CALIFORNIA STATE SENATE
JOINT INFORMATIONAL HEARING
ASSEMBLY RULES COMMITTEE
AND
SENATE ELECTIONS AND CONSTITUTIONAL AMENDMENTS COMMITTEE

INITIATIVE HEARING: PROPOSED INITIATIVE #1742

LEGISLATURE: LEGISLATION and PROCEEDINGS

WEDNESDAY, JUNE 15, 2016

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JOINT INFORMATIONAL HEARING
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Transcript of proceedings taken on behalf of
Redwood Pacific Public Affairs, California State Capitol,
1315 10th Street, Hearing Room 437, Sacramento,
California, commencing on Wednesday, June 15, 2016, at
10:30 a.m., before Karen Challe, Certified Shorthand
Reporter Number 8244.

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APPEARANCES:

Assembly Rules Committee:

ASSEMBLY MEMBER RICHARD S. GORDON, Chairman
ASSEMBLY MEMBER LING LING CHANG
ASSEMBLY MEMBER CHRIS R. HOLDEN
ASSEMBLY MEMBER KEN COOLEY
ASSEMBLY MEMBER MARIE WALDRON

Senate Elections and Constitutional Amendments Committee:

SENATOR BENJAMIN ALLEN, Co-Chairman
SENATOR JOEL ANDERSON

Presenters/Speakers:

FORMER SENATOR SAM BLAKESLEE
DR. CHARLES MUNGER
FRED SILVA, California Forward
TOM SCOTT, National Federation of Independent Business in California
JOHN COUPAL, Howard Jarvis Taxpayers Association
TERRY FRANK, Californians Aware
GAVIN BAKER, California Common Cause
LEE LAWRENCE, League of Women Voters

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SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 15, 2016

10:30 A.M.

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CHAIRMAN GORDON: Good morning and welcome.

This is a joint informational hearing. The hearing on the Assembly side is being done by the Assembly Rules Committee. On the Senate side is being done by the Senate Elections and Constitutional Amendments Committee.

The purpose of today's hearing is to implement the terms of Senate Bill 1253, which was signed into law in 2014. That piece of legislation said the following: Each House shall assign the initiative measure to its appropriate committees. The appropriate committee shall hold joint public hearings on the subject of the measure not later than 131 days before the date of the election at which the measure is to be voted upon.

Today, this joint hearing is called for the purpose of receiving information as required by SB 1253 on the California Legislature Transparency Act, which is proposed for the November ballot. We will today receive a brief overview from the Legislative Analyst's Office. We will then allow the two initiative proponents, Sam Blasklee and Dr. Charles Munger, to present their measure to us. There will be an opportunity for member questions,
and there will be an opportunity for public comment. No action will be taken at today's hearing.

I would also remind members that currently in the State Senate there are two measures, SCA 14 and AB 884, which present similar requirements as the initiative. But I want to admonish everyone that today we are not discussing SCA 14, and we are not discussing today AB 884. Those are currently, appropriately, in the Senate for discussion and possible vote.

And particularly for my colleagues in the Assembly, should either of those measures move forward, they would come out of the Senate and be considered at a future point in the Assembly.

So today, the focus of this hearing is strictly on the terms and conditions and the language of the California Legislature Transparency Act. And we welcome this opportunity to allow the proponents to present to us what their intentions are under this proposed act.

With that, I want to introduce the Co-Chair of this hearing, who is the Chair of the Senate Elections and Constitutional Amendment Committee. Senator Ben Allen.

CO-CHAIR ALLEN: Well, thank you, Mr. Chair.

I should just want to add that last week we had a hearing on those two measures that were mentioned by Assembly Member Gordon. And while this certainly, this is
a hearing on the proposed initiative, those two measures are very much a part of the context of this discussion. And there's a lot of negotiations, I understand, currently underway with the authors. And so this is part of this broader discussion that's happening between the Legislature and the authors, to see if we can come to some sort of mutually-agreeable solution.

That being said, this is also an opportunity for us to kind of hear publicly the issues that are being raised by the initiative, and flesh out some of the core concerns that the initiative authors have. And we'll see -- you know -- if you look at the Herwagon initiative, for example, that process has actually worked very, seemingly very well, where Mr. Herwagon came to the Legislature, brought a series of concerns that he had that were the impetus behind his measure, and then ultimately the Legislature's moving on, you know, the core issues that he was bringing forward. So you know, thus avoiding a costly legislative referendum ballot between all sides. So let's see if we can get that here.

And I'm looking forward to a good discussion. We had a good discussion last week. And you know, this is all part of this broader, fascinating negotiation that we're engaging in right now. So I appreciate the Chair's leadership on this, and I look forward to the discussion.
CHAIRMAN GORDON: Great. Thank you.

We'll begin then with an overview and fiscal evaluation from the Legislative Analyst's Office. And let me invite Ann Hollingshead, who is a fiscal and policy analyst with the ALO, forward for a presentation.

Welcome.

MS. HOLLINGSHEAD: Thank you, Chairs and Members of the Committee. Ann Hollingshead, Legislative Analyst's Office.

As the Co-Chair noted, we're going to provide some brief contextual remarks, just outlining an overview of what's included in the ballot measure today. But before I do so, I just wanted to briefly discuss our role, our office's role in these initiative hearings, because it's somewhat different than our office's role in sort of traditional budget hearings.

So I'm also going to speak from a handout that you should have in front of you. And I'll turn now to the first page.

Our office completes two types of analyses for every measure that qualifies for the ballot. The first is a fiscal analysis, which we conduct prior to signature collection. This is required by state law, and we do it along side the Department of Finance. A summary of this estimate is included in the petition that is circulated
for signatures.

The second kind of analysis that we conduct is after a measure receives sufficient signatures to qualify for the ballot. And for this analysis, we again conduct a non-partisan, unbiased analysis required by state law, and it includes a fiscal analysis and a description of the measure. This is included in the statewide voter information guide that is distributed to voters in California.

We are still in the process of preparing these materials, but we are able to offer comments and answer questions based on the analysis that we've conducted to date.

And I would also note that we do understand that there are ongoing conversations related to SCA 14 and AB 844. But we have not completed an analyses of either of those measures, so it's unlikely we will be able to answers questions related directly to those.

I'm going to turn to the next page and outline provisions of the proposed initiative. The initiative amends the Constitution in two ways. The first is that the Legislature would have to wait 72 hours after posting a bill, including any amendments to that bill, on the internet before it would be able to pass that bill. This would include some exceptions for emergencies, such as
natural disasters.

The second major provision is that videos of all legislative public proceedings would be filmed and then placed on the internet within 24 hours of that meeting. These videos would have to be publicly accessible and downloadable for a minimum period of 20 years following the meeting.

There are a few other provisions associated with the initiative. First, members of the public would be able to film and broadcast any portion of any public legislative meeting. Second, it would amend State Statute to provide that the members of the public would be able to use videos of any public proceeding for any purpose, and without paying a fee to the State. And finally, any Legislative cost associated with this measure would come out of the Legislature's annual spending limit.

I'll just conclude with our fiscal effects analysis of the proposed initiative. We estimate that the quantifiable costs associated with the initiative are related to filming and storing videos of the public proceedings. This would include both one-time costs and ongoing costs. Our office has provided a range based on some assumptions about what is likely to happen. But these are not definitive, and they would change, depending on decisions made and in the implementation of the
measure.

The one-time cost would be about one to two million dollars per year. And this would be to buy equipment such as cameras in order to film all of the meetings. And then the ongoing cost would be about one million dollars per year. And this would be for staff and the archival storage needs for the videos.

That's the end of my prepared remarks, and I would be happy to take any questions.

CHAIRMAN GORDON: Are there any questions for the Legislative Analyst's Office?

Miss Waldron.

ASSEMBLY MEMBER WALDRON: Just a quick question regarding the cost. If -- you know, currently a lot of stuff is done digitally. It's not like the old time with tapes and storage and things like that.

MS. HOLLINGSHEAD: Sure.

ASSEMBLY MEMBER WALDRON: We're talking about buying cameras and equipment for some of the rooms that don't have cameras. How many cameras are we exactly talking about for one to two million dollars?

MS. HOLLINGSHEAD: So it doesn't just include cameras. It also includes some Capitol improvement needs that would need to likely use to change some facets of the buildings. For example, we would likely, the Legislature
likely need an additional control bay to operate the cameras. Perhaps one of the building rooms would need to be remodeled in order to include that control bay. There would also need to be mobile systems for field hearings. So those costs include those things as well.

ASSEMBLY MEMBER WALDRON: Is there any administrative or salary cost 'cause you might have to hire people to operate those.

