

Proposition 42: Public Information

SDCTA **SUPPORTS** Proposition 42. Proposition 42 ensures transparency, which is crucial to having an accountable government that represents the people. Despite the potential cost to taxpayers, transparency should be the priority of every local and statewide government and agency.

- The California Public Records Act requires that public records be open for inspection.
- The Ralph M. Brown Act requires that legislative bodies must provide the time and place for meetings, make them open and public, and allow anyone to attend.
- Measure would amend the California Constitution to require each local agency to comply with the California Public Records Act, Ralph M. Brown Act, and any subsequent changes that further transparency.
- Financial estimates for compliance range from \$15 to \$20 million a year statewide. Most of these mandates have been paid for and provided under the law but were previously reimbursed.
- Measure would exempt the State from reimbursing compliance with the California Public Records Act, Ralph M. Brown Act, and any subsequent changes that further transparency. This would shift the legal responsibility to local governments and agencies, which would effectively transfer the burden of paying for these services from the state taxpayer to the local taxpayer.
- Pending passage, local governments and agencies will need to set aside funding with the expectation that they will not be refunded for future compliance and may not be refunded for pending claims.

Proposition 42: Public Information

April 2014

SDCTA Position:

SUPPORT

Rationale for Position:

Proposition 42 clarifies that local government transparency is the legal and financial responsibility of each local government entity. Transparency is crucial to having an accountable government that represents the people. Because local governments and agencies have always been required to comply with transparency mandates, there should be little to no additional cost to taxpayers.

Title: Proposition 42 – Senate Constitutional Amendment No. 3

Jurisdiction: State of California

Type: Ballot Measure – Legislative Constitutional Amendment

Vote: Majority

Status: June 2014 Ballot Measure

Issue: Public Information

Description: Proposition 42 calls for amending the California Constitution to require each local agency to comply with the California Public Records Act, Ralph M. Brown Act, and any subsequent changes that further “the people’s right of access to information.” The California Public Records Act requires that public records be open for inspection, while the Ralph M. Brown Act requires that legislative bodies must provide the time and place for meetings, make them open and public, and allow anyone to attend. Because the California Constitution requires reimbursement of state mandates imposed on local governments or agencies, Proposition 42 also includes a reimbursement exemption for the California Public Records Act, Ralph M. Brown Act, and subsequent amendments that expand transparency.

Fiscal Impact: The official statewide cost of compliance is estimated at \$15 to \$20 million per year. However, individual cost per city will vary. Most of these mandates have already been paid for and provided under the law, but were previously reimbursed by the state. Therefore, the constitutional mandate should not result in a significant increase in the cost of transparency. Local government budgets would have to reflect the loss of reimbursement dollars. Proposition 42 would transfer the legal and financial burden of transparency from the state taxpayer to the local taxpayer as local governments and agencies front the bill.

Background:

Section 6 of Article XIII B in the California Constitution determines that the state will reimburse local governments and agencies for compliance with mandates for new programs or better services. In 2002, the court confirmed that California must reimburse local governments for implementing certain parts of the California Public Records Act. In 2004, Section 6 was amended to say that for every fiscal year following 2004-2005, state mandates must be approved in the state’s annual budget. Without approval, the mandate would be suspended during the fiscal year.

In 2012, Governor Jerry Brown proposed cutting state reimbursements of transparency mandates. This was estimated to save the state approximately \$20 million a year. The requirement to comply with the California Public Records Act and the Ralph M. Brown Act became ambiguous. Many local governments, including San Jose, Oakley, Palo Alton, and San Mateo, were committed to compliance with these laws regardless of funding status from

the state. Some, like Union City, declined to commit to unconditional compliance before a final state decision was made.¹

In June of 2013, Governor Brown and the California State legislature decided to back away from allowing optional compliance with the California Public Records Act and the Ralph M. Brown Act. Funding for transparency compliance was temporarily restored.

California Senate President Pro Tem Darrell Steinberg and California Assembly Speaker John Perez released a joint statement saying, “We agree there needs to be both an immediate fix to ensure local entities comply with the California Public Records Act and a long-term solution so the California Public Records Act is not considered a reimbursable mandate.”

