspondence within the governor's bill file if the correspondence does not represent the intent of the Legislature.<sup>25</sup> However, this does mean that the courts will never consider such correspondence as a part of a bill's legislative history.<sup>26</sup>

Similarly, the courts have not given much weight to post-enactment attempts at creating legislative history, such as statements made by public officials stating what they understood to be the legislative intent of a measure.<sup>27</sup>

*Practice Tip: An advocate submitting an analysis of a bill to a legislator and/or committee consultant should endeavor to have their analysis included in the committee's analysis. A court may view a letter to the individual legislator with skepticism as legislative history, but if a committee consultant includes a portion of the letter in their analysis of the bill it can become a*

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<sup>21</sup> See *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383, 402, 20 Cal. Rptr. 2d 164 (4th Dist. 1993).

<sup>22</sup> See *Roberts v. City of Palmdale*, 5 Cal. App. 4th 363, 377, 20 Cal. Rptr. 2d 330 (1993).

<sup>23</sup> See *Id.* at 378 (stating that letters from the Senate and Assembly as well as from proponents of the bill outside the Legislature have “remarkable unanimity”).

<sup>24</sup> See *Wilson v. City of Laguna Beach*, 6 Cal. App. 4th 543, 555, fn. 13, 7 Cal. Rptr. 2d 848 (4th Dist. 1992) (noting that local governments opposed a bill regarding “granny flats” and citing letters from the League's Orange County and Peninsula Divisions and five cities).

<sup>25</sup> *People v. Stepney*, 120 Cal. App. 3d 1016, 1020, fn. 4, 175 Cal. Rptr. 102 (1st Dist. June 26, 1981).

<sup>26</sup> See *Bickel v. City of Piedmont*, 16 Cal. 4th 1040, 1051, 68 Cal. Rptr. 2d 758 (1997) (California Supreme Court noted that court of appeal discussed a letter from the League of California Cities to the governor's office).

<sup>27</sup> See *Honey Springs Homeowners Association, Inc. v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1137-1138, 203 Cal. Rptr. 886 (4th Dist. June 29, 1984) (finding that few materials of legislative intent offered did in fact show the intent of the entire Legislature).



*part of the legislative history. These analyses are considered legislative history because they provide an indication of how the legislators understood the measure when they voted on it. See Hutnick v. United States Fidelity & Guaranty Co., 47 Cal. 3d 456, 465 fn. 7, 253 Cal. Rptr. 236 (1988).*

### *Where to Find Legislative History*

Legislative history is not always easy to find. One starting point, for relatively recent legislation (dating back to the 1993-1994 legislative session) is the State Senate's web site ([www.sen.ca.gov](http://www.sen.ca.gov)). The text of all versions of the bill, committee and floor analyses and the voting history are all available online. However, letters to the legislature and governor and other information contained in the committee's bill files are not available online. To locate information that is not currently available online, consult the State Archives through the Secretary of State's Office.<sup>28</sup> Additionally, several private companies assemble legislative history.

### *The Use of Legislation That Does Not Pass as Legislative History*

Generally, bills that do not pass do not become a part of another statute's legislative history.<sup>29</sup> This does not mean, though, that courts never evaluate bills that were not enacted. In one case, the court stated that failed legislation suggested that the Legislature was aware of an alternative to the problem the parties in the case faced over a statutory fee authorized for executors but declined to support it.<sup>30</sup> The implication of this is that it may be hazardous to introduce a bill to resolve an ambiguity in the law if the bill fails. Legislative advocates and city officials should weigh this consideration in deciding whether to introduce a bill to clarify a perceived ambiguity in the law.

### *Despite Some Judicial Reluctance, Creating Legislative History Can be Useful*

Some judges are reluctant to give too much weight to the use of legislative history.<sup>31</sup> A judge(s) sensitive to the fact that legislative history is corollary to a bill's passage through the legislative process and is not approved or rejected by the governor may be skeptical about the use of legislative history.

*Practice Tip: Despite some courts' reluctance to rely on, or even consider, legislative history, many advocates attempt to "create" legislative history, especially when attempts to amend or*

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<sup>28</sup> For further information about the State Archives, please see [http://www.ss.ca.gov/archives/archives\\_about.htm](http://www.ss.ca.gov/archives/archives_about.htm).

<sup>29</sup> See *Miles v. Workers' Compensation Appeals Bd.*, 67 Cal. App. 3d 243, 248, 136 Cal.Rptr. 508 (3d Dist. 1977).

<sup>30</sup> See *Estate of Getty v. Trust Services of America*, 143 Cal. App. 3d 455, 465, 191 Cal. Rptr. 897, 903 (2d Dist. 1983).

<sup>31</sup> See *Conroy v. Aniskoff*, 507 U.S. 511, 519, 113 S. Ct. 1562, 1567 (1993) (Scalia, J., concurring) ("legislative history [is] the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends.")