MS. HOLLINGSHEAD: Yes. So the ongoing costs do include salary costs for the individuals that would operate the cameras.

ASSEMBLY MEMBER WALDRON: Okay. So that's --

MS. HOLLINGSHEAD: As well.

ASSEMBLY MEMBER WALDRON: -- the other ongoing cost of a million. So that's different from the purchasing.

MS. HOLLINGSHEAD: Correct.

ASSEMBLY MEMBER WALDRON: On-line storage for videos.

MS. HOLLINGSHEAD: That's correct.

ASSEMBLY MEMBER WALDRON: Okay. Thank you.

MS. HOLLINGSHEAD: You're welcome.

CHAIRMAN GORDON: Mr. Cooley.

ASSEMBLY MEMBER COOLEY: Just in the course of doing your analysis of fiscal effect, are you trying to
think about the issue of the requirement for 20-year retention availability? Technology even in the last 20 years has greatly changed. And so I wonder if there is a long-tail liability, so to speak, that as technology changes, if technology changes, that there is a cost to be incurred out of our operating funds to go back to five, ten, 15 years and re-- re-up old video to match changing technologies, because there is a requirement it has to be accessible for 20 years.

MS. HOLLINGSHEAD: Right.

ASSEMBLY MEMBER COOLEY: So we have to sort of keep whatever the cumulative store is aligned with what is the typical technology. And I'm sort of -- I can see that it is a public good. But I also see that as something that if it comes out of the Legislature's operating funds, one of my concerns, generally, is I think that the voters of California and the Citizens Redistricting Commission, in the top two, in the 12-year extension have actually done a series of changes in recent years that I think are going to enter the public benefit. We have longer term members, more middle-of-the-road members, trying to work issues through, a more engaged Legislative membership. I think the opportunity in front of California, which the voters have set up for us, is to strengthen the institution.
The former Speaker, the current Speaker, Mr. Gordon, you, yourself, instrumental in pushing oversight, which is the Legislature is really an oversight of the Executive Branch. This requires the work and the focus of our chairs, our vice chairs, our staff, folks that what is the Executive Branch doing so it's subject to accountability by this body. And I see that as an area where probably when you look at what the voters have done in recent years, this is where we can be more influential on the well-being of the State, so that the Executive Branch is held accountable to its co-Executive Branch of the Legislature.

But our operating funds can only go so far. And so I'm just very interested, as you analyze this, to think about this storage archival retrieval for decades, and is there an expense that's associated with it? Because that can come at the cost of us trying to do more collaborative oversight in our standing committees, which is the leadership that our current Speaker is very interested in.

So that's more of a cost dimension. Can you speak to that a little bit?

MS. HOLLINGSHEAD: Sure. So we did consider the archival cost for a long period of time. We did speak with the State Archivist as well in considering these costs. And as you note, there would be some uncertainty
of those costs going forward. The costs could go up. They could also go down over time. That is partly the reason that we provided a range or rough estimate of the cost going forward, because there is a high degree of uncertainty.

But we did base the archivable cost of what we have on what they would be today.

ASSEMBLY MEMBER COOLEY: All right. Okay. And I note I do know that that is sort of typical, that you will provide a range. So I'll look forward to seeing that. So thank you for that.

CHAIRMAN GORDON: Thank you.

Any further questions?

Mr. Anderson.

SENATOR ANDERSON: When you were considering the archiving costs, can you tell me the components that you looked at? Because I know that the cost of megs has gone down considerably, whether on the web or off the web, and so I'd be interested in an analysis.

MS. HOLLINGSHEAD: Sure. So according to Granicus, which is a firm that does some storage for -- at Cal Channel. They include some videos of Legislative hearings. Terabytes would cost about $29,000 per year. That would be sort of at the low end of the estimates that we've seen. There is an effort in Texas to do something
similar to archiving a great deal of Legislative hearings and other public proceeding videos, and they estimated that the first year's cost of 183 terabytes, which is -- you can think of many, many, many hours of videos, it's probably much more than we would incur over even a few years, is about $156,000 a year.

SENATOR ANDERSON: Were you thinking that -- so what comes with that storage? Certainly there must be more than just storage. That must also give you the ability to retrieve it and other items. Because when I look at the cost at going -- mind you, this is pretty simplistic, but when I go to Costco and I look at what I can purchase there, these prices are just astronomical. So that what else comes with these prices? Because certainly the storage space is not this expensive.

MS. HOLLINGSHEAD: This does just include storage space cost. But it's sort of an enormous amount of data is the way that I would think about it. It's much more than you could purchase at a normal convenience store for.

SENATOR ANDERSON: Okay. Thank you.

CHAIRMAN GORDON: All right. If there are no further questions, thank you very much. And let me invite to the witness table Senator Sam Blakeslee and Dr. Charles Munger.
Gentlemen, welcome. The Senator knows, oftentimes Members must leave for other hearings, which is what I'm about to do. It is no indication of my desire not to hear what you have to say. And I hope to be back shortly. But Senator Allen will take over while I go present some bills in committee.

FORMER SENATOR BLAKESLEE: Sadly, you will miss the moment where I was going to thank you for all your hard work.

CO-CHAIRMAN ALLEN: Proceed.

FORMER SENATOR BLAKESLEE: Very good.

CO-CHAIR ALLEN: And thank you, Senator.

FORMER SENATOR BLAKESLEE: Thank you, Chair. Appreciate the opportunity to be with you today. And I do sincerely mean that I appreciate all the hard work by Assembly Member Gordon, in particular, Senator Wolk on this issue of transparency, and I will say their staff as well, Craig Reynolds, Al Grant, have been very helpful in many of these conversations.

And I think I want to start off, as someone who's been in the building, and understands what life feels like on that side of the microphone, that these are complex issues. And staff has a lot of things they can potentially work on, and the fact they have reached out is something I appreciate.
Let me also say that by virtue of my being intimately involved with these issues, I feel a great deal of passion around them. Having served in the Assembly, I served as Vice Chair of Rules, as Miss Ling does today, Ling Ling Chang does today. And having served as Minority Leader and served in the Senate, I developed a great passion for this body and this institution. And when I left it four years ago, I wanted very much to remain engaged and seek ways to improve this body so that it could be all that it potentially could be.

And the issues we have been looking at, to help this Legislature move forward, are captured in this measure. And I would like to briefly describe some of the challenges, the problems we want to address, and Dr. Munger will describe some of the solutions, and the implementation of those policy solutions.

So first of all, what I found was very troubling as a member was to be sitting on the Floor and suddenly find -- and this is the time of year when these things happen, when the budget's moving, when you suddenly find measures that are literally in front of you, you have no time to analyze it, you have no time to read it, you have no time to call your constituents, you have no time to make sure that you know what is in that bill before you have to cast that fateful vote.
And oftentimes all you have to rely upon is the respective caucuses' recommendation. "Aye" recommendation. "No" recommendation. And you go into the Floor, there may be 50, 60, 70 bills that could get worked in a single day, and you have no choice but to vote what's in front of you without the information necessary. That is the gut and amend process that we want to put an end to once and for all. This should never happen to any legislator. Sure, I'm talking about the injustice to the legislator, but let's be frank. This is an injustice to the public. This is the people's House. This is where the people elect you to represent them. And how can you possibly do that if you can't talk to them before you cast a fateful vote on redevelopment, the fateful vote on the reserves for school board, a fateful vote on SB 202 that deals with a measure of whether or not initiatives will be heard in June or November.

These are examples of initiatives -- bills rather, that have gone forward that have huge moment and effect on this body, that weren't allowed to receive the kind of feedback from constituents that were necessary.

So first the problem is we as legislators, if I can include myself in that expansive "we," are not well-served by the gut and amend process. The public is not well-served. And I'll point out the press is not
well-served. Oftentimes the press, in doing their due
diligence, will chase a matter down, they'll pick up the
phone, they'll put people on the record, and they will
discover things that, frankly, you or I or an average
constituent would have no chance of uncovering except for
the fact there was a journalist who was ready to go and
make those phone calls, 'cause they had the bill in chief
before them.

So the first issue we're really wanting to put
an end to is this gut and amend process. There are other
States that have found ways to solve these problems. And
Dr. Munger will speak to them. And we think it's
achievable. This Legislature has talked about it for
years. And there are members who are engaged today who we
know have supported the kind of solutions that we'll be
presenting.

The number two area or problem we seek to
address is what happens in committee. First was what
happens on the Floor; second, what happens in the
committee. For any of you who have served in local
elected government, you're very familiar with the public
access channel, just clicking away, following you. You
know everything you do is on the record. You know
everything you do is in the public eye. It's no surprise
that the cameras are going to record for posterity what's
happening.

