



June 19, 2020

The Honorable Toni Atkins
President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

Re: ACA 25 (Mullin) – Oppose

Dear Senator Atkins:

The Institute of Governmental Advocates (IGA) is a voluntary, non-partisan association representing the leading professional lobbyists and lobbying firms in California. We oppose ACA 25, as presented. The Legislature should never reject, even in the face of crisis, the structural underpinnings of our representative democracy as enumerated in our State Constitution, the foundational constitutional provisions include:

- 1) “The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good” (Art. I, § 3(a).)
- 2) “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” (Art. I, § 3(b).)
- 3) “Except as provided in paragraph (3) [permissible closed session matters], the proceedings of each house and the committees thereof shall be open and public.” (Art. IV, § 6(c).)
- 4) “The right to attend open and public proceedings includes the right of any person to record by audio or video means any and all parts of the proceedings and to broadcast or otherwise transmit them...” (Id.)
- 5) “No bill may be passed or ultimately become a statute unless the bill with any amendments has been printed, distributed to the members, and published on the Internet, in its final form, for at least 72 hours before the vote, except [for bills necessary to address the declared state of emergency by the Governor].” (Art. IV, § 8(b)(2).)

In addition, our Constitution requires legislative action to be taken by “roll call vote entered into the journal” (See, e.g. Art. IV, sec. §§ 7, 8, 10).

ACA 25 would allow legislative business to be conducted “without being physically present” and/or by “proxy voting” during “the pendency of a state of emergency declared by the President... or the Governor.” We believe that “the business of the people” should never be conducted in this manner – under any circumstance. Indeed, our Constitution does not presently dispense with these foundational principles even in the face of “war-caused or enemy-caused disaster” (Art. IV, § 21). ACA 25 dispenses with these principles upon the simple declaration of the President or Governor.

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The definition of "state of emergency" found in ACA 25 is so overly broad (e.g. "conditions of disaster...within the State, or parts thereof") that it would authorize the Legislature to withdraw from the Capitol and work remotely at almost any time it so desires. Why should a "storm" in Los Angeles causing the Governor to issue a declaration of emergency give cause for the Legislature to abandon its public meeting requirement in Sacramento?

Moreover, Governors have a long history of making emergency declarations, but never rescinding such declarations once the emergency has ended. The persistence of these lingering emergency declarations required Governor Newsom to issue a proclamation, on December 23, 2019, extinguishing over 70 prior declarations of emergency dating back to 2011 (copy of Proclamation attached). In addition, as shown by the Proclamation, just a couple of the 70 declarations of emergency affected the Sacramento region at all.

Historically, the threshold for repairing to alternate locations other than the Capitol is very high. Indeed, even the Great Flood of 1862, which did affect the Capital building, resulted in the temporary re-siting of the Legislature to San Francisco. (See, Theodore H. Hittell, History of California vol. 14 (1898) p. 295, N.J. Stone & Co., San Francisco; and Senate Journal, 1862 p. 105; and Assembly Journal, 1862 p. 104)

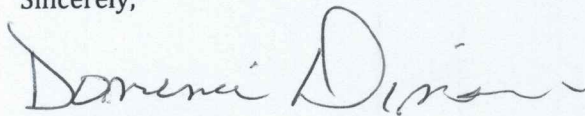
Under ACA 25, as written, the Legislature could have invoked its ability to legislate remotely on November 30, 2018 when the Governor declared a state of emergency in Shasta County as a result of fire – that declaration was in place for over a year. Indeed, there has been a Declaration of Emergency in place at one point or another during every year over the last decade or more.

Additionally, IGA opposes the use of "proxy voting" under any scenario. While ACA 25 does not specify proxy voting as a result, it would permit the Legislature to draft rules allowing for such voting. We believe such a process to be fundamentally antithetical to representative democracy. Moreover, it is unnecessary as the Constitution presently authorizes the Legislature to "compel the attendance of absent members" (Art. IV, § 7(a).)

Finally, ACA 25 requires the Legislature to adopt rules to implement its provision, but those rules will only apply to one session of the Legislature and even then, such rules are subject to amendment. For example, a rule that authorized a member to vote just one proxy vote could be easily amended to allow a single member to vote 10, 20, 30, 40, 50, 60, 70, or even 79 other Assembly member votes. Such should never be permissible, under any situation, under our system of government.

In summary, IGA opposes ACA 25 as unnecessary and unwise. Thank you for your consideration of our concerns.

Sincerely,



Dominic Dimare
President

cc: Members of the Senate Rules Committee