

(10) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

Section 24. Amend § 5316(c)(10), Title 25, Delaware Code, by making insertions as shown by underlining as follows:

(10) The landlord, after being given notice of the tenant's victimization per § 5141(6) or ~~(26)~~(27) of this title, discontinues those actions prohibited by subsection (a) of this section, above.

Section 25. Amend § 5953, Title 29, Delaware Code, by making insertions as shown by underlining as follows:

No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or be in any way favored or discriminated against with respect to employment in the classified service because of political or religious opinions or affiliations, sexual orientation, gender identity, sex or race.

Section 26. Amend § 6962(d)(7)a., Title 29, Delaware Code, by making insertions as shown by underlining as follows:

a. As a condition of the awarding of any contract for public works financed in whole or in part by state appropriation, such contracts shall include the following provisions:

"During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, gender identity or national origin."

Section 27. The inclusion in this Act of the words “gender identity” is intended to ensure equal rights and not to endorse or confer legislative approval of any unlawful conduct.

Section 28. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 29. This Act may be referred to as the “Gender Identity Nondiscrimination Act of 2013”.

The Hard Truth of Writing Laws

Writing laws demands technical and legal skills that are extremely difficult to learn while juggling all the other demands lawmakers face.

By Lee Hamilton

When Congress hurriedly passed its first multi-billion dollar relief bill in the wake of Hurricane Katrina, only a handful of legislators were actually present. The measure was written by a few people, almost certainly not members of Congress themselves, and then passed by “unanimous consent.” Most of our elected representatives were not even in Washington.

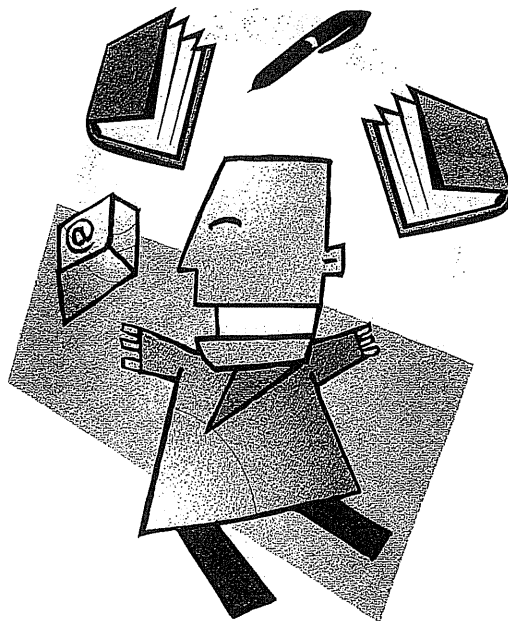
Knowing this, you might be tempted to think of it as yet one more example of how little input the rank and file enjoy on Capitol Hill these days. My own thoughts, however, run in a different direction: I’m impressed that they got it done so quickly.

NOT AS SIMPLE AS WE THINK

If you’re like most people, you probably imagine that when your representative has an idea for a new law, he or she sits down, writes it up—maybe using some legalese here or there—and sends it off for consideration. If only it were that easy.

In truth, drafting legislation is an immensely complex task with which most members of Congress—I hope this won’t shock you—feel uncomfortable. This is because it demands technical and legal skills that are extremely difficult to learn while juggling all the other demands that members face.

To begin with, the entire bill must relate to the appropriate section of the U.S. Code. Then, since it almost always affects existing law in some way, it must address the particulars of each law it will change, which means that every addition, change or deletion in existing law must be spelled out in detail. And all this must be done in specific language with legislative terms of art that have evolved over the past two centuries of American law-making. So entire offices in the



House and Senate are filled with highly expert legislative drafters. It’s no surprise that legislative aides who are adept at bill-writing are highly prized on Capitol Hill, or that mistakes creep into hastily drafted legislation and produce consequences that no one intended.

NOW FOR THE HARD PART

Yet the technical aspects of writing legislation are only the beginning of the challenges it presents. Congress is not like an operating room, or a “clean room” at a semiconductor plant, where all outside influences are shut out. If anything, it’s just the opposite. It feels sometimes like a seething cauldron of egos, home-state concerns, grand designs, political strategies, and elbow-jabbing interests. And all of them are focused on one thing: the specific language that goes into the bills that affect them.

