

Date of Hearing: May 7, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
ACA 6 (Gatto) – As Introduced: February 11, 2013

SUBJECT: Initiatives: constitutional amendments: voter approval.

SUMMARY: Requires an initiative measure that amends the state constitution to receive 55 percent of the vote in order to be approved, unless the measure repeals a previously adopted constitutional amendment. Specifically, this constitutional amendment:

- 1) Requires an initiative measure that proposes to amend the state constitution, except for a measure that repeals a previously adopted amendment to the constitution, to receive a minimum of 55 percent of votes cast thereon in support in order to be approved.
- 2) Provides that an initiative measure that proposes to repeal a previously adopted constitutional amendment may be approved on a majority vote. Provides that the repeal of a previously adopted amendment pursuant to this provision shall also be deemed to repeal any subsequent amendments to that constitutional amendment, but provides that this provision is not applicable to repeal a previously adopted constitutional amendment if the measure that contained any such subsequent amendment also included one or more constitutional provisions that did not amend the previously adopted amendment.

EXISTING LAW provides that all constitutional amendments, whether placed on the ballot by the Legislature or by an initiative, shall take effect if approved by a majority of votes cast thereon.

FISCAL EFFECT: Unknown. Although this constitutional amendment is keyed non-fiscal, this bill has been double-referred to the Assembly Appropriations Committee.

COMMENTS:

- 1) Purpose of the Measure: According to the author:

ACA 6 increases the vote threshold for an initiative constitutional amendment to 55% of the votes cast thereon but maintains that a simple majority of voters may repeal a previously adopted constitutional amendment....

A constitution is the most fundamental document in any government, holding within it the rights of the people as well as the most basic rules by which the people's business is conducted. Any change to it should not be taken lightly. Even the founders of our nation thought the concept of a constitution so sacred that they wrote into the US Constitution a process of amendment so difficult so as to ensure that it would only happen when truly necessary. While the US Constitution has been amended only 27 times in 223 years, California's has been amended 521 times in 133 years. That is because California makes it the easiest to amend its Constitution of any of the 50 states.

The US Constitution does not permit initiatives. An amendment must garner 2/3 approval of both houses of Congress or a petition of 2/3 of the states, followed always by ratification of 3/4 of the states. However, in California, to put an amendment on the ballot, initiative proponents need only gather signatures equal in number to 8% of the votes cast for Governor in the last gubernatorial election. Then, amendments pass with just 50% + 1 of the votes cast.

A supermajority to amend the Constitution is different from a supermajority to pass other laws. A constitution is not a statute; it is a governing document that sets forth basic rights and government structures. If a constitution can be amended by a simple majority, there is no constitution. Any reform or any right can be altered or taken away in the very next election. Had California's rules been in place nationally, there are several times in history where the public would have overturned the First Amendment....

ACA 6 requires any constitutional amendment proposed by the electors that adds any new sections pass with a two-thirds majority in order to achieve parity with both the California legislative threshold and come close to the US Constitutional threshold. The straight repeal of any sections, however, could still be done by a simple majority. Also, any constitutional amendment put on the ballot by a two-thirds vote of each legislative house would keep its majority vote threshold at the ballot box.

It is worth noting that supermajority thresholds have already been approved by voters. The legendary Proposition 13 included a provision that demanded a 2/3 vote for certain taxes. It is not unreasonable to suggest that we put the process of amending the constitution on the same pedestal as new taxes. Both are highly important to the people of California and should not be taken lightly.

ACA 6 is a reasonable measure that seeks to make California's constitutional amendment process more reflective of the national constitutional amendment process by placing a higher threshold for voters' consideration and passage of initiative constitutional amendments to protect the document's sacredness.

- 2) Initiative Constitutional Amendment History: In the last decade, California voters have voted on 68 initiative measures. Of those 68 measures, 35 proposed amendments to the state constitution. During that time, about 31 percent of initiative measures that amended the constitution were approved, compared to 33 percent of initiative measures that made only statutory changes.
- 3) Supermajority Vote Requirement: Under this measure, an initiative constitutional amendment would require approval by 55 percent of voters statewide to take effect. This supermajority vote requirement would apply only to constitutional amendments that are proposed through the initiative process—that is, constitutional amendments that are placed on the ballot after proponents gather a sufficient number of signatures on an initiative petition. The vote requirement for constitutional amendments that are proposed by the Legislature would not be affected by this measure.