*clarify a bill's language have not been successful. Since courts sometimes rely on legislative history when statutory language is ambiguous, this practice should not be overlooked.*

## **Special Issues Relating to Cities**

It is important to understand the existing state of the law when analyzing an effort to change the law. For city issues, *The California Municipal Law Handbook*, a League publication, provides a good starting point for background information and relevant statutes and case law. Additionally, reading the code sections in the general area of the statute to be amended can provide context for understanding what the effect of the proposed change might be. This can be especially helpful if the bill amends just one small code section or does not contain definitions of essential terms.

### **Does the Bill Apply to Cities?**

Many bills explicitly state that they apply to local agencies. Other times, a bill's implications to local agencies is implicit. For example, crime bills are enforced by county district attorneys even though each bill does not explicitly state this.

Occasionally, though, a new law is enacted where its application to cities is just not clear. For example, a bill that covers "corporations" may appear to apply to the private sector, but the author may think it covers cities as "municipal corporations" as well.

*Practice Tip: Watch for bills that apply to "employers," "persons," or "corporations" and try to determine if the bill will apply to cities. Sometimes the bill will say that the use of a certain term is given the same meaning as that in a cross-referenced statute; read that statute to determine if the bill applies to cities. Other times, a bill may define what the term means. Or, a definition may be provided in existing law but not cross-referenced in the bill. In these instances, look to code sections preceding the statute to be amended for a definition section.*

*If a definition is not provided in existing law or in the statute, it may be helpful to insert a definition or a cross-reference into the bill to clarify the bill's application to cities. If express clarification is not feasible or strategic, it may be necessary to employ more subtle means (such as providing a contemporaneous letter to the Senate or Assembly Journal or endeavoring to get specific language or arguments included in a committee consultant's analysis of the bill.*

## The Preemptive Power of the State

The California Constitution grants certain powers to cities while limiting the Legislature's ability to interfere with local actions in certain ways. The key source of city power and local control is known as the "police power." *See* Cal. Const. art. XI, § 7. This police power is cities' regulatory authority and extends to issues such as building safety, land use decisions and public safety issues.

While cities have this police power, cities may not enact laws that conflict with state law. In areas where the state has spoken, cities are preempted from taking action to address a local issue because state law preempted local authority. In many situations when the Legislature crafts a statewide, one-size-fits-all solution to a perceived problem, the legislation hamstringing local attempts to create a solution that meets an individual city's unique needs. Sometimes a bill specifically states that it preempts local authority. Other times preemption is achieved more subtly. This preemptive power of the state is the key reason why legislative advocates and city officials need to carefully watch bills that have the potential to affect cities even though the bill's language may not expressly apply to cities.

### Application to Charter Cities

A question that frequently arises in legislative analysis for cities is whether the bill affects charter cities. Charter cities have the ability to govern "municipal affairs" even in the face of conflicting state law.<sup>32</sup> This is why a bill that applies to charter cities should immediately raise red flags in the eyes of legislative advocates and city officials.

Understanding the powers of charter cities requires an understanding of charter cities' powers to regulate "municipal affairs." Neither statute nor the constitution defines a "municipal affair," although there are arguably four "core" categories of municipal affairs. These four core areas are: 1) regulation of the city's police force; 2) subgovernment in all or part of a city; 3) city elections; and 4) the election, appointment, compensation, and removal of municipal officers and employees.<sup>33</sup> Typically, issues relating to local elections, public contracting, city police regulations and personnel management are municipal affairs within a charter city's authority.<sup>34</sup> However, the California Supreme Court has opined that the concept of municipal affairs is not fixed and can change.<sup>35</sup>

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<sup>32</sup> Cal. Const. art. XI, § 5 (a).

<sup>33</sup> Cal. Const. art. XI, § 5 (b).

<sup>34</sup> *See generally Mackey v. Thiel*, 262 Cal. App. 2d 362, 68 Cal. Rptr. 717 (1968); *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 110 Cal. Rptr. 67 (1973); *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 152 Cal. Rptr. 903 (1979).

<sup>35</sup> *See Pacific Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal. 2d 766, 771, (1959).

Courts step in to resolve conflicts between a state law and a charter city's law. One of the considerations is whether the matter in state law is a matter of statewide concern.<sup>36</sup> Sometimes, the Legislature makes its intent clear and declares a matter to be of statewide concern in the bill even when it involves a traditional home rule power. For example, the legislature stated that the rights and protections afforded to peace officers by the "Police Officers' Bill of Rights" was a matter of statewide concern even though charter cities can regulate their police force.<sup>37</sup>

*Practice Tip: Look for the words "matter of statewide concern" as an attempt of the state to subvert the home rule powers of charter cities, especially since the California Supreme Court has stated that doubt should be resolved in favor of the state's legislative authority.*<sup>38</sup>

Another consideration is whether the state law impinges on a traditional home rule function of charter cities<sup>39</sup> and whether the regulated matter is "strictly" a municipal affair.<sup>40</sup> Moreover, courts will uphold a charter city enactment when there is an insufficient connection between the state's policy goals and the legislation enacted.<sup>41</sup>

## **Mandatory Duties Created by Statute**

A statute that requires a city to protect against a particular risk of injury creates a mandatory duty.<sup>42</sup> For example, state legislation may require public agencies to ensure that its contractors have adequate workers' compensation insurance. See Cal. Lab. Code § 3800. Mandatory duty liability is significant to public agencies because it allows a third party to sue an agency for not performing the duty and to collect money damages. Under a theory of mandatory duty, a city can be held liable for a third party's injury that was legally caused by the city's failure to protect

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<sup>36</sup> See *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61, 81 Cal. Rptr. 465 (1969) ("[a]s to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters . . .").

