



June 1, 2020

The Honorable Ken Cooley
Chair of the Assembly Rules Committee

The Honorable Jordan Cunningham
Vice Chair of the Assembly Rules Committee

RE: Institute of Governmental Advocates Opposition to ACA 25

Dear Chair Cooley and Members:

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. These 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) “The Legislature shall also cause audiovisual recordings to be made of all proceedings subject to paragraph (1) in their entirety, shall make such recordings public through the Internet within 24 hours after the proceedings have been recessed or adjourned for the day, and shall maintain an archive of said recordings...” (Id.)
- 6) “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 “rollcall 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 cavalierly dispenses with these principles upon the simple declaration of the President or Governor.

As presently drafted, ACA 25 would allow the Legislature to dispense with the open and public meeting requirements at any time “during the pendency of a state of emergency.” The definition of “state of emergency” is so overly broad (e.g. “conditions of disaster... within the State, or parts thereof”) that it would authorize the Legislature to act in the dark at almost any time it so desires. Why should a “storm” in Los Angeles causing the Governor to issue a declaration of emergency cause 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.¹ As an example, on December 23, 2019, Governor Newsom issued a proclamation declaring that over 70 prior declarations of emergency, dating back to 2011, no longer existed and therefore should be rescinded (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. Indeed, even the Great Flood of 1862, which did affect the Capital building, merely 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 dispensed with all of its public meeting requirements 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 was 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 provide the rules for such proxy voting, we believe such a process to be fundamentally

¹ ACA 25 would also allow the President to make such a Declaration. We see no reason why such authority should be extended to the President.

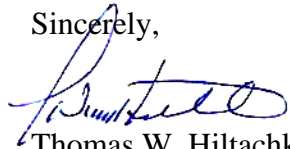
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antithetical to representative democracy. Moreover, such is unnecessary as the Constitution presently authorizes the Legislature to “compel the attendance of absent members” (Art. IV, § 7(a).)

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,



Thomas W. Hiltachk,
IGA General Counsel

Earthquake – Accompanying Executive Order B-24-14	9/2/14	Napa, Solano, and Sonoma
Fire	8/2/2014	Statewide
Fire – Accompanying Executive Order B-25-14	9/11/14	Amador, Butte, El Dorado, Humboldt, Lassen, Madera, Mariposa, Mendocino, Modoc, Shasta, and Siskiyou
Fire	5/14/2014	San Diego
Fire – Accompanying Executive Order B-27-14	10/6/14	Siskiyou
Storms	4/29/2014	Los Angeles
Fire	10/31/2013	Shasta
Storms	9/30/2013	Inyo
Gasoline Spill	9/20/2013	Los Angeles
Fire	8/29/2013	Mariposa
Fire	8/23/2013	City and County of San Francisco
Fire	8/22/2013	Tuolumne
Fire – Accompanying Executive Order B-23-13	10/23/13	Mariposa, San Francisco, and Tuolumne
Fire	8/09/2013	Riverside
Fire	7/19/2013	Riverside
Fire	7/12/2013	Los Angeles
Storms	2/28/2013	San Mateo
Fire	8/22/2012	Plumas, Shasta, and Tehama
Fire	12/20/2011	Los Angeles
Wind	12/9/2011	Los Angeles and City of Rancho Cucamonga
Storms	7/12/2011	Marin
Storms	4/15/2011	Alameda, Amador, Butte, Contra Costa, Del Norte, Humboldt, Madera, Mariposa, Mendocino, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Sierra, Stanislaus, Sutter, Trinity, Tuolumne, and Ventura
Tsunami	3/16/2011	Mendocino and San Luis Obispo
Tsunami	3/11/2011	Del Norte, Humboldt, San Mateo, and Santa Cruz
Tsunami – Accompanying Executive Order B-4-11	3/17/11	Del Norte, Humboldt, San Luis Obispo, San Mateo, and Santa Cruz
Storms	3/3/2011	Modoc
Storms	1/27/2011	Madera

I FURTHER DIRECT THAT as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 23rd day of December 2019.



A handwritten signature in black ink, appearing to read 'Gavin Newsom', written over a horizontal line.

GAVIN NEWSOM
Governor of California

ATTEST:

A handwritten signature in black ink, appearing to read 'Alex Padilla', written over a horizontal line.

ALEX PADILLA
Secretary of State