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CONSULTANTS
PETER M. DETWILER
HELEN Y. HO
BRIAN E. WEINBERGER

COMMITTEE ASSISTANT
ELVIA DIAZ

TEL (916) 651-4115
FAX (916) 322-0298
WWW.SEN.CA.GOV/LOGGOV

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TO: Committee Staff Colleagues
FROM: Peter Detwiler
SUBJECT: Say What You Mean, Mean What You Say

Don't confuse *double-jointing* with *contingent enactment*.

As we hurtle towards the end of the session, lobbyists and legislators will tell Committee consultants that they want to amend "double-joining" language into their bills. The proper term is *double-jointing*, but most rookies mistakenly drop the "t." What they really want is contingent enactment. The difference is important, especially at this time of year.

As Senate committee consultants analyze Assembly bills, we find often Legislative Counsel's "conflict letters" in our bill folders. These cryptic messages completely bewildered me in 1982 when I first started writing committee analyses. It took me a while to figure out how to use them. But once you master the mechanical problems of *double-jointing*, you won't be confused by the political problems of *contingent enactment*.

Contingent enactment. Contingent enactment occurs when one bill does not become operative unless another bill takes effect. For example, a new law created by the hypothetical SB 123 will not become operative (even though the bill passes both houses and the governor signs the measure) unless AB 321 also passes and is signed. X happens only if Y also happens. If the bill containing X passes, but someone kills the bill with Y in it, then X never happens.

Contingent enactment language is a political solution to a political problem.

Double-jointing. Double-jointing occurs when two bills amend the same code section, but in different ways, and the Legislature wants both of them to happen. Double-jointing avoids the problem known as "chaptering-out."

Double-jointing is a mechanical solution to a mechanical problem.

Here's how Legislative Counsel described double-jointing nearly 35 years ago:

Double-jointing is requested when there are two or more bills affecting the same section of the law. Such a request is prompted by Section 9605 of the Government Code which provides generally that in the absence of any express provision to the contrary in a bill which is chaptered last, the last (higher) chapter law prevails. Consequently, unless some consideration is made for the earlier chaptered bill, the last chaptered bill will eliminate any changes proposed by the earlier bill.

Sometimes the problem can be resolved by adding a new section to the law rather than by amending a section which is also being amended by the other bill. Also, of course, the later bill could be amended to incorporate all of the changes of the earlier bill and thus save the effect of the earlier bill. For various reasons, including pride of authorship, this may not be desired. So, assuming the changes made by both bills are compatible (that is, neither change is in conflict with the other), both bills can be saved by "double-jointing."

Requests for "double-jointing" are therefore requests for provisions in a bill which would add provisions to the bill that would make effective all of the changes in a section of a code or general law proposed by that bill and one or more other bills, if each bill is chaptered.

Double-jointing, to be effective, must either be in the bill which is last chaptered or that bill must contain a provision expressly indicating that it is the intent of the Legislature that an earlier chaptered bill prevail over the later chaptered bill (see Sec. 9605, Gov. C.). The only way in which it can be certain that double-jointing will be in the bill which is last chaptered is if each of the bills that amends a section of a code or general law contains the double-jointing provision. Thus, where possible, each bill should be double-jointed.

George H. Murphy, Legislative Counsel
Legislative Drafting Manual (1975)

For example. Both AB 338 (Ma, 2009) and AB 1158 (Hayashi, 2009) amend Government Code §65040.2, but in different ways. To protect their respective changes, both the Ma bill and the Hayashi bill contain double-jointing language. Read these bills and you'll see what I mean.

Get professional help. Legislative Counsel's deputies understand the difference between contingent enactment and double-jointing. As you draft amendments for the Assembly bills that are in your Committee, just be sure to use the right term and then let your deputy guide you.

Very little of the craft of Committee work is written down, so much of what we do and how we do it as committee consultants comes from trial and error. In my case, there have been lots of trials and many errors. I circulated the original version of this memo in 1997, revised it in 2000 and 2005, and now seemed like a good time to share the information again.