<sup>37</sup> See *Baggett v. Gates*, 32 Cal. 3d 128, 185 Cal. Rptr. 232 (1982) (holding that the police officers' bill of rights act could be applied to charter cities).

<sup>38</sup> *Abbott v. City of Los Angeles*, 53 Cal. 2d 674, 681, 3 Cal. Rptr. 158 (1960).

<sup>39</sup> *Baggett v. Gates*, 32 Cal. 3d 128, 137, 185 Cal. Rptr. 232 (1982) (stating that the bill of rights act impinges "only minimally" on the compensation of employees home rule power set forth in the state constitution); see also *Professional Fire Fighters Inc., v. City of Los Angeles*, 60 Cal.2d 276, 295, 32 Cal. Rptr. 830 (1963) (general laws seeking to accomplish a goal of statewide concern may prevail over conflicting local regulations even if they impinge, to a limited extent, upon some aspect of local control).

<sup>40</sup> See *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 315-316, 152 Cal. Rptr. 903 (1979) (stating that what constitutes a strictly municipal affair is often a difficult question and is ultimately an issue for the courts to determine).

<sup>41</sup> See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992) (finding an insufficient relationship between a ban on public financing for local elections and the state interest in election integrity).

<sup>42</sup> The statute reads: "Where a public entity is under a mandatory duty imposed by an enactment imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Cal. Gov't Code § 815.6.

against the risk of that injury. A city can establish a successful defense by demonstrating that it exercised reasonable diligence to discharge the duty.<sup>43</sup>

It is not always easy to figure out if a statute imposes a mandatory duty. The usual starting point is looking to whether the statute uses the word “shall” or “may.” The use of the word “shall” typically indicates that the legislation imposes a mandate, while “may” indicates that the legislated action is permissive. However, that rule is tempered by the competing rule that context can otherwise require a different interpretation of “shall” and “may.”<sup>44</sup>

Another way to analyze whether a statute imposes a mandatory duty is to read the bill in a larger context. The courts have been instructive in this area and have stated that both the words in the statute and statutes themselves should be harmonized internally and with each other.<sup>45</sup> One of the dangers of reading a bill “in isolation,” is neglecting to recognize that the bill may impose a mandatory duty when read with existing statutes.

A court may find a mandatory duty when none seems facially apparent, such as by reading a statute in context rather than just on its face.<sup>46</sup> Or, a court may look to a more specific statute to resolve an ambiguity and thus impose a mandatory duty on a city. If a general provision and a specific provision, when read together, appear to conflict, a court must step in. To resolve this dilemma, the rules of statutory construction require the court to look to the more specific statute.<sup>47</sup>

*Practice Tip: To insulate cities from potential liability created by a mandatory duty, think about adding a finding of legislative intent to the bill. The legislative intent could include a statement that the Legislature finds the bill’s components (whatever they may be) to be in the public’s interest and beneficial for public agencies, but in enacting the statute the Legislature does not intend to create a private cause of action for damages.*

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<sup>43</sup> See *Becerra v. County of Santa Cruz*, 68 Cal. App. 4th 1450, 1458, 81 Cal. Rptr. 2d 165 (1998) (setting forth the three part test for mandatory liability).

<sup>44</sup> See *Roseville Community Hospital v. State of California*, 74 Cal. App. 3d 583, 587-588, fn. 4, 141 Cal. Rptr. 593 (1977).

<sup>45</sup> See *Alford v. Department of Motor Vehicles*, 79 Cal. App. 4th 560, 565-566, 94 Cal. Rptr. 2d 222 (2000).

<sup>46</sup> See *Rankin v. City of Murrieta*, 84 Cal. App. 4th 605, 101 Cal. Rptr. 2d 48 (4th Dist. Oct. 31, 2000) (concluding that a city had a mandatory duty to investigate the status of a surety’s solvency prior to accepting payment bond; even though the statute did not explicitly impose a mandatory duty, three separate statutes should be read together; thus creating a mandatory duty read in context).

<sup>47</sup> See *San Francisco Taxpayers Assn. v. Board of Supervisors*, 2 Cal. 4th 571, 577, 7 Cal. Rptr. 2d 245, 248-249 (1992) (“A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.”).

## Conclusion

Knowing and recognizing some of the tips and pitfalls of reading and analyzing bills can prevent headaches down the line. A well-drafted and well-thought-out bill creates a similarly well-drafted-and-crafted statute that lends itself to easy interpretation by the public and the courts.

*The League welcomes city officials' comments and suggestions on this as well as all League publications. Please address comments to JoAnne Speers, General Counsel, League of California Cities, 1400 K Street, Fourth Floor, Sacramento, CA 95814. JoAnne can be reached at 916/658-8233; [speersj@cacities.org](mailto:speersj@cacities.org).*

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