



Legislative History: The Intent Behind the Action

by Cheryl L. Jackson

Background

Why did they choose that wording?

Was it modeled after the Maryland statute, which was upheld last month?

Did they intend for it to cover a situation like this?

Many judges, attorneys and researchers ponder these and other questions when interpreting a statute. They hope to understand the intent of the statute by reviewing its legislative history. The term “legislative history” has two meanings. One definition is the process by which a bill advances through the legislature, and includes the recorded votes, amendments offered and other bill tracking information. The term, however, can also mean legislative intent—what was the intent of a particular piece of legislation and why did lawmakers choose the specific language that appears in the statute? For purposes of this article, legislative history will be synonymous with intent.

Most legal researchers are familiar with legislative history as it is recorded on the congressional level. Explanatory committee reports accompany bills, testimony is noted, and floor comments are entered into and become part of the official record. The majority of states, though, do not keep such thorough history. In fact, in a recent survey, only 11 states reported that a legislative history is prepared for bills.¹ Some of those histories are quite complete, including tapes or written transcripts of committee and/or floor questions and debates, in-depth staff explanations of the bill’s purpose, and complete records of public hearing testimony. However, even in states that do not identify themselves as actively preparing legislative history, some documentation generally exists to provide even a glimmer of intent to the persistent researcher. More often than not, the state has some sort of bill file, which may contain fiscal notes, a bill request form, or some other type of explanatory correspondence or analysis.

Virginia legislative history

Virginia falls into this last category—we do not keep official legislative history. We do not have transcripts of floor debates or committee discussions about a bill, nor are standing committee reports issued which explain or state the purpose for proposals. The intent of the General Assembly in passing a bill is generally not recorded, but if it is, it is printed on the face of the bill and referenced in the *Code of Virginia*.

Researchers can, nonetheless, attempt to glean the legislative intent of particular pieces of legislation in the following ways:

- I. Check for legislative studies on the topic
- II. Request the legislative draft file of the bill
- III. Consult other sources, such as videotapes of floor proceedings, fiscal impact statements, newspaper interviews, etc.

The thorough researcher will naturally want to consult with a law librarian before embarking upon any legislative history research to help clarify the search focus and to discuss searching techniques.

I. Legislative studies

Specially appointed subcommittees, permanent commissions, or state agencies can be charged with studying particular issues and reporting the findings and recommendations to the General Assembly and the Governor. The authority for these studies comes through either a House or Senate Joint Resolution (e.g., HJR 174, 1998), and the resulting report is issued in the form of a House of Senate Document (e.g., HD 68, 1999).

There are at least four options available to the researcher to determine whether or not a study exists on a certain topic. First, a searchable database is available through the Legislative Information System on the World Wide Web.² The second option is the Topical Studies index,³ in which studies are arranged by subject and year of publication. Third, the annual Final Cumulative Index⁴ lists each document reported to the General Assembly. Finally, many law libraries throughout the state include the individual studies as part of their collection, and catalog them accordingly.

II. Legislative draft files

The Division of Legislative Services' (DLS) staff creates a legislative draft (LD) file when the request to draft a bill is received. The file may contain the following:

- Final draft of the bill
- Copies showing substantive drafting changes
- Request to draft the bill
- Correspondence between DLS staff and the requester
- Background information or material that explains the proposal

Although some files can be replete with background or explanatory information, it is important to note that more often than not, the file contains only the bill draft and editing copies.

Release of LD files:

There are a couple of caveats regarding release of the LD files, which are governed by § 30-28.18 of the *Code of Virginia*.

1. All files created prior to 1989 are confidential and can only be released with permission of the chief patron.⁵ If he or she is deceased, then the file is closed.
2. Files from 1989 to the present are open to the public if the bill was enacted into law, on its effective date. Legislative draft files for failed bills can only be released as noted above.

Requesting a Legislative Draft file:

The Legislative Reference Center⁶ is the proper entity from which to request access to an LD file. To do so, a researcher needs to know the bill number (or chapter of the Acts of Assembly) and year of the legislation. Keep in mind that the LD files are created for *specific bills*; there is no legislative history for entire Code sections.