In this building, here we are, in many cases hundreds of miles away from our own constituents. They can't walk down to see us the way they see a city council member. They don't bump into you in the grocery store and talk to you about a potential bill. You're hundreds and hundreds of miles away from your constituents, and what is their ability to engage you or even see what's going on in committee.

Well, if they're wealthy enough, they can hire a lobbyist. But the last time I checked, we're not here to represent lobbyists. Potentially they can get on a bus if they can get a break from the job, and drive up I-5 and get to this building and sit out there and watch what's happening. Doesn't happen that frequently. So what's the only other fallback position? Well, fortunately we do have some video recordation. We have the Cal Channel. We have some ability for our constituents to see what happens in these committee meetings. That's the second problem we want to fix. I'll touch only briefly on this statement that "Oh, we have enough transparency. We record enough hearings." There are many, many hearings which are not heard. And some of those hearings that are not heard actually have great moment, even though there may not be a vote cast.
So for Example, on the Prop. 30 election of some years ago, there was an informational hearing, not unlike this. But when it came time to hear the arguments against Prop. 30 -- whichever side you're on, it's immaterial for the point of this discussion -- the cameras were not lit up.

And even last week, you saw in the Sacramento Bee there was another hearing just like this, where the camera started, and the cameras went off. And there were three different Chairs. The different Chairs said they didn't know who turned off the cameras. Rules said they didn't know who turned off the cameras. Leadership said they didn't know who turned off the cameras. And the final conclusion was it was Cal Channel that turned off the cameras. The article in question speaks to the condom bill in particular. It's a very interesting piece of writing, 'cause it really details that this is a problem that's happening today. And it's happening with very little justification.

The third and last problem I want to identify is what happens to those records that are created by virtue of video recordation and they're put in the public domain? You may not be aware of this, because you may not have encountered it, but did you know in fact it's a crime to use these videos, at least Assembly videos, for certain
purposes? So for certain First Amendment purposes, such as political speech or commercial use, it can be a crime up to six months in prison and a thousand dollar fine for daring to use this material that's in the public domain.

Now you would think "But no one's ever prosecuted anyone on that statute, so it's not really all that big a problem." Well actually it's in front of a Federal Court right now, because this has had a chilling effect on people being willing or able to use videos, and our own Attorney General is seeking to defend the Statute that makes it a crime to use videos. Fortunately, a Federal Judge has stated he's going to likely uphold a -- establish an injunction, and the argumentation is moving very rapidly to support the concept that this is a violation of the First Amendment. But this is another problem. The third problem I want to identify.

So those are the problems we seek to identify.

I'll now turn to Dr. Munger, who will describe the approach we've taken.

CO-CHAIR ALLEN: Thank you, Senator.

Dr. Munger.

DR. MUNGER: Thank you. Sam Blakeslee has outlined the problems that the California Transparency -- California Legislature Transparency Act is to address. I will break my remarks into three sections, and increasing
order of detail. First, I will say our broad policy
objectives and the particular means we've chosen to try to
implement those objectives, and then as needed, I will get
down to choices, specific language, legal aspects and so
forth.

We note from the beginning that the whole act,
the whole initiative consists of two short paragraphs to
be added to the California Constitution and two lines in
Statute. This really isn't all that much to go over.

Broad policy objectives. There are four. One,
to ensure that no bill may pass out of the Assembly or out
of the Senate without all of the members of the House
passing the bill having had 72 hours to read the language
of the bill, for citizens to read the bill and confer with
those representatives, and for the members to prepare a
thoughtful position of support or opposition or to draft
amendments to offer to improve the bill.

Second policy position is to require that if any
proceeding of this Legislature to which a member of the --
which a member of the public has a right to attend, the
Legislature make and post on the internet, an audio-visual
recording that any person may see at will.

Three, to require that a person attending a
proceeding of this Legislature, as a member of the public
has a right to attend, has a right to their own recording
of what their eyes see and what their ears hear. Not the official recording where the camera may be in one direction or the other, but what they hear and what they see.

The last policy objective is to ensure that the recordings, by whomsoever made, may be freely copied, excerpted and shared so that the citizens have the widest access to the information and the widest ability to engage in a discussion of what the Legislature, of which they the people created, is doing and will do for them.

Now at this moment I would like to pause briefly and just ask, since our measure's been before the public and this body for over months, does any member present have any objection to these broad policies, that I may respond to those objections in the course of my remarks?

CO-CHAIRMAN ALLEN: I think one of the concerns we discussed last week was about kind of cost issues and trying to make sure that we don't have a chilling effect -- I know we discussed a little bit last week. But not have a chilling effect on hearings in the field. So I know that was one of the concerns that was there.

DR. MUNGER: Certainly. Is there another that I can address in the context of my remarks?

CO-CHAIRMAN ALLEN: And then I'm going to want to go through all the ambiguities that were cited by the
DR. MUNGER: That's fine. And as I said, I will go through legal issues and so forth in the third section of my talk and I will issue the same --

CO-CHAIRMAN ALLEN: Fantastic.

DR. MUNGER: -- offer at that time.

ASSEMBLY MEMBER HOLDEN: Can I just also, so it was my understanding that this was supposed to be a listening discussion. And so I think it's really, my understanding is, at least for my purpose, is that I'm hearing the presentation, I'm taking some notes, formulating opinions. It may not be completely formulated in the context of your presentation, but it doesn't mean that I won't have questions later on.

So just because I don't have any now doesn't mean that -- I reserve the right to have them later.

DR. MUNGER: Certainly. I'm just -- this is a public hearing. We're here. You're my Legislature. This is your opportunity to ask me. I'm here.

All right. Now, it will not surprise this Legislature that a very large coalition supports these generally commonsense policies, and the California Legislature Transparency Act in particular. Specifically, the actual initiative has been formally endorsed by a wide range of organizations who are not usually found on the
same side of anything. But here they go. The League of
Women Voters of California. The California State
Conference of the NAACP. The California Common Cause.
Californians Aware. The First Amendment Coalition.
California Forward. The California Chamber of Commerce.
The California Black Chamber of Customer. California
Business Roundtable. The National Federation of
Independent Business of California. La Raza Roundtable to
California. The Latin Business Association of California.
The Hispanic 100. The Howard Jarvis Taxpayers
Association. The Small Business Action Committee. The
Los Angeles Chamber of Commerce. The San Francisco
Chamber of Commerce. The Fresno Chamber of Commerce. San
Jose Silicon Valley Chapter of the NAACP. Monterey County
Street Institute.

And I will say that this measure has not even
qualified for the ballot yet. It will qualify in days.
But it's a remarkable coalition which has been assembled
in support not only of the policies, but of the specific
language and specific measure that we are bringing to the
ballot.

So I will now proceed to the matters of the
implementation. 72 hours notice. At present, the
Constitution requires that a bill must be printed and
distributed to the members of the House of the Legislature before a vote to pass the bill out of that House may occur. We add to the Constitution a provision that the text of a bill must be posted on the internet, and that the House must wait 72 hours after all three of these requirements are met before it may vote on the bill. That's where the public gets the right to know, to read the bill and confer were their representative, and the representative has 72 hours to read it.

There is an exception in case of an emergency so dire where delaying even that 72 hours would not be in the public interest. The Governor must declare the emergency. The Governor must certify to whichever House proposes to take up the bill that the passage of that particular bill is needed without waiting 72 hours in order to address that emergency, and then the House, by roll-call vote, requiring a two-thirds majority, must agree. Immediately after that, the vote to pass the bill in question may proceed. The two-thirds requirement to waive the notice is onerous, because for a bill to take effect instantly after passage, instead of having to wait to take effect until the following January 1, as is typical of ordinary Legislation, the bill must be crafted as an urgency statute, which itself requires a two-thirds vote.

If two-thirds of the House want to pass it, it's
a good idea to waive the notice requirement, two-thirds of the House will be able to say we want to waive the notice requirement.

This 72-hour notice requirement is enforced by providing in the Constitution that if a vote occurs when a notice is violated, that the bill in question shall not became a statute. Basically, the Supreme Court will toss it. Just as the Supreme Court would if the bill were proven now not in fact to have mustered the required majority in the House, or one or other House or any other Constitutional provision about to pass issuance of a bill.