This makes sense, of course. Billions of dollars and matters of high principle rest on the placement of a comma, the use of “and”

vs. “or,” the precise description of a geographic area, the inclusion or absence of a crop, a business or a group of people. Legislators know that lobbyists, constituents, the White House and their colleagues are all looking over their shoulder at the language that goes into a bill. This is, after all, where the rubber meets the road, where all the lofty rhetoric and fine ideals get translated into concrete action.

This is why writing legislation can often be excruciatingly difficult and take a long time. Politics is the art of the possible—and of building a majority—and when verbal agreements or unspoken understandings suddenly take shape on the page, many issues and divisions that before might have seemed manageable take on a reality that demands attention. Words matter, and how they are used can make a huge difference.

Judges and bureaucrats often complain about fuzzily written laws that leave a lot of room for interpretation, but that is frequently the price of getting a bill passed; the vaguer the language, the more likely it is to garner the votes it needs. There is a cost to this, of course: the less clarity in legislation, the less clarity in the law, which in turn gives judges and bureaucrats greater leeway to interpret the law.

Yet legislation is how Congress addresses the most difficult public policy issues of the day. For every knotty problem—every funding decision, every intractable social problem, every political controversy or economic dilemma—someone has to translate human thought into painstaking language that, ideally, produces a solution.

Every once in a while, as it demonstrated by its immediate response to Katrina, Congress can do this quickly. But we shouldn’t be surprised if, for the most part, it demands extraordinary skill on the part of someone far removed from the public arena, and asks for our time and patience as well.

Lee Hamilton is director of the Center on Congress at Indiana University. He was a member of the U.S. House of Representatives for 34 years.

How to Create a Great Bill Draft

Follow these suggestions and get the bill you want.

By Bruce Feustel



The public often hears about Senator Smith or Representative Rogers authoring a bill, but the days of legislators writing their own bills are long gone. State legislatures employ professional bill drafters to mold a legislator's idea into a clear, concise, well-organized and legally correct bill draft. These drafters are usually attorneys and they have intimate knowledge of the state's statutes and bill drafting procedures. The legislator, however, doesn't get off scot-free in this process. In order to get the best bill possible, the lawmaker must follow these principles:

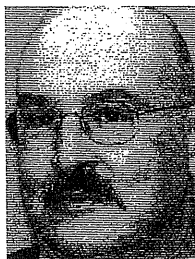
1

THINK PROBLEM AND SOLUTION.

A legislator shouldn't spend time at the beginning worrying about potential bill language. Leave the wordsmithing to the drafter. According to Gordon Malaise, senior attorney with Wisconsin's Legislative Reference Bureau, "a good drafting request consists of two components:

The problem—describe the problem in society or current law that you are trying to solve, together with examples, background materials, and people to contact for more information.

Bruce Feustel is NCSL's expert on legislative staff work. He is a former Wisconsin bill drafter.



GORDON MALAISE
REFERENCE BUREAU
WISCONSIN

The solution—tell how you want to solve the problem."

2

RESPECT AND BUILD THE RELATIONSHIP.

Former Idaho Representative Doug Jones notes that when he worked with experienced bill drafters, they provided a wealth of information. "They are trained to keep their opinions to themselves, but a legislator should ask for as much help as possible. Experienced drafters can tell you what previous legislatures have done with your topic. Most important, they can tell you where the pitfalls are in your legislation." He urges lawmakers to respect and take advantage of the drafters' expertise.

Iowa's Legal Services Division Director Richard Johnson advises legislators to "be prepared to work with the drafter in answering the questions that arise in the drafting process." Typical questions involve deciding



RICHARD JOHNSON
LEGAL SERVICES
IOWA

who should administer a new law and what the consequences for violating the law should be. The more patience the legislator shows in working through these questions, the better the final work product.

3

SHARE YOUR STRATEGY.

Senator Leticia Van de Putte of Texas, NCSL president elect, counsels lawmakers to share their political strategy with bill draft-



SENATOR
LETICIA VAN DE PUTTE
TEXAS

ing staff, who work on a confidential basis.

"There are three main reasons why a legislator carries a bill—you're actually trying to change the policy, you're trying to raise awareness about an issue, or you're creating a decoy or trading block. That can affect how prescriptive and specific you make the language in the bill. We must be personally clear about the bill's purpose and should share that objective with the bill drafter." The political strategy affects what you want to put in your bill and the drafter can help you best if he or she is fully informed.

4

WORK THROUGH EXAMPLES.

Former Colorado House Minority Leader Peggy Kerns says a common problem is that a legislator often starts the bill drafting process with only a vague idea in mind. "I felt that I had to know clearly what I wanted to accomplish, a need to get 'concrete' to some extent before submitting the request."

