

Hi, and thanks for joining. This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is about Prop 54 and the 72-hour in print rule.

In November of 2016, the California voters adopted Prop 54. This was an effort to provide transparency in the Legislative process. Prop 54 was a hot topic during the 2017 legislative session because that was the first year in which Prop 54 had an impact on the legislative process.

Now, it came to light around the June 2nd House of Origin deadline in 2017. Basically, what that means is that the Assembly bills introduced that year had to pass out of the Assembly by June 2nd and similarly, Senate bills had to pass out of the Senate by that Friday, June 2nd deadline.

Well, the interesting aspect took place on the Assembly floor because during Assembly floor debate that week an issue was repeatedly raised to almost 95 different Assembly bills - whether the Assembly was properly complying with the requirements of Prop 54 that the California voters had approved last November.

Before getting started on our discussion, what is Prop 54? Prop 54 essentially did two things. One: Prop 54 prohibits the Legislature from passing any bill unless it has been in print and published on the internet for at least 72 hours prior to the vote, except in some limited cases of public emergency that have been declared by the Governor. Prop 54 also contains a requirement allowing the public to record all legislative hearings and it requires the Legislature to record all public hearings and post them online within 24 hours. However, these provisions on video and audio recordings are not at issue in the Prop 54 debate that occurred during the 2017 legislative session.

I would note that one of the sponsors of Prop 54 actually publicly claimed that the Assembly had violated the law when it voted on 95 bills that were passed after they had been amended but they had been in print fewer than 72 hours prior to being taken up on the Assembly floor during the House of Origin deadline week.

So, what exactly does Prop 54 say? Prop 54 amended Article IV of the state constitution - which deals with the Legislature - and specifically Section (8) (b). Section 8 deals with the Legislative process and it amended an existing constitutional section, section (8) (b) that previously said no bill may be passed unless the bill has been in print and distributed to the members. But that's all it said.

So Prop 54 added to it, and it said no bill may be passed or become a statute unless the bill with any amendments has been published on the internet in its final form - that's the key phrase, in its final form - for at least 72 hours before the vote except this notice period may be waived if the Governor has submitted to the Legislature a written statement that dispensing with this notice is necessary to address a state of emergency and a 2/3 of the house concurring, anyways.

The Assembly took a different approach than the Senate. The state Senate rules said it would comply with the 72-hour in print rule. The Assembly on the other hand stated that it would only take effect with the final version, not during the house of origin deadline. By the way, keep in mind that the constitutional provision is a 72-hours in print rule. A lot of people improperly call it the 3-day in print rule, but the constitutional amendment does not refer to days, but rather hours. And so when it actually occurs is very critically important. That is, when the bill is posted on the internet and distributed.

So essentially, the debate really only occurred in the state Assembly because the state Assembly that Prop 54 does not get invoked during the House of Origin deadline. Now, while the Senate verbally took the same position, it chose to comply with Prop 54 regardless. So, the Assembly essentially adopted two rules, Assembly Rule 76 and 46, to put Prop 54 into effect.

It did two things in terms of its interpretation of Prop 54. The first, it said the Proposition only applies to Senate bills that have been amended in the Assembly and so the 72-hour in print rule requires that when a Senate bill is amended in the Assembly it must be in print for at least 72 hours before the Assembly can vote on it. Second, the Assembly said that Prop 54 does not apply to resolutions or constitutional amendments. And they took this position because they determined that Prop 54's language in the Constitution says, ultimately become a statute. And because neither a resolution nor a constitutional amendment results in a statute, it believed its interpretation was correct.

So, again, the Assembly's position is that the limitations imposed by Prop 54 only applies to the final passage of the bill and not the House of Origin deadline. Now, what this resulted in is of those 95 bills that passed the Assembly during the House of Origin deadline week, were any of them amended? If they were all amended in the Senate and then they had to return to the Assembly for a concurrence vote, then the Assembly took the position that the 72-hour in print rule would require that the Assembly couldn't vote on it unless the amendments made in the Senate had been in print for at least 72 hours. That's pretty easy.

But, were any of the bills that passed the House of Origin deadline in the Assembly not amended? If so, then they passed the Assembly in their final form. Remember that language that was added to Section (8) (b) of the Constitution by Prop 54? It said in its final form at least 72 hours before the vote. So accepting that premise, the Assembly took the view that those bills would actually come back to the Assembly floor and take a final concurrence vote in their final form to ensure compliance with Prop 54.

So, just three of those 95 bills that passed the Assembly but had been amended and in print fewer than 72 hours did not get amended in the Senate. The remaining 92 did, and therefore when they returned to the Assembly were then in their final form and in fact they weren't in their final form when they left the Assembly at the House of Origin deadline. And so with those three remaining bills that did not get amended in the

Senate, they returned to the Assembly for what they called a final form vote. And that's how the Assembly complies with Prop 54.

Hope you enjoyed this podcast. We'll talk with you again.