Of course the Legislature could always, while the Court is mulling over this, simply re-visit the bill, with due notice, and pass it, pending the objection. But if they did not, then the bill would not become a statute. It might take definitive evidence for the Court to be convinced that a violation occurred. But because our Act mandates the Legislature has a Constitutional responsibility to record all its public meetings, in particular the one where the language of a bill was last changed, and the one where the House actually moved to vote on that language, that evidence to the Court would be available. Even if the official cameras go dark at the critical moment, which under the stress of this or that, might happen, by accident or design, because our Act
provides any person present may make their own recording
of the proceedings, there will be a backup. So that is
how the notice requirement's enforced.

We now move on to the question of the
Legislature's recordings. We require the Legislature not
only make a recording of its public proceedings, but to
post it on the internet within 24 hours. We provide that
it must be downloadable, meaning that any person may keep
their own copy. And we provide that any person may freely
broadcast or otherwise transmit them.

Next point. To require that a person attending
a proceeding of this Legislature has the right, that a
member of the public has a right to attend, has therefore
a right to their own recording of what their own eyes see
and their own ears hear. We provide a measure taken from
the Ralph M. Brown and Bagley Keene Act. Those Acts, as
you know, have been in force for decades and for every
single agency of local government, city council, school
board, board of supervisors -- everything -- and every
single agency of state government except the Assembly and
Senate alone. A member of the public who comes into a
public meeting may freely make their own record of what
they see.

That exception for the Assembly and Senate is
long overdue to be ended. These recordings under the
Brown Act and Bagley Keene Act provide that the official recordings made are complete, that they stay honest, that there's a redundancy in the availability of recordings available to the public, and this is all done at absolutely no cost to the State whatsoever, because these are these people's own recording devices.

In the context of our Act, while we require the State to post its recordings only within 24 hours. We're not going to ask you to do anything fancy, like guarantee live-streaming of everything instantly. However, recordings by persons of the press, since they're their recordings, may be posted immediately, and in fact live-streamed. So whether this body chooses to live-stream its meetings, information on many meetings will be made available to the public immediately.

Now adapting provisions from the Bagley Keene Act, the Legislature, while it must allow persons to record its public proceedings, may adopt reasonable rules for the sole purpose of ensuring that any disruption of its proceedings is minimized.

Now, naturally, to keep the Legislature from abusing those rules, we provide two forms of relief to a person whose right to make a recording is being abridged. Specifically, a person may seek a Court to grant injunctive relief, meaning, the Legislature makes a rule,
and the person wants that rule struck. In the more complicated case of a rule whose effect in practice on a person seeking to record a meeting frankly is not at all clear, a person may seek from the Court declaratory relief, that is that the Court issue a clarification of just what under the rule the Legislature is and is not permitted to do in the name of minimizing disruption of its meetings.

In these proceedings the Legislature bears the burden of showing that the purpose of the rule is in fact to minimize a disruption of its proceedings, not to stifle rights of public recording, and that limited end of the rule in question must be, quote, "reasonable," end quote. And these are high standards of proof.

Last point. To allow the fullest distribution of the recordings, whether made by this Legislature, or made by a private person, we mention that the recordings by persons may be freely broadcast and transmitted in whole or in part; that the recordings made by the Legislature must be posted on the internet and downloadable for a period of 20 years, and thereafter are archived, and all recordings of whatever origin may be used for, quote, any "legitimate purpose," without imposition of any fee by the State. As for legitimate purpose, you may know that the provisions of an initiative
put in statute can be made that it takes a vote of the
people to change them. Most statute's by the Legislature,
Statute's by the Legislature, a vote of the Legislature
may change. That protection is -- that word legitimate is
protected by the two-thirds required to have another
initiative. And consequently, when someone asks what is
legitimate, it will be, broadly speaking, legitimate
within the purposes of the act. And we have a page and a
half, abundantly declaring that the purpose of the act is
to provide public access and information and to allow the
public to engage fully in the political process and to
allow the public to engage with their representatives
before a vote on the bill, et cetera, et cetera. Infringement on that would not be legitimate in the course
of -- in my view, in the course of any ambiguity or
difficulty in someone interpreting it.

Now that concludes my part of the talk on the --
excuse me -- almost. I want to address a question
Mr. Cooley raised and that Mr. Ben Allen raised, including
cost to this measure.

The first matter is, of course, modern
digital -- modern audio-visual recordings are digital
files. Digital files are a collection of binary bits.
It's zero and ones. It's the same file if it was recorded
on any media whatsoever. So if we have recorded it on an
old-fashioned tape deck, I wouldn't recommend it, and you
said "Whoops. We want to make it available to the public,
but we don't use that technology anymore," you just need
to copy the bits over. And there are many services that
will exist to do that whenever it's required.

To give an example, we used to take color
slides? Anyone remember color slides? And there are
commercial companies that will take your color slides and
they'll turn them into modern computer bit files. They've
invented that technology. The transition will be
seamless. It's not costly. You're not going to be stuck
with saying "I've got 20-year equipment which I somehow
have to keep maintaining for the business, the purpose of
the public having access to recordings." You can copy the
files over. As long as they are viewable as audio-visual
files by the public, you're good. So the legacy issues
and equipment are not a major issue.

Regarding the question Mr. Ben Allen asked about
the funding of this measure, we did take the cost of this
and require them to come from the Legislature's own
budget. As members of the Legislature are aware, your
budget is tied to something called the State
Appropriations Limit, which is a Constitutional Amendment
established by Proposition 140 in 1990. And it's indexed
to -- if I can remember the technical term, which is
eluding me at the moment -- but roughly speaking it goes up as the State economy goes up. As you may also know, that that budget in real terms went up five percent last year. Five percent this year. And we project it will go up five percent next year.

In fact, I just saw a headline this morning saying California had suddenly gotten back to being the sixth most powerful economy in the world. So I think you're going to get your five percent. In real terms that's something like 40 million dollars a year. And that's a permanent increase in the Legislature's budget.

We generally agree with the Legislative Analyst's estimates of the one-time capital costs of this of the one to two million dollars, and the operating cost annually for the whole shooting match of one million dollars. I submit to this Legislature the public is going to make available to you an extra 45 million dollars a year, that peeling off one million dollars of it, or about two and a half percent, to take what you are already doing, you are already audio-visually recording and streaming this meeting, and now that you're -- take that part of your duties and increase its effectiveness in the same way that you increased the effectiveness of the rest of your organization. We do not view that as a big bite out of that increase. And we also think that
consolidating the authority for making the videos with the
money to make the videos is appropriate public policy. It
is the Legislature that has authority over the building,
over the cameras. It's the Legislature, given the
Constitutional responsibility for making these recordings.
The Constitution now guarantees you have a budget to do
this. It seems an entirely appropriate way for us to do
this.

We will certainly concede if the cost of this
had been ten million dollars a year, 50 million dollars a
year. But one million dollars a year, it's irrelevant.

The other matter is you asked a question about
the cost of maintaining all of this stuff on the internet.
Memory is incredibly cheap and falling ever faster. So if
you consult a company like Granicus, or you consult
basically anybody, you will come up with the following
remarkable fact. To host all the video that you will
record, and every public meeting of the Legislature over a
year, you will spend less money than it will cost you to
buy the paper to print the 120 copies the Members of the
Legislature use when they actually go to the Floor and
vote. It's that cheap. You're talking -- it is -- you're
down -- it is irrelevant on the scale of the Legislature's
budget, which is currently in the vicinity of 300 million
dollars a year. At this point you're literally
legislating over paperclips relatively speaking.

ASSEMBLY MEMBER COOLEY: Just, if I may, I wasn't asking about the storage. It was more of the question of if technology changes so we have to go back, I think the point is well made, this is -- to the extent this offers accountability, it's accountability that supports the Executive Branch in its works, the Courts in their work, the citizenship, the citizens generally. It is, of necessity, would happen, especially with the Legislature, but as a broad general government purpose. I don't -- accountability would further -- Executive Branch agencies, as I said, awareness oversight, be able to look at the record, understanding more particularly what the -- what the discussion was, what a bill went through. It is accountability scaled up on a different level, but it's a broad governmental sort of thing. So it actually strikes me as very anomalous that for something that has such a pervasive effect on government, and supported all three branches of government, and the people, because of course every bill is the people of California to enact as follows, to say that it would come out of a particular account set up 20 years ago just strikes me as it's an anomaly. It is a general government purpose that's being articulated.

So I do want to say -- I jumped in. I wasn't
worried about the storage cost. It was if we have to convert old storage to updated things, and it's coming out of that Legislative account. It just strikes me as odd that a broad general government purpose, we would articulate in the Statute and the Constitution that it comes out of a fund that was established before any of this technology really existed.

1990, we were barely getting to the use of green diode screens in the Legislature. We still had IBM Selectrics pervasive in the building. Word processors were in their infancy. The whole technology scheme was different. So that just strikes me as -- I don't quite understand the rationale for a bill of such broad governmental purpose.

