



SIDE-BY-SIDE COMPARISON: VOTERS' INITIATIVE v. SCA 14/AB 884

The bills SCA 14 (as amended June 17, 2016) and AB 884 (as amended June 9, 2016) would put an inferior measure on the ballot in direct competition with the California Legislature Transparency Act (CLTA), under conditions when only one measure can be made law, and so no support should be offered to SCA 14 and AB 884. While the latest amendments of SCA 14 are improvements over prior versions of SCA 14, both bills still fall short of improving transparency as much as CLTA would.

The following is a comparison of CLTA and those bills. Given that we have had only 36 hours to review the newly amended SCA 14, the list that follows is not necessarily a comprehensive list of the differences between CLTA and this pair of bills.

The provisions of CLTA are set in the State Constitution or in a statute that the initiative provides shall not be changed but by a vote of the people. The provisions of SCA 14 are also set in the Constitution, but the provisions of AB 884 can be changed by the Legislature. There is therefore a large difference in the security of the provisions in AB 884 compared with related provisions in CLTA.

72 hours' notice for bills

CLTA: No bill may pass out of the Assembly or Senate unless it has been posted on the Internet for at least 72 hour

SCA 14: No bill may pass out of the Assembly of Senate unless it has been posted on the Internet for at least 72 hours. SCA 14 does not include any requirement for bills to be printed and distributed to Legislative members for any time period before a vote. This allows the 72-hour clock to start with the online posting of a bill even if it occurs outside of normal working hours (1:00 AM, example), allowing hours to pass before members or the public have any practical opportunity to read the bill.

Exception to 72 hours' notice in case of emergency

CLTA: 72 hours' notice must be expressly waived by a separate 2/3 roll call vote in both the Assembly and the Senate (plus requiring the governor to declare an emergency and ask *in advance* of a vote for notice to be waived).

SCA 14: The 72 hours' notice can be waived by a 2/3 rollcall vote in both the Assembly and the Senate, however there is no bar to combining the vote on the waiver with a vote on the bill itself. And SCA 14 is phrased so that the waiver can be retroactive after the bill is voted on. (The actions required of the governor are the same as required by CLTA.) be granted *after* a bill has been voted on.)

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Audiovisual recordings made by the Legislature

CLTA: Requires all public proceedings of the Legislature, as already defined in the Constitution, to be audiovisual-recorded and the recordings to be posted within 24 hours.

SCA 14: Requires audiovisual recording only of: 1) floor sessions and committee meetings in which a vote or other action occurs, and 2) any committee meeting that occurs in the State Capitol Building. Only requires a “reasonable effort” to: a) record committee meetings outside the State Capitol Building where no vote or other action occurs, and b) “broadcast” “in real time” all floor sessions and committee meetings in the State Capitol Building. *No requirements to implement these provision by a certain date** No constraint on what constitutes a “reasonable effort,” which leaves implementation of (a) and (b) above to the Legislature’s discretion. Unlike the requirement to make “audiovisual” recordings of proceedings in the State Capitol, proceedings need only be “broadcast” (not necessarily by audiovisual means) to the public and only “reasonable efforts” need be taken to do so.
AB 884: (by legislative statute, and so changeable without a vote of the people) Same.

Availability of audiovisual recordings made by the Legislature

CLTA: Requires the recordings to be posted on the Internet within 24 hours, accessible on the Internet and downloadable.

SCA 14: No specifications of *if, how, or when* recordings must be available except “promptly” and must be “reasonably accessible”. Successive legislatures can define differently what “promptly” means for purposes of making recordings available to the public. *No requirements to make recordings accessible through the Internet or downloadable nor to implement these provision by a certain date**
AB 884: (by legislative statute, and so changeable without a vote of the people) Posting by the office of Legislative Counsel “within one business day.” At best unclear if the Legislature may delay giving the recordings to the Legislative Counsel in the first place.

SCA 14 requires enactment of statutes to implement these provisions and declares any bill doing so, after 2016, cannot become statute unless it is posted in its final form for at least 12 days prior to the final vote in each house. **By placing these provisions in the Constitution, the Constitution could be interpreted to allow the Legislature to delay the effective date of the recording requirement until the Legislature has enacted the implementing statute. Further, the so-called commencement date of January 1, 2018 is only the commencement date for the Legislature to “make reasonable efforts” to broadcast proceedings.*

Use of audiovisual recordings made by the Legislature

CLTA: Grants the public a right to broadcast or transmit all or part of the recordings

SCA 14: Grants no such right.

AB 884: (a statute, and changeable without a vote of the people). Specifies the recordings are in the public domain.

CLTA: Recordings may be used for any legitimate purpose and without fee. Set in an initiative statute, and so not changeable except by a vote of the people.

SCA 14: Grants no such right.

AB 884: (by legislative statute, and changeable without the vote of the people). Recordings may be used by the public and without a fee. Specifies the recordings are in the public domain, but does not provide that they may be used for any legitimate purpose.

CLTA: Recordings made by the Legislature posted on the Internet for at least of 20 years.

SCA 14: Recordings posted for only the duration of the current biennial session and next two sessions (so 4-6 years). Recordings must be “reasonably accessible” to the public for 20 years. Grants no permission to make a copy and does not define what “reasonably accessible” is.

AB 884: (by legislative statute, changeable without a vote of the people). Recordings to be archived for at least 20 years in a retrievable and perceivable format, “reasonably available” to the public, language which suggests that the recordings may not be immediately downloadable.

Audiovisual recordings made by persons

CLTA: Grants right of any person to record a public proceeding and broadcast or otherwise transmit the recording (which includes immediately). Clearly exempts “closed sessions” as currently defined by the Constitution. Allows the Legislature to minimize any disruption. This right takes effect immediately upon CLTA getting enacted. An aggrieved party may challenge any restrictions on right.

SCA 14: Grants *no* such right to record a public proceeding; only provides an “authorization” “subject to reasonable restrictions such as those necessary to ensure public safety and prevent disruption of the proceedings,” providing the Legislature broad discretion to decide when circumstances merit restricting the right to record. Grants no right to broadcast those recordings and only authorizes the public to broadcast those recordings authorized pursuant to the Legislature’s “reasonable” restrictions. Authorization would not go into effect until January 2018. No right to challenge the Legislature’s reasonable restrictions.

AB 884: Grants no such permission.

Funding of the Legislature’s recordings and postings

CLTA: Legislature’s costs to be taken from the existing budget for the Legislature’s operations as capped by Article IV, Sec. 7.6; this provision is set in initiative statute, and so, not changeable except by a vote of the people.

SCA 14: Expenses of making recordings of the Legislature’s public proceedings are outside the spending cap and not limited. The Legislature “shall make sufficient funds available.”

AB 884: (a statute, changeable without a vote of the people) Makes responsibility for posting and archiving recordings the responsibility of the office of Legislative Counsel.

In-print time period before a committee hearing

CLTA: No changes.

SCA 14: Shortens the time period, from 30 days to 15, that must pass after a bill has been introduced before it can be heard or acted upon by a committee.

Competing measures

CLTA: Measure receiving the most votes prevails and the competing measure is voided.

SCA 14: Same.