Believing that the state “should not have to provide a fiscal incentive to local governments so that they comply with these important transparency laws,”² State Senator Mark Leno (D-11) later introduced legislation that would become Proposition 42. It passed in the Senate 37-0-1 and in the Assembly 78-0-0. The bill was filed with the California Secretary of State on September 20, 2013 and will be up for vote in the state of California in June 2014.

Proposal:

Proposition 42 states, “In order to ensure public access to meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act... and the Ralph M. Brown Act.” This constitutionally requires local governments to comply with the aforementioned acts. It abolishes ambiguity over whether local governments or agencies must provide transparency services mandated when reimbursements are not received.

The language also states that local governments must comply with “any subsequent statutory enacted amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.” This leaves room for future transparency requirements that may increase city government financial commitments.

Prop 42 establishes that the State does not need to reimburse “legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 or Article I.” This includes the California Public Records Act, Ralph M. Brown Act, and any subsequent amendment that furthers transparency.

The requirement to comply with these acts and the legal transfer of funding responsibility to local governments and agencies will ensure transparency services are always available, regardless of reimbursement status from the state.

Fiscal Impact:

The California State Controller determined that compliance with the mandates cost \$14,985,506 (\$258,370 on average per county) in the 2011-2012 Fiscal Year. The

¹ Mike Rosenberg. San Jose Mercury News. “[Legislature, Gov. Jerry Brown back down on attempt to weaken open records law](#).” June 20, 2013.

² Laura Olson. San Jose Mercury News. “[Calif. Voters to consider public records amendment](#).” September 10, 2013.

Commission on State Mandates estimates the cost of compliance will be approximately \$20 million a year. The Legislative Analyst's Office estimates the annual cost will be tens of millions of dollars.³ Orange County estimates it costs \$90,000 a year in staff to adhere to the Ralph M. Brown act alone.¹ Each local government has a different cost for complying with the transparency laws that have been in effect for years.

States previously paid for the services and most submitted a claim for reimbursement. With Proposition 42 exempting the state from reimbursing the cost of compliance with the transparency laws, local governments and agencies will have to include the absence of a reimbursement into their budgets.

Proposition 42 should not result in a substantial increase in the cost of transparency. It will simply transfer the legal burden of transparency compliance from the state taxpayer to the local taxpayer.

Policy Discussion:

In the long-term, the passage of Prop 42 will establish transparency as an essential component of any functioning and accountable government, regardless of finances.

Implementation

No implementation procedures will occur if local governments and agencies had previously complied with the law. If any local governments and agencies suspended these mandates, they must re-implement them. Local governments and agencies will also need to earmark funding to ensure mandates from the Ralph M. Brown Act and California Public Records Act are being followed, given that they will no longer be reimbursed.

Unfunded Mandate vs. Ensuring Transparency

Some may oppose Prop 42 because they believe the financial burden of state mandates should be on the state government. They would argue that the transparency compliance is an unfunded mandate. The State, on the other hand, may embrace Prop 42, as it will no longer have the financial burden of providing transparency services of local governments and agencies.

List of Proponents:

- California State Legislature (unanimous in Assembly and only one abstain in Senate)
- California Newspaper Publishers Association
- First Amendment Coalition
- California Common Cause
- California League of Women Voters

Proponent Arguments:

- Removes any lingering doubt about transparency obligations
- Local governments have sovereignty and should be responsible for their own transparency
- Clarifies the right to public documents

³ The Legislative Analyst's Office. "[Proposition 42](#)." January 12, 2014.



List of Opponents:

- California Association of Clerks and Election Officials
- League of California Cities

Opponent Arguments:

- Prop 42 is not about transparency
- Prop 42 is about shifting the cost of implementing state legislation to local governments
- The Ralph M. Brown Act and the California Public Records Act are already being followed, and do not need to be included in the California Constitution
- The California Legislature itself is not covered by the Ralph M. Brown Act
- Costs will be too high for cities