Accountability, by its very concept, is another party, you know, looking at what the law is. So it's everyone who would have an interest in the work product of this branch of government and what was -- what was understood.

So again, I'm sort of with the Chair of Senate Elections, and that just strikes me as anomalous.

FORMER SENATOR BLAKESLEE: Can I speak just briefly? So if these were videos of the Executive Branch, or these -- this was a fund that was going to pay for videos of local government, clearly that very broad
overarching conversation about why would the Legislature's budget cover it, certainly would be cogent. But we are talking about recordation of this body, just as we paid for this room. This is another form of public access for what happens in the Legislature.

And currently, about half of the hearings are televised. The precedent is that it comes out of the Legislature's budget. So we're working within, A, existing precedent, and B, the purpose and function of these activities are completely consistent with the Legislature's role, not the Executive Branch, not State Department's agencies or local government.

ASSEMBLY MEMBER COOLEY: Yeah. Well, if I may. Last November, Speaker Atkinson, Rich Gordon conveyed to every member of this body, this book dealing with oversight, and to put our institution on the road to more oversight, which is carrying out, I think, the top two primary, the citizens' redistricting, the longer terms for members, and in a transmittal letter, their concluding remark is "We encourage you to consider oversight hearings. The Administrative Branch of government is tasked with implementing public policy that was created by the Legislature." So I believe it's unassailable that the work of the committees, the conversations they hold, the understanding of events by memberships as they debate
issues of public policy, even as your own digital divide -- I saw that you have a video that has me in a Foster Care hearing. Mr. Blakeslee, your digital divide thing, a hearing released earlier this year.

FORMER SENATOR BLAKESLEE: You look great.

ASSEMBLY MEMBER COOLEY: It's all about what is the Legislature's intent. That is actually the raw material. The Statute and the associated understanding of the Legislature in passing that Statute, that is the raw material for the Executive Branch, and the work of oversight is are they aligned with that? So I would say, again, this initiative does focus on the fundamental interaction of our tri-partied system of government, Legislative, executive branches, Courts -- I'm not arguing with so much the recordation. If you want to go to YouTube -- I was looking at your YouTube this morning. You go to YouTube and look up California Proposition 20, or California Proposition 21. California Proposition -- any up to 27, you're going to find that I'm on YouTube talking about ballot measures. Because that's -- and it will pull up on the first screen. It's not going to go searching in my name. So I actually believe in access.

But again, I just think for something that aspires to have such a broad impact on government generally, to go into the 20-year old budget and just say
this is uniquely a Legislative expense, is, to me, anomalous. And that's just an observation. And again, I don't disagree that the cost of saving digital stuff per se is more if you have ever had to translate into an updated format to meet the requirement of a 20-year access.

    DR. MUNGER: I have a few -- one more. At least one more point to make. Because you had asked the question about details of language and statutory construction.

    CO-CHAIRMAN ALLEN: Yeah. And we've got -- I guess there are ten ambiguities that were listed out. And it would be great if we could go through them.

    DR. MUNGER: Well, let me -- I'm happy to do so.

    CO-CHAIRMAN ALLEN: Okay.

    DR. MUNGER: But let me preface this. I mean, I certainly agree with the Honorable Cooley that I think this is a transformational thing. You mention recording these and putting them in the internet for 20 years. After all, you all know that 15 years after a Statute passed, somebody doesn't know how it applies. One of the things the Courts do is say what did the Legislature have in mind when it passed this?

    Well, I think they're going to need to look at an archive of recordings here to find out what the members
here might have argued at the time. At the present, a lot of that in the Committees evaporates into the air. It's actually important for the Legislature to be able to have that on the record, so that its own intent is remembered, even if a future Legislature might construe a Statute differently in trying to enforce it.

We tried to be as respectful of the tri-party nature of our government in this matter as possible. We have a budget that the Constitution actually gives to the Legislature to run its operations. We have not engaged to say that anybody else should be -- have authority over a budget that affects something so intimately as the camera arrangements in your own committee rooms. But you make the rules for the access to this building. You make the rules for security. You make the rules for conduct of your business. To give the authority over funding this to some other agency, seemed to us, one, constitutionally perhaps inappropriate, and certainly contrary to all existing precedent. We're extending what you were doing and how you were paying for it.

Regarding your question about it's anomalous. Yes. We're -- in this sense, it's anomalous. We're saying your proceedings, you have the responsibility to record. Every other agency of government, you are the Legislature. And if you want to set recording
requirements and pay for them, however they're done, you can require local governments to do it. By Statute, you can do the General Fund, you can do anything you want.

We're just saying for your unique recordings, your responsibility, your budget, you take it. It's your building. You take care of it. It's possible to disagree on that one. We tried to be very careful about it.

Let me turn to your issues. In drafting this California Legislature Transparency Act let me remark that our chief counsel, in drafting it, is the Honorable Dan Gulke. Mr. Gulke was the Chief Legal Advisor for Governor Wilson during the eight years of that administration. He is a former Appellate Court Judge. He was my counsel in the drafting of California's Congressional redistricting reform. This is -- oh, by the way, thank you for saying kind works about redistricting. That was -- Congressional redistricting was something that I essentially carried, and it's nice to know that after the fact -- it's a pleasure. The -- you know, it's apt to mention the Congressional redistricting in particular because there was alleged ambiguity in the interpretation of the Statute that was brought to the California Supreme Court, ironically by my own political party. I fought them. It was dismissed 7-0 within 24 hours of receipt by that Court. That measure's also withstood indirect challenge
before the U.S. Supreme Court as late as last year.

Now Mr. Gulke is, in my view, one of, if not the foremost Constitutional scholars and practitioners in the State. Because I'm a conscious man, I had all this work, nonetheless, reviewed independently by two other attorneys.

So while at this late date, this language is has been before you for eight months, it's nice to get feedback from Legislative Counsel, yesterday at 1:30, about various ambiguities, and just in time for me to spend the interval of time, maybe 18 or 20 hours, trying to respond to your comments. But we're here trying to establish 72 hours for people to take complicated questions and actually think about them before giving answers. So if you'll excuse me, not going to give you definitive answers to your questions. My chief legal counsel is frankly not available for this meeting. This meeting was called on Friday. He's in trial. And he has other clients. So I'm sorry he can't address you directly.

Now you did mention Legislative Counsel had many specific remarks. Before I go through those in specific, again, are those the only issues that this body currently wish-- -- this has been before you for eight months. If there's any other issue other than what's raised by
Legislative Counsel, this would be a good time to tell us, because we would like to respond to you. In particular, if there's any, we would like to take the Legislative Counsel's remarks, and we would like to reply in due course, perhaps a little more than 72 hours would be nice. But anyway, to write a reply and have it appended as part of the official records of this meeting.

Would that be acceptable to the body, in addition to my answering your questions as best as I can here?

CO-CHAIRMAN ALLEN: It is reasonable to me.

DR. MUNGER: Thank you.

CO-CHAIRMAN ALLEN: But if you do have comments on, you know, this is a -- and I understand, you know, you haven't had that much time. But if you do have comments that you would like to make today on these ten ambiguities that have been listed out, we would certainly be interested in hearing them.

DR. MUNGER: As I say, we can't give definitive answers from this kind of notice.

CO-CHAIRMAN ALLEN: I understand.

DR. MUNGER: But on some of these matters we can. Perhaps you would like to look at the list of ten or so and say which ones you would like me to address first, as to you think the most important.
And meanwhile, I'd like to invite Tom Hiltachk, one of the attorneys to the measure, to join us here. He may be able to address some of your comments, responses directly, and somewhat more authoritatively than I could.

ASSEMBLY MEMBER HOLDEN: Can I just ask a question? And this is not really question for those who are presenting. Because I appreciate the questions that are laid out before us as -- and before you, that have been identified by Legislative Analysts. I have staff who are watching who are in the office, who are watching from the audience, and there may be questions that -- I mean we certainly would be timely in trying to be -- to add those to it. I would be really -- I'm just saying, through the Chair, if I have any questions in a timely enough way that can be presented through the Chair, and then presented to all of you who may need to have them to respond to. I think that, just in terms process, because I know you're -- you've now twice asked for any questions from us here. And if -- and I don't want it to -- I don't want to let that moment pass without again saying that if I don't have a question at this particular moment, it does not mean that I will not have a question. But I will respect the fact that being timely and presenting my questions to the Chair, and then to you, I'll honor that. But just because I'm silent at this particular moment does not
necessarily mean that I don't have some questions that I might -- that might come up after this hearing.

CHAIRMAN GORDON: Miss Waldon.