It may help to talk through some possible real life situations with the bill drafter, according to Emily Berquist, a tax law drafter



EMILY BERQUIST
LEGISLATIVE COUNCIL
VERMONT

in Vermont. She advises legislators to “ask your drafter to go through specific examples with you on how your bill would work, so you will be less likely to be surprised by the consequences of your bill on the floor.” Bills often get revised as a result of this “specific example” discussion process between the legislator and the drafter. Jones feels that this is normal—you can’t always get a full picture of a bill draft at the start. A legislator may need to look at a rough draft and talk through some of the issues to crystallize his thinking about the bill.

5

AVOID DEADLINE RUSHES.

Many states have deadlines for bill drafting requests. Waiting until the last minute only ensures that the drafter will be forced to write the bill in a hurry, not having the time to give the careful consideration to all the nuances and ripple effects connected to the legislation. You get better quality when you get your request in early. You shouldn’t rely on subsequent amendments to fix your bill’s



PAM RAY
LEGISLATIVE COUNCIL
NEW MEXICO

shortcomings, according to Kerns. “The better shape the bill is in when introduced, the better its chances.”

6

UNDERSTAND MODEL BILL LIMITATIONS.

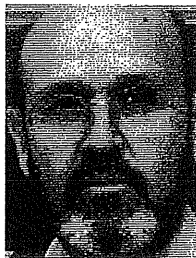
Drafters often cringe when a legislator submits a draft and says, “Just draft me up this model legislation. You won’t need to change a word.” New Mexico Staff Attorney Pam Ray cautions that all states have different styles and procedures and lawmakers need to allow the drafter to put the legisla-

tion in the correct form for the legislator’s state and to integrate the policy with current law.

7

CONNECT TO THE REAL PARTY IN INTEREST.

All drafters work with legislator bill requesters under some presumption of confidentiality. However, as noted by Gordon Malaise earlier, it helps for the drafter to consult with experts on issues that come up in the drafting process. David Thomas,



DAVID THOMAS
LEGISLATIVE COUNCIL
ARIZONA

deputy director of Arizona’s Legislative Council, notes that this is particularly important when “the legislator is not the real party in interest.” It is very common and appropriate for a lawmaker to act as a facilitator for a bill drafting request that originates with a constituent, organization or lobbyist. It is helpful, however, for the drafter to talk with the person who has intimate knowledge of the problem and intended solution. Legislators still need to stay connected to the draft, as they will have to explain it to their colleagues and the media.

8

QUIETLY CIRCULATE THE DRAFT.

Before introducing the draft, you will want to get feedback from others. In addition to reviewing pertinent fiscal note information, you may want to show the draft to a few trusted colleagues. The drafter and the legislator may not see all of the bill’s ramifications, especially the unintended consequences. Former Representative Kerns calls this stage a “quiet circulation” of the bill to get people you trust to review it, people who will respect confidentiality. Sometimes you and the drafter are so focused on certain parts of the bill that fresh eyes and different perspectives are needed. The key is to identify the pitfalls and probable opponents before the bill is introduced.

9

HAVE IT YOUR WAY.

Texas Senator Jeff Wentworth advises legislators to “read and insist” when developing legislation. “You need to listen to the drafter’s suggestions, to be open to good ideas, but you are the one who decides what



**SENATOR
JEFF WENTWORTH**
TEXAS

policy is in a bill. It helps if you have a lawyer on your own staff to work through some of the issues that come up.” Legislators should be persistent in making sure that the bill does what they want it to do, which sometimes means going through multiple redrafts with the drafter.

FINAL THOUGHTS

Legislators are busy people. You don’t have hours to spend polishing each of your bill drafts. Use the talents of the legislative bill drafters. Leave the writing to the professionals, but review the work closely. And don’t introduce the bill until you fully understand it and can explain to colleagues, constituents and the media.

SOME ADDITIONAL TIPS FOR LEGISLATORS

- ◆ Develop a checklist for submitting requests and reviewing drafts.
- ◆ Closely check your bill’s subject or relating clause.
- ◆ Be clear about the costs and benefits of your bill. You will need to be able to explain it to your colleagues in a clear and concise manner.
- ◆ Honestly assess whether the bill can be feasibly administered. You may want to allow the administering agency to review the bill before you introduce it.
- ◆ Pay close attention to the penalties or consequences in your bill.
- ◆ Invite the drafter to sit in on some of the initial brainstorming sessions when you gather stakeholders together to work on a complicated bill.