

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on addressing a few differences in legislative floor operations. I wanted to cover a few items and brief explanations of key differences in four common legislative floor operations in the California State Legislature.

The first is on concurrence measures. How does each house of the Legislature handle items on concurrence, that is, a vote in the house of origin on the amendments made in the other house? Under Assembly Rule 77, concurrence in any Senate amendment to an Assembly Bill requires the same affirmative recorded vote as the vote required by the California Constitution for the passage of the bill, which is generally a majority vote, unless otherwise specified. That should be obvious.

Now in the Assembly, the vote on concurrence may not be taken until the bill has been on the unfinished business file for one calendar day. This is often referred to as the one day waiting period. And again, it's used when amended Assembly Bills are returned from the Senate. However, the one day wait period does not apply to the last two legislative days preceding the end of session.

Of course, Assembly Rule 77 can and does get suspended, as was done at the end of the 2020 legislative session. Before a concurrence vote in the Assembly, the members must have an analysis for the bill on their desks unless the Assembly Speaker orders otherwise. Now, on the other hand, the Senate does not have a one day waiting period for concurrence items. So under Senate Rule 29, a Senate bill returned from the Assembly for concurrence in those Assembly amendments may not be considered until the measure appears in the unfinished business file on the Senate Daily File and analysis is provided to each Senator, but again, Senate Rule 29 does not require a one day waiting period.

The next item is floor amendments. Here, how does each house of the Legislature handle floor amendments? Well, for example, in the 2021 legislative session, Friday, September 3rd was the deadline for amending bills on the floors of the Assembly and the Senate according to the Joint Rules. Specifically Joint Rule 61 (a) 13. Now, the two houses of the California Legislature operate slightly differently in how they amend the other houses' bills on their respective floors. In the Assembly, they are required to submit amendments the night before the Friday deadline, i.e. Thursday evening at 5:00 PM. Now, the deadline is usually five, but sometimes with the crush of business, the Assembly Desk remains open in order to process all the amendments that were submitted. Then, on Friday, the next day, the Floor Manager, that is the Assembly Member who is managing or presenting the Senate Bill on the Assembly floor, actually has to stand up on the floor and present the proposed amendments and seek approval for those amendments. Approval can either be made with unanimous consent of the members or by a roll call vote. Any member can request a roll call vote. And in that case, the bill is amended by a majority of those present and voting.

Now in the Assembly, a Senate bill that's amended on third reading remains on the third reading file. That is, it does not return to the second reading file. Now, as opposed to the Assembly, the Senate does not present amendments on the floor; nor does it vote to adopt amendments. And those amended bills are returned to the second reading file. So, in the Senate, amendments to AB's, to Assembly Bills, are simply processed by the Senate Desk. As a result, amendments to AB's were basically made through five o'clock on Friday, a week before session ended in the 2021 legislative session. The amendments must include an analysis prepared by the relevant policy committee in order for the Senate desk staff to process the amendments to the Assembly Bill.

Now, again, in the Senate, a bill amended on third reading is placed on the second reading file and the following day, the bill can return to the third reading file. The next item is batching versus the consent calendar. So what is this batching process that is used on the Assembly floor? Well, in recent years, Capitol observers have often heard the term batching used on the Assembly floor. And basically it's a process that once unanimous consent is received on the floor, it permits a single vote for multiple bills

or amendments to be adopted. It's used occasionally where both the Democratic and Republican caucuses both have a support recommendation and there haven't been any Republican legislators who've stayed or voted no in committee on the floor. It's basically a variation of the consent calendar, which does have formal rules for determining which measures will be placed on the consent calendar. So batching is kind of similar to the Senate's special consent calendar, which is basically used when there are bills that again have this support-support recommendation by both the Democratic and Republican caucuses; but note that the Senate special consent calendar is different than its consent calendar.

And the fourth item is going past midnight on the last day of session. So the question here is, can business be conducted (that is legislative business) on the floors of the Senate and the Assembly past midnight on the last day of session in either an odd or even numbered year? Now this question always arises at the end of session when the clock gets closer to midnight. Again, can the Legislature continue to conduct official legislative business past midnight?

Well, in an even numbered year, an election year, that question is clearly answered by the California Constitution because, pursuant to Article IV, which contains the legislative branch provisions, and in Section 10, Subdivision C, the Legislature must conduct work by midnight on August 31st. Except there are three types of bills that could be acted upon after August 31st.

On the other hand, during an odd numbered year, the date of adjournment is actually set by the Joint Rules of the Assembly and Senate. It's primarily in Joint Rule 61 (a) 14. And as we know, these Joint Rules can be suspended by the two houses if necessary. So the question in the odd numbered year, such as the 2021 legislative session, is whether the Legislature needs to suspend Joint Rule 61 to continue working in its official capacity past midnight. Well, in past years, the Senate has followed its custom and practice and worked past the midnight deadline without suspending Joint Rule 61. On the other hand, in the Assembly, they generally pass a resolution suspending Joint Rule 61 prior to the midnight hour arriving.

Now is the Joint Rule 61 suspension required? Maybe, maybe not. I don't think so, because as a general principle of separation of powers, the judicial branch generally will not consider a legal challenge to the enactment of a statute in which the bill is alleged to have violated internal rule of procedure of either house or of the two houses. That's because in Article IV, Section 7A, the authority is vested in the Legislature to both elect its officers and adopt its internal rules of procedure.

So these are just four of the key differences in legislative floor operations, particularly as it applies to the end of the legislative session. Thanks for joining today's podcast. I hope you enjoyed it.