ASSEMBLY MEMBER WALDON: Just to jump on what Mr. Holden's said, we as Legislators, you know, once we get out into the public, and we're on recess and things like that, we always have members of the public coming up to ask us, you know, what about this initiative? What about that initiative? We always get that. So you know, what you're saying is true. We may not necessarily have questions now. But it would be helpful to keep that dialogue and be able to ask those questions as we go forward. Because we will inevitably get those questions. Thank you.

CHAIRMAN GORDON: Senator Anderson.

SENATOR ANDERSON: Thank you. I -- perhaps you could clarify for us, the reason why you're asking for questions in the way you have is because the process that could have been performed months ago, that was supposed to happen months ago, is last minute now for you. Questions that weren't presented to you were presented to you on Friday, which kind of leaves the whole 72-hour issue of being blind-sided by this committee. And I know it's not the Committee's purpose to blind-side you, but on the same token, I don't want you -- I don't want you to believe
that our additional questions are necessarily hostile.

But in the same token, I'm not sure every member realizes
how this process has somewhat been blind-sided. No other
initiative has been treated this way.

So I think there might be some
misunderstandings, and perhaps you could address that
issue.

FORMER SENATOR BLAKESLEE: I'll make an attempt
at it, Senator Anderson. Thank you.

The reason we as proponents are asking if
there's an issue, if there's a problem, identified some
significant difference in policy, please alert us now, is
because of the fact that we are literally two weeks away
from that moment, June 30th, where the ability for us to
withdraw the measure goes away. And as Senator Anderson
mentioned, we reached the 25-percent threshold, which is
the moment when this type of hearing can be convened, on
February 11th. Four months ago. Four months ago we were
ready to have a conversation.

And again, even that would not be an issue
except for the fact the Legislature's rushing to put their
own measure on the ballot, which could potentially compete
with this. So when we ask for your feedback and are
seeking an understanding of what's the problem you're
trying to solve that we're not solving, it's not an
academic question. It's not a rhetorical debate. It's not an engagement of sophistry. We really need to know. Because if there's a problem, a substantial problem, then there may be motivation to sit down and do something else. For example, the vehicles that were mentioned earlier.

And why this is so important is the following: If that is not the ultimate goal of the Legislature, specifically to identify a critical defect or policy disagreement, and then resolve it through compromise, but it's something different, then I think we need to bear in mind the words that were in this morning's, Dan Walters' article, and they are whether SCA 14 goes before voters depends on whether at least a few Republicans support it, since it requires a two-thirds vote with a June 30th deadline to place it on the measure, the November ballot.

If both measures pass, the one with the most votes would prevail. But if voters are confused by two measures on the same subject, both could be rejected, and we'd be back where we started on making the Legislative process more transparent.

So the question here is is this an exercise in putting a competing measure on the ballot to confuse the public? I don't believe it is. Others are concerned it might be. If not, then what is the problem that we can speak to right now, in front of you? Because you'll be
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voting on a competing measure which could produce this bad
outcome that's been warned about in this morning's paper.
That's why we're asking this question.

ASSEMBLY MEMBER HALDEN: Well, I -- to be honest
with you, this is my first stint on Rules. I've not
served on elections. This is three years for me, and this
is the first time that I think -- at least my
understanding -- that we've had this kind of conversation
about a proposition. There have been plenty of them out
there. And I'm not saying it hasn't happened in some
context. But to be all sitting here right now, giving you
the opportunity to present -- now I can't tell you, answer
the timing issues, because you're talking about rolling
the clock back four months ago, and I'm preparing
Legislation for this cycle and asking LAO and engaging on
my Legislation. And so I'm not tuned in, as you have
been, on your initiative.

I've now been asked to tune in. So I'm here.
And I'm taking notes, and that's all I can do at this
moment. And my apologies if it comes down to two weeks.
But welcome to how sometimes the sausage gets made.

FORMER SENATOR BLAKESLEE: Right.

ASSEMBLY MEMBER HALDEN: And you're keenly aware
of that. And so we're here, and I think it's everyone's
intention to find out where the equilibrium is on all of
this, and what is the best way to move forward. At least that's my intention. And -- but I, again, I may not have a question for you at this particular moment. I have ideas and thoughts that have arisen, based on your presentation. And I'll go back, and I'll talk to my staff and others. And through the Chair, if we have a series of questions, we will be prompt in presenting those to the Chair.

DR. MUNGER: Do you have some --

CO-CHAIRMAN ALLEN: Well, I -- look --

DR. MUNGER: -- particular points on the language? I can answer a few of them if you like.

CO-CHAIRMAN ALLEN: Why don't you do that. And then I understand you're going to be preparing some written remarks.

DR. MUNGER: YES.

CO-CHAIRMAN ALLEN: And more detailed response. And that way that will be on the record and you'll have an opportunity --

DR. MUNGER: Right. And we'll be able to actually get what our best answer to the questions that the Co-Chair has raised.

CO-CHAIRMAN ALLEN: Okay. Did you want to raise it first? Or should we wait for --

ASSEMBLY MEMBER COOLEY: I can raise it any
time.

CO-CHAIRMAN ALLEN: What are you -- Senator, do you prefer --

ASSEMBLY MEMBER COOLEY: How about I'll do it now, and then I'll --

CO-CHAIRMAN ALLEN: There you go.

ASSEMBLY MEMBER COOLEY: I'm more looking at this from a process standpoint. And just trying to think about how the process works. And I have to say, on behalf of the -- from an institutional standpoint, you know, in the 1900's we had Artie Samish. Artie Samish, the horrible lobbyist, who had Confederates engrossed in office, and was able to slip language in beyond the reach of members to change it in the official record.

We now have, as an institution, of necessity, just a human institution, we have deadlines. We have budget deadlines. We have end-of-session deadlines. We now create a dynamic where if somebody by any means slips language into a bill, at that last 72-hour window, no member has seen it, but your choice at that point is you either kill the bill, vote it down, or somehow there's reasons it moves forward.

I think there's actually plenty of your constituents who didn't like the way the minimum wage thing worked out, which was sort of action under pressure,
feeling they needed to move forward. It was sort of this new dynamics. I'm just -- some of the small business people, I meet with them, my district, you know, confounded by how the process unfolded. And yet the Legislature, it made sense to do something.

My concern is this language, and I'm not saying I'm opposed to it, but there's no ability to amend, to strike language if people think it's objectionable. There's no ability to "Oh, my God, we need to amend another bill, to double-join the two, so that it can cancel out a provision that somehow got slipped in."

There's tools in the Legislative tool kit to keep the process well-grounded, and the 120 lawmakers feeling that what we are passing is our collective best judgment. We sort of set up with this deadline -- and again, I'm not averse to time for observation. But in an institution that gets crowded up against deadlines, sort of like the old Artie Samish thing, if someone could just slip some language in right at the last minute, all 120 members are sort of taken out of the ability to get something dumped. And it can be -- it can be purely technical. It could be that maybe, "Oh, my gosh, we agreed that a bill was supposed to have all the shelves taken out to May, and some of them got missed." How do we fix that? Or it can be something more pernicious, that somebody had a plan and
they got some language in, and of course, it got drafted that way.

So I understand the desire for accountability. But I think accountability for the people of California is vested in the 120 lawmakers. And I think when you get up against a deadline, and a member has no effective tool in the tool kit to say "Wait a second." You can commend the reporters that look at this stuff. But today, I had my staff saying "I want you to check against some of the bills I will be voting on," and looking for a particular code section that might have popped up that would have been of interest to me. And I'm the sort of Member that would do that.

And my colleagues, I can guarantee, I serve with an outstanding 120 lawmakers. And as we have more time to serve together, we're all going to be more assertive. And I think that's what the public wants.

So I see the broad philosophy in the thing, but I object to the funding. I don't think it's well-served to be on one entity. And I actually think that you haven't thought through the ramifications for good, responsive, effective government, strong legislators raising their hand, saying "There's a problem here." I think that 72-thing needs some work. There's some other variations out there that I should think start solving
this problem. But I don't think it's in yours.

Personally.

CO-CHAIRMAN ALLEN: And so I know Assembly Member Ching has comments, and then Assembly Member Walden.

ASSEMBLY MEMBER CHANG: Thank you so much Mr. Chair.

And I think you can tell that the Committee has some very thoughtful members on here. And we are clearly thoughtful in the need to want to review material before making decisions. So this exercise, this hearing, I believe is a great example of the need to have something in print for 72 hours at least, to be able have a thoughtful process.

And I love my colleague, Mr. Cooley. And I understand that you value and respect the process; however, in my two years of being here, I've been observing some inefficiencies in the process which I think that we can improve upon.

