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 drifter. 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.

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.

3. SHARE YOUR STRATEGY.
   Senator Leticia Van de Putte of Texas, NCSE president elect, counsels lawmakers to share their political strategy with bill drafting 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 decry 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 drifter.” The political strategy affects what you want to put in your bill and the drifter 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 drifter, according to Emily Berquist, a tax law drafter.

Bruce Feustel is NCSE’s expert on legislative staff work. He is a former Wisconsin bill drifter.
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 shortcomings, according to Kerns. “The better 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, 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 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

-ảit 위치 the deadline for bill introduction and review dates
- Allow time for thorough drafts, enlightened by appropriate feedback from trusted sources
- When drafting, ensure the bill aligns with the intended policy
- Establish a relationship with the bill drafter to facilitate an open and collaborative process
- Clearly communicate your expectations to the drafter, ensuring a smooth collaboration
- Encourage other lawmakers to review drafts, fostering a collaborative legislative environment