

TOWNSEND

PUBLIC AFFAIRS

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MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: June 19, 2020

Subject: Consider adopting a position on Assembly Constitutional Amendment 25 (Mullin)
– State of emergency: remote legislative proceedings

Summary

ACA 25 temporarily permits Members of the Legislature, by two-thirds vote, to remotely attend and vote in a legislative proceeding, or to vote by proxy in a legislative proceeding if permitted by their house, during the pendency of a state of emergency declared by the President of the United States or the Governor. In limited circumstances, the bill permits the Legislature to restrict the public's access to a proceeding, if the restrictions are no greater than necessary to ensure the health and safety of Members, legislative employees, and members of the public.

More specifically, the provisions of ACA 25 include:

- Members of the Legislature, through the use of technology and without being physically present in the State Capitol, may attend and vote remotely in a legislative proceeding, or vote by proxy in a legislative proceeding if authorized by their house, during the pendency of a state of emergency declared by the President of the United States or the Governor.
- The vote of a Member remotely attending a proceeding shall have the same force and effect as if the Member were physically present in the State Capitol; and, requires that a Member remotely attending a proceeding shall be included in the determination of a quorum.
- Requires that the participation of a Member remotely attending a proceeding shall be included in the existing constitutional audiovisual recording requirement.
- The Legislature may waive the audiovisual recording requirement by a two-thirds rollcall vote if compliance is not practicable under the circumstances of the state of emergency.
- The Legislature may restrict the public's physical access to a proceeding if such access is not practicable under the circumstances of the state of emergency or due to the manner in which the proceeding is conducted.
- The restrictions on physical access shall be no greater than necessary to ensure the health and safety of Members, legislative employees, and members of the public.
- Defines "state of emergency" as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, including, but not limited to, such conditions as an attack or probable or imminent attack by an enemy of the United States, fire, flood, storm, insurrection, earthquake, volcanic eruption, or pandemic or other public health emergency.

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- Requires that a Member's authorization to attend and vote remotely, and to vote by proxy if applicable, shall end upon the termination of the state of emergency.
- The Legislature may permit Members to vote by proxy, in which case the resolution shall specify rules for this method of voting and shall include procedures for authenticating a Member's proxy vote.

If approved by the Legislature, ACA 25 would require approval from a majority of voters at the next statewide election before its provisions would become law.

Status

ACA 25 passed out of the Assembly on June 10th on a 60-13 vote. The measure is currently in the Senate Rules committee awaiting referral to policy committee.

Support

According to the author, "California is the fifth largest economy in the world with a population of over 40 million and growing. We have a full time Legislature which, under normal circumstances, is able to be nimble and respond by passing urgency legislation and adjust spending priorities, in real time, when conditions warrant. However, it took a worldwide pandemic for us to discover that California government is unable to continue to function, according to American notions of checks and balances during such an emergency. The legislative branch of government currently has no authority to convene remotely during an emergency where it would be unsafe for members to gather and meet in person. ACA 25 seeks to put before the voters a Constitutional amendment that would require both houses of the Legislature to adopt rules, by a two-thirds vote, which would allow for the sworn duties of the Legislature to continue, and to require such rules to provide for and maintain maximum transparency and visibility by the public."

There is no official support on record for ACA 25.

Opposition

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. Under the provisions of this measure, the definition of state of emergency is so overly broad that it would authorize the Legislature to act in the dark at almost any time it so desires. Moreover, Governors have a long history of making emergency declarations, but never rescinding such declarations once the emergency has ended.

Opponents of SB 1431 include: Institute of Governmental Advocates, Charles T. Munger and Sam Blakeslee

Potential Impact

While state law should be updated to allow for the Legislature to carry out their business while not physically present in the Capitol in the event of an extreme emergency, much the same way that local governments are able to conduct their meetings via teleconference, it must be done in such a manner that allows the public the same level of transparency and participation as during the regular order of business. Additionally, the constitutional amendment should be narrowed to limit the states of emergency that can trigger the bill's provisions.

Recommended Action

Adopt a watch position on ACA 25 (Mullin).