I've also noticed that quite a few bills are introduced to correct some unintended consequences from bills that have been signed in the past. And I believe that if we engage in a more thoughtful process, having more time to deliberate, to go through the details, we can eliminate that, and we don't have to keep introducing
bills to correct some of the deficiencies of prior bills.

So I think -- I think this is a really great thing. And I just want to say, as you can tell, once again, that members are very thoughtful, and we want to do the right thing. And we want to be able to introduce thoughtful Legislation. I think this is a great tool to be able to provide that.

CHAIRMAN GORDON: So we've asked Dr. Munger a question. We put him off several times.

Miss Walden, I'm going to let you have the last comment. And then we'll take no more comments from Members for the moment. So allow Dr. Munger to answer.

ASSEMBLY MEMBER WALDEN: Thank you, Mr. Chair.

You know, just hearing the conversation, and being a member now four years, the issues that were brought up about the kind tools that legislators have at the last minute, when things are presented on the fly, is kind of the symptom of the problem you're trying to solve with your initiative.

You know, if someone tries to sneak language in and throw it to the Floor in the war, with the 72-hour, you know, mandated time to look at it, if they sneak language in, someone's going to find it, the alternative then is to kill the bill. So over time people are going to learn that doesn't work anymore, and that process, I
think, is what you're trying to solve, that we're not
going to have to deal with that.

And I remember as a freshman legislator, first
year, and I have to commend, 'cause we had 38 new members,
and then we added three more when other folks ran for
other offices. So, you know, we were in the majority of
80 members were freshman. And we did the bill that came
through for the Sacramento Stadium, with the CEQA
exemption that covered, kind of went through the whole
State on a lot of things. We took a break, came back,
there was a wharfing bill that undid everything in the CEQA
exemption, except the stadium. And to the credit of the
freshman, 33 Democrats, joined with Republican freshmen,
and we did not -- that bill died. It was the last bill we
voted on before we recessed. So those wharfing things,
those type of things would eventually start to go away,
because they wouldn't work.

And the reason things are the left to the last
minute is for more of a control or to get things pushed
through without the public even, and even us seeing them.
So that's just my response to that.

CHAIRMAN GORDON: Thank you.

Now I understand that you've been asked to
address some of the things from the --

DR. MUNGER: Happy to.
CHAIRMAN GORDON: And rather than put you on the spot, I'll let you respond to what you want to. You said you'd submit something anything writing.

DR. MUNGER: That's right.

CHAIRMAN GORDON: And I think that's very preferable at this point. So your turn.

DR. MUNGER: All right. I can address one of them for Mr. Ben Allen, who's been suffering, because he asked this question and got no answer. And I think I can address some of your concerns.

The first is that 72 hours applies to the bill that dismisses a bill from a House. So if you're in the Assembly, and you are going fast and furious through Committees, and you're amending bills on the Floor, and somebody says -- and says "I move to put in some bunch of junk," and they get it on there. If you notice it 20 minutes later, you can take it right out. The only thing that starts the 72-hour clock is the Assembly pronounces itself satisfied. They want this to become law. They're putting it out of the Assembly. And if the Senate and the Governor like it, they're good. So the only time you're going to be in a problem is if the language in question is bad, and discovered last minute. It's discovered, and we're just about to dismiss the bill from the floor.

Now I submit that the Assembly can probably
learn to stop putting bad language in those circumstances.

But the worst thing that's going to happen to you is

you're going to have to say well, we had that bad language

71 hours to go, with only one hour to go, we discovered it

now. If we change it now, we're going to have to wait

72 hours before we can move it to the Senate. That's the

limit of the.

So when you think about Legislation, and that's

the worst thing that's going to happen to you in practice,

suppose at the end of the day, you're at the end of the

session this year, you got every bill done except one, and

somebody finds a problem. And you want to move out the

Assembly, and you want to move it to the Senate. And the

Senate's waiting. And it doesn't care. And you say "Okay

guys, we're going to amend it in the Assembly. We're

going to go home. We'll come back in three days, move

that bill in the Assembly, vote in the Senate, it's law.

Your problem is you've got to come back for one more day

to deal with that one last bill, assuming it was important

enough for you to do so.

Now in terms of the practicalities of this, and

this answers -- addresses a part of your question, we

didn't find this idea from nowhere. One of the language

questions we were asked is why we said -- if I can find

the exact phrase -- no bill may be passed or ultimately
become a statute unless the bill is up for Assembly. Why did we stick up "may be passed or ultimately become a statute"? And Legislative counsel said it's ambiguous.

It's not necessary.

We took that from the Constitution of the State of New York, which provides that no bill may be passed or become a law unless it has been printed on the desk of members for three Legislative days. All right. So we're copying something that's been in the Constitution for a little bit, for a little while. 112 years.

Now the State of New York is one of the original colonies. I may have that wrong. May have 116. But it's well over a century. It's one of the original 13 colonies. Governorship of New York has -- the Legislature of New York has dealt with every crisis imaginable. They've dealt with wars, we've dealt with recessions, we've dealt with people blowing up the Twin Towers. We've done all of that, and somehow or other the New York Legislature says, you know, it's not a bad idea before the final bill, final vote of a bill, for the Legislature to actually see it. And they have an exception that the Governor can waive it, which we also have.

Another state that has this is the State of Idaho has. It has a 70- -- it has three, several day exemption. The most interesting one is the State of
Hawaii. The State of Hawaii says that all the bills have to be final form for 48 hours. There are no exceptions whatsoever in the Constitution of the State of Hawaii. Hawaii's a very interesting state, because they put that in in mid -- sort of 1967. Hawaii, it lives on top of volcanoes. It is subject to repeated hurricanes. And within living memory, it has watched the U.S. Pacific Fleet sunk at Pearl Harbor by enemy attack. And it somehow thinks that to deal with whatever might come their way, their Legislature can manage to do it if the bills are available for everyone to see for 48 hours.

We do not think that this provision is going to seize up the California government. We have -- if you want me to go through how it affects specific bills, and the specific deadlines, at the end of the day, this is not going to be a problem. The examples of New York, Idaho and Hawaii make it pretty clear that this is -- that this is going to work.

And again, we've copied Constitutional language, because we just don't want to reinvent the problem. No one's had a Supreme Court issue with that language since its writing. We declined to reopen that question.

So that's one of them. And it's relevant to your question. The other -- the other ones, we're happy to respond to in writing before this Committee as long as
the record becomes part of the public's record on this meeting.

    CHAIRMAN GORDON: And it will.

    DR. MUNGER: Thank you.

    CHAIRMAN GORDON: In just a second I'm going to move to public comment. Before I do, let me allow you to close.

    FORMER SENATOR BLAKESLEE: Thank you. I'll make my comments brief. Thank you for your very thoughtful questions. And thank you for your patience in giving us an opportunity to address those questions. I mean that with great sincerity.

    Again, as someone who loves this institution dearly, I believe these are the kinds of reforms that, if adopted, will allow us, I think, to serve with greater distinction, and to avoid these moments when we have to go back and explain to our press or our public and sometimes our families how certain bills became law. Because in the future we'll be able to read these bills. In the future, the public will be able to see what's happening in these rooms. And in the future, what's happening in the rooms will be widely available for the public's support, approbation or disapprobation.

    With that I would urge you to think very carefully about putting a competing measure on the ballot.
which could ultimately, if there's confusion generated, thwart these reforms. Thank you very much.

    DR. MUNGER: And of course, Honorable Gordon knows I've been attending the hearings on the bills the Legislature developed. I think I'm now into hour number -- maybe starting hour number five in the last week before you all. Apropos of the Honorable Holden's concern, there's an ongoing conversation about what the Legislature should do in response to this initiative. Our first and foremost job, which is a question we're willing to have come in after this meeting, if need be, is tell us what's policy objections from -- for example, Mr. Cooley, tell us what the language is we've got wrong. Okay? Convince us that -- convince us, A, that there's a flaw in our measure that's so bad we should yank it. We want to hear it. Because we don't want to do the people of California an injury. But we have to hear there's a problem before we can contemplate that.

    The second one is that we think we've got a very good foundation of the bill we already have, you know, to deal with these issues. And if the Legislature wishes to engage in working on transparency, it can continue working on the bills in question. I've testified at the Appropriations Meeting that, as written, I won't yank the CLTA if those are passed as they are. And I do not think
that a bill which is -- that it's a good idea for the
Senate to dismiss a bill to the Assembly without being
able to say to the public that we the Senate think that
bill, the Assembly takes it as is, should become law,
should amend the Constitution. I don't think you're
there.