Since the creation of the initiative process, the voters have approved 53 initiative measures

that proposed amendments to the constitution. Of this total, 36 received more than 55% of the vote. In the last 25 years, 13 of the 24 initiative constitutional amendments approved by the voters have received more than 55% of the vote. Among the high profile initiatives that passed but did not receive 55% of the vote are: Proposition 98 of 1988 (school funding); Proposition 140 of 1990 (term limits); Proposition 209 of 1996 (affirmative action); Proposition 8 of 2008 (same-sex marriage); and Proposition 11 of 2008 (redistricting commission).

Currently, all state ballot measures require a simple majority to be approved by the voters, regardless of the changes to state law made by the measure. If this constitutional amendment is approved by voters, it would mark the first time that any measure that appears on the state ballot would require more than a simple majority to be approved by voters.

- 4) Other States: According to the National Conference of State Legislatures, California is one of 24 states that have an initiative process. Of those 24 states, six states permit initiatives for statutes only, three states permit initiatives for constitutional amendments only, and the remaining 15 states permit initiatives both for constitutional amendments and for statutes.

Of the 18 states that permit the state constitution to be amended through the initiative process, only one state requires all initiative constitutional amendments to be approved by a supermajority in all circumstances. In 2006, Florida voters approved a constitutional amendment that requires any future amendment to the Florida Constitution, whether put on the ballot by initiative or by the Legislature, to be approved by 60 percent of voters in order to take effect. Additionally, in Florida, any constitutional amendment that imposes a tax or fee not in place in November 1994 must receive a two-thirds vote in order to pass.

Certain other states do require a supermajority vote to approve an initiative constitutional amendment in certain circumstances, however. In Illinois, initiative constitutional amendments must pass by three-fifths of those voting on the measure or by a majority of those voting in the election. Massachusetts, Mississippi, and Nebraska all permit initiative constitutional amendments to pass on a majority vote, provided that the total number of votes cast on the initiative equals a specified threshold (ranging from 30% to 40%) of the total votes cast in the election.

Nevada does not require a supermajority vote on initiative constitutional amendments, but initiative constitutional amendments must receive a majority vote at two consecutive general elections in order to pass.

- 5) Previous Legislation: ACA 11 (Gatto) of the 2011-12 Legislative Session, was similar to this measure. ACA 11 was approved by this committee on a 4-2 vote, but was held on the Assembly Appropriations Committee's suspense file.

ACA 10 (Gatto) of the 2011-12 Legislative Session, would have required an initiative measure that amends the state constitution to receive 55 percent of the vote in order to be approved, unless the measure repealed a previously adopted constitutional amendment, among other provisions. ACA 10 was approved by this committee on a 4-1 vote, but failed passage on the Assembly Floor.

ACA 9 (Gatto) of the 2011-12 Legislative Session, would have required an initiative that would increase the current vote requirement for an action by either the electors or by the Legislature, or would impose an extraordinary vote requirement for the amendment of an initiative statute by the Legislature without approval by the electors, to itself receive the same affirmative vote percentage in order to be approved by the electors. ACA 9 was never voted on in this committee.

As introduced, ACA 21 (Charles Calderon) of the 2009-10 Legislative Session, would have required an initiative measure that amended the state constitution to receive a two-thirds vote in order to be approved. ACA 21 was never voted on in this committee in that form, but instead was amended to address another issue.

- 6) Re-Referral to Appropriations: Although this measure has been keyed non-fiscal by the Legislative Counsel, it has been double-referred to the Assembly Appropriations Committee. In recent years, non-fiscal constitutional amendments regularly have been referred to the Assembly Appropriations Committee because the state incurs costs to add additional pages to the state ballot pamphlet whenever it places a measure on the ballot for voter approval.
- 7) Approval of Voters: As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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