



MEMORANDUM

To: Honorable Speaker Anthony Rendon; Honorable Senate President Pro Tempore Kevin de León; Honorable Members of the California State Senate and Assembly
From: Proposition 54 Coalition
Date: April 3, 2017
Re: Implementation of Proposition 54

As supporters of Proposition 54, we write to express our concerns with the Legislature’s implementation to date, which could inadvertently result in the invalidation of bills that the Legislature wishes to pass. We urge the Legislature to promptly adopt stronger measures through its Joint Rules in order to prevent delay or disruption of essential governmental functions.

Proposition 54 Requires Transparency

In the November 2016 election, California voters passed Proposition 54, the California Legislature Transparency Act, with more than 65% approval, including majority support in each of California’s counties.

Proposition 54 amended the California Constitution to give voters more transparency regarding the Legislature’s activity. Specifically, under Proposition 54 the Constitution now requires:

- **72-Hour Notice of Legislation.** The Legislature must post each bill online for at least 72 hours before the bill may be passed out of either house (except for emergencies, as specified). (Art. IV, § 8(b)(2).) A house can amend a bill at any time, but the bill as amended must be posted online for 72 hours before passage. If the Legislature does not follow this requirement before voting to pass a bill, that bill would not be constitutionally passed and would not be eligible to become a law.
- **Recordings of Public Meetings.** Any person at a public meeting of the Legislature may record the meeting. Additionally, beginning in 2018 the Legislature must record all public meetings and post the recordings online within 24 hours. (Art. IV, § 7(c).)

These Constitutional provisions are “self-executing” and require no statute or rule to be effective (Art. I, § 26; *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300, 307 [“every constitutional provision is self-executing to this extent, that everything done in violation of it is void.”]). Nonetheless, we encourage the Legislature to adopt rules that will ensure compliance with and successful implementation of these new Constitutional requirements.

Failure to Implement 72-Hour Notice Requirement Could Invalidate Legislation

To avoid the danger of invalidating legislation if the Legislature does not consistently implement the 72-hour notice requirement, we recommend that the Legislature adopt more detailed rules to address this procedure.

Proposition 54 was clear: legislators and the public must have at least 72 hours to review the complete text of a bill, including any amendments, before any floor vote on the bill. The official ballot argument in

favor of Proposition 54 stated that it would “require every bill to be posted online *and* distributed to lawmakers at least 72 hours before each house of the Legislature is permitted to vote on it” (emphasis in original). This is what voters overwhelmingly voted to pass.

Unfortunately, the rules adopted by the Assembly thus far (HR 1) misinterpret this requirement. If applied, the procedures in HR 1 would result in clear violation of the Constitution’s requirements because they do not require 72 hours of notice prior to voting on Assembly bills that have not yet been approved by the Senate. (Rules 46(c), 64, 76, and 77(b)(2).) Meanwhile, recognizing that the practice so far has been to acknowledge a 72-hour waiting period, the Senate rules (SR 4) do not contain an explicit 72-hour notice requirement.

While rules cannot override the Constitution, they can provide for procedural consistency in the Legislature’s actions. Therefore, we recommend that the Legislature’s joint rules (introduced as SCR 21) incorporate provisions for full implementation of the Constitutional 72-hour notice requirements, and we encourage the Assembly and Senate to strike any rules to the contrary from their house rules. For instance, we note that the Office of Legislative Counsel now timestamps each version of a bill when it is published on Leginfo and the Senate Daily File now marks when the 72-hour requirement will be met and a bill can be heard. These are helpful practices to ensure the 72-hour notice requirement can be followed, and we encourage the Legislature to codify this practice.

If the Legislature does not adopt rules consistent with Proposition 54, there is a risk that the Legislature may schedule votes in violation of the Constitution’s 72-hour notice requirements. Any such vote for passage will be invalid, and that bill will be ineligible to become a law. This includes legislation where delay may cause hardship, such as the budget bill. The goal of Proposition 54 is to give voters and legislators transparency, not to inhibit the legislative process; proper implementation can avoid the risk of such disruption.

Each member of the Legislature is constitutionally guaranteed the right to have at least 72 hours to review the final version of any bill prior to a floor vote, regardless of the bill’s house of origin, and your constituents have the same right. We believe the Legislature’s rules should unambiguously reflect that right.

Restriction on Recording of Public Meetings Must Be Limited

Under Proposition 54, the only permissible restrictions on the recording of public meetings are “reasonable rules ... regulating the placement and use of the equipment for recording or broadcasting the proceedings for the sole purpose of minimizing disruption of the proceedings.” (Art. IV, § 7(c)(1).) The Legislature may adopt such rules only “by concurrent resolution adopted by ... two-thirds of the membership of each house, concurring, or by statute.” (Art. IV, § 7(c)(5).)

The current Assembly Rule 25(b) mistakenly directs the Committee on Rules to adopt such rules. However, any rules adopted only by committee would have no effect, as they would not comply with the Constitution’s requirement of a two-thirds vote concurring in each house. Similarly, the current Senate Rule 21.8 restricts recording by the press; this rule also lacks validity because it was not adopted by a two-thirds vote concurring in each house.

If the Legislature wishes to regulate the placement and use of recording or broadcasting equipment, it must adopt those rules in compliance with the Constitution’s requirements: that is, by a two-thirds vote concurring in each house, or by statute. We encourage the Assembly and Senate to update their rules, consistent with the Constitution’s procedural requirements as enacted in Proposition 54.

Conclusion

On behalf of the voters who passed Proposition 54 to require more transparency, we encourage the Legislature to adopt joint rules fully implementing, and in compliance with, Proposition 54, and to repeal

any house rules to the contrary. We remain ready to work with the Legislature on these important matters, but feel compelled to raise these concerns now in order to avoid litigation over specific bills. Please feel free to contact us should you have any questions.

Respectfully,



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cc: E. Dotson Wilson, Chief Clerk of the California State Assembly
Daniel Alvarez, Secretary of the California State Senate