But I'm willing to engage. We've got 15
calendar days. If you want to keep having public hearings
about bills, legislation, so forth, I'm happy to attend to
the limit that my wife will let me. You know, but you
have to -- I'm not here to draft a solution for you on two
weeks. It took us months. All right? To try to get
where we are.

You're working under a -- self-deadlines imposed
by the Legislature itself. I know you have many other
things to deal with. But if you can't close this deal at
the end, what I suggest you ought to do is simply say do
the CLTA. Let's see if the voters pass it. And if
there's something in it you don't like, which may be as
simple as where the money comes from, well, you're the
Legislature. And June -- 18 months later, if you want to
say we have an amendment to offer the public, and we want
the public to support it, you can do that.

The question is is there something so bad in
this that you can't wait 18 months to fix it. If
there's -- is there an idea so good that you have right
now that you want to have a head-to-head ballot, possible
head-to-head battle on the ballot, with all the
transparency in line, to get that reform, when you could
ask for that reform in 18 months? You're not going to be
in conflict with us if you just don't put it on the same
bloody ballot.

So I'd be willing to engage with you. I'll
continue do that. But you know, with respect, this
institution is running out of time. And it's going to be
difficult.

So I'm willing to engage, because there might be
a big upside to this. But understand, if it doesn't
happen, it's not going to be because I didn't want to
engage or I'm not willing to talk to my Legislature,
because you've run the clock out on yourself. Thank you
very much.

CHAIRMAN GORDON: Thank you very much.

Let me now invite members of the public who
would like to make a comment, that we have a microphone
set up if you would line up, and encourage you to be to
the point, please.

MR. SILVA: Thank you, Mr. Chairman and Members.
And to the point, Fred Silva with California Forward.
We're actively supporting the CLTA. I would suggest to
you, many of us have been involved in this since 2009, looking at different approaches to Legislative transparency. California Forward supported it, put together an initiative, Prop. 31, that included a vote requirement, a print requirement. It also supported -- actively supported SCA 10 that Senator Wolk carried back in 2013.

So our active support has been based basically on this notion that there ought to be more legislative transparency and some form of a print rule so that everyone sees all legislation. Much of the emphasis has been placed on gut and amends. I would submit to you that the CLTA applies to all legislation, including conference reports, including legislation that you all deal with in special session.

So as you're considering this, think about the breadth of the application, not simply to certain circumstances like the gut and amend issue. So we're actively in support of the measure.

CHAIRMAN GORDON: Thank you. Next.

MR. SCOTT: Members. My name is Tom Scott. I'm the State Executive Director for the National Federation of Independent Business in California. 22,000 members. Strongly supportive of the CLTA. I know members of the Committee might say why is transparency a small business
issue? I am here to make it clear that this is a major issue for small business. And that this initiative is by far the best proposal at our fingertips to create a more open and accessible government for our job creators across the state.

Every day my members tell me that they worry about what's going on under the Dome, whether it's here in Sacramento, whether it's in D.C. And whether it's new regulations that are constantly coming out of nowhere that they're not aware of or legislation. But my members know that one bad bill out of these halls can be the death knell that closes these businesses for good.

I hear these stories all the time. And it's not fiction, you know. And honestly, what we witnessed, as Assemblyman Cooley mentioned about the minimum wage, to me, you know, for the 21st century to see a deal cut on a Saturday, before Easter, no public participation, one committee assignment, appropriations. No analysis. Two floor votes. And then a signature by the Governor, to me, was just unbelievable. No business at the table. No retirees at the table. No non-profits at the table.

I mean, if anything, that, to me is the model for why people should be supporting the CLTA. You know, and I'm not going to even get into budget trailers. I mean, I've been watching twitter, and I mean, there are
things that I'm learning every second, you know, as to what's going on.

But regardless of how you feel about the debate on minimum wage, I'm not really here to argue the issue. But the abandonment of the public process and good government demonstrated that in ramming SB 3 through this building a few months ago reaffirmed our need for real transparency here. There are important substantive differences between the initiative constitutional amendment before us compared to the legislative proposals. I mean, honestly, transparency, I mean people throw it up on their websites. They mention it in every other sentence.

You know, for me, I mean, what is the cost of transparency? A million? Two million? Public participation? Engagement? You know, to me, you know, I say hey, whatever it costs to make sure the people in this state know what's going on is well worth it. You know, and quite frankly, you know, I think this -- I mean one million-plus people have signed this. And then for the Legislature, in the final two weeks, to come along, you know, with even what I would question, you know, how transparent have the two proposals been, is really -- you know, it just -- this is the 21st century. We can do better. CLTA, to me, is the answer. Let the people vote.
MR. COUPAL: Mr. John Coupal. Howard Jarvis Taxpayers Association. And we strongly support this particular proposal. Among the many motivations is the fact that the incident referred to by Sam Blakeslee, with the video recording being turned off during the opposition arguments in the -- what was supposed to be an informational hearing on Proposition 30 was so shameful that the Sacramento Bee excoriated the legislator who was responsible for that. I won't mention his name. Rumor has it he's going to be a mayor around here someplace.

But also the Chairwoman of the committee, Lois Wolk was incensed that this had happened in her committee, that the video recording had been shut off.

We greatly support transparency. We also like this particular proposal for what it does not contain. It's going to shock you that we like this because it does not contain a tax increase.

But finally, the cost. As a percentage has been mentioned of the total Legislative budget, this is, I think to use an LAO term, is referred to as budget dust.

Strongly in support.

CHAIRMAN GORDON: Thank you. Next.

MR. FRANK: Yes. Chairman and Members. Terry Frank, with Californians Aware, a non-profit organization that spends a good deal of its time, not all, but a good
deal of its time in policing the Brown Act, so to speak, and urging the improvements and defending against measures that would water it down, in educating and helping to get adequate training for local officials who don't understand what the Brown Act is or how to comply with it. And after about 36 years of doing this, with local agencies around the State, what strikes me is that they are already operating under a regime which requires them to provide adequate notice to the public of the specifics of things that are being proposed for policy, before the vote, so they may come forward and ask questions and make statements.

They're already under a regime which says that they must allow audio and video recording and photography of their proceedings, unless the body makes a finding that practically speaking, it can't be done without noise or disruption of the process, which of course, now, with photo cameras and their phones, is no longer an issue anyway.

We deal with organizations that, on their own, increasingly subject their meetings to recordation and archiving, without being told to do so, because they think it's a good idea. So with that kind of experience with local officials of goodwill, when we were approached to ask for our support for this measure, it seemed to be a
natural. Thank you.

MR. BAKER: Good morning. Gavin Baker with California Common Cause. We are in support of the ballot initiative. We think it's fundamental that legislators should have an opportunity to read a bill and to hear from their constituents before they have to vote on it. And so we believe that this initiative, which contains a 72-hour transparency period before a vote in either House is a common sense and balanced rule that would allow legislators the opportunity to read something, to hear from their constituents about issues before they have to vote, while also allowing their legislature to keep the trains rolling and be able to do their job.

Chairs, thank you very much for holding this hearing. I'll just quickly note that Common Cause was a co-sponsor of SB 1253 in the previous session, which created these public hearings for initiatives. We think it's important for voters to be able to have some information about what they're voting on. We think that these hearings are also useful because they create a record that courts can look to when they're interpreting these initiatives. So thank you very much for holding this hearing to build that record. Thank you.

MS. LAWRENCE: I'm Lee Lawrence, Government Director for the League of Women Voters of California.
And we strongly support transparency and the public's right to know. So we deeply appreciate the provisions in the CLTA initiative and hope that they end up in the final solution, however that comes.

I'm also wanting to speak on behalf of our Senior Program Director, Trudy Schafer, who's unfortunately on the east coast. But she has perhaps noticed with some frustration there may be some need for attention to transparency in the whole budget trailer bill process, and we recommend that to your attention as well.

Thank you.

CHAIRMAN GORDON: Great. Thank you.

Anyone else from the public?

Let me thank my colleagues and my co-chair for participating this hearing. And let me specifically thank the proponents. Appreciate you being here and providing the information. And the public for participating. And those who are also watching us as this is being broadcast.

With that, we will adjourn this hearing. And thank you all very much.

(The hearing was concluded at 12:05 p.m.)
REPORTER'S CERTIFICATE

I, KAREN S. CHALLE, CSR No. 8244, Certified Shorthand Reporter, certify:

That the foregoing proceedings, pages 1 through 71, were taken before me at the time and place therein set forth;

That the proceedings and all statements made at the time of the hearing were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 20th day of June, 2016.

_____________________________
KAREN S. CHALLE, CSR NO. 8244