The amount of research that must be done prior to requesting the LD file depends on the amount of information the researcher is starting with:

- Search the *Code of Virginia* to determine the relevant code section⁷ (e.g., § 55-331)
- Locate the parenthetical reference at the end of the section, which provides a "map" to the amendments to that section.

(Code 1950, § 8-906; 1952, c. 658, 1968, c. 251; 1977, c. 624)

Thus, the section cited in the above example existed as § 8-906 prior to the most recent codification of the Virginia Code (in 1950), was amended in 1952 by chapter 658 of the *Acts of Assembly*, etc.

- Backtrack through each Act listed in the parenthetical reference until the wording that is being researched appears in *italics*, signifying language that was added. Conversely, language that appears as ~~stricken through~~ was deleted.
- Locate the bill number in brackets at the top right, underneath the title of the Act (e.g., [H1408]).
- Contact the Legislative Reference Center with the information about the bill.

Reference Center staff will examine the file to determine if it contains any background notes, memoranda, correspondence, or any other material that would provide even a hint of original intent. A written request may be required, and five (5) working days should be allowed for a response. Files that are confidential and require permission before releasing may take up to a month's turnaround time.

III. Other sources

Other means of discovering background information about a bill or code section include:

- Viewing videotapes of proceedings on the House and Senate floor, which may be available through the appropriate clerk's office. Before requesting, it is necessary to know the dates on which the bill was debated, which can be found in the House and Senate journals, or through the Legislative Information System on the World Wide Web.
- Reviewing the Fiscal Impact Statement, if applicable. These statements are prepared by the Department of Planning and Budget or another state agency, and contain a summary of the legislation, the anticipated cost to the state, and other pertinent information. They are available through the Legislative Reference Center or appropriate clerk's office.
- Checking the House and Senate journals on the chance, rare though it may be, that a member has submitted a statement about a bill to be included in the permanent record. This is a fairly new trend and happens no more than a handful of times per session.
- Looking in the major Virginia newspapers for articles which may have been written explaining the proposal during the General Assembly session (January–March).
- Searching for Attorney General opinions on the topic.
- Researching Virginia law review articles on point.

Conclusion

As is the case with many other states, legislative history in Virginia is elusive. Although the General Assembly prepares nothing official, however, there are still quite a few options available to the persistent researcher to understand legislative intent.

Laws are not envisioned or made in a vacuum. The keys to unlock the reasoning behind them may lie deep, but uncovering them may be well worth the effort. 📖

ENDNOTES

- 1 National Conference of State Legislatures. Legislative Reference Librarians staff section. Legislative Intent Research: A 50-State Guide. 1996.
- 2 Select "Search List of Legislative Studies" at the following site: <http://leg1.state.va.us/lis.htm>
- 3 Commonwealth of Virginia. Division of Legislative Services. Topical Studies by the General Assembly of Virginia During the Period . . . (1970–1986: vol. 1) (1987–1997: vol. 2). Published irregularly. Available on the World Wide Web at: <http://dls.state.va.us/lrc.htm> (select "Publications")
- 4 Commonwealth of Virginia. General Assembly. Final Cumulative Index of Bills, Joint Resolutions, Resolutions, and Documents. Published annually. Available for years 1994–1999 on the World Wide Web at: <http://leg1.state.va.us/lis.htm> (select "Comprehensive index" for applicable year).
- 5 The chief patron of the bill is the legislator who sponsors the bill, signing it and presenting it to the Clerk for introduction. It is his or her name that appears first on the face of the bill. If, however, the chief patron of the bill is not also the person who requested that the legislation be drafted, then permission is needed from both the requester and the chief patron.
- 6 The Legislative Reference Center is part of the Division of Legislative Services, and is located in the General Assembly Building in Richmond. For more information on the Reference Center, call 804/786-3591 or see the following website: <http://dls.state.va.us/lrc.htm>
- 7 Researchers will need to consult the hardcopy volumes of the *Code* for this process, which is available in law and local libraries throughout the Commonwealth. While the *Code* is available via the internet (<http://leg1.state.va.us/000/src.htm>), the online version is unannotated, and therefore, does not contain the parenthetical references.



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