

Date of Hearing: August 23, 2023

ASSEMBLY COMMITTEE ON ELECTIONS  
Gail Pellerin, Chair  
ACA 13 (Ward) – As Amended August 17, 2023

**SUBJECT:** Voting thresholds.

**SUMMARY:** Requires an initiative constitutional amendment to comply with any increased voter approval threshold that it seeks to impose on future ballot measures. Guarantees in the state constitution the ability of local governments to submit advisory questions to voters. Specifically, **this measure:**

- 1) Provides that an initiative measure that includes one or more provisions that amend the California Constitution, and that increases the voter approval requirement to adopt any state or local measure, must receive a proportion of votes in favor of the initiative that is equal to or greater than the highest voter approval requirement imposed by the initiative for the adoption of a state or local measure.
- 2) Permits a local governing body, at any election, to hold an advisory vote concerning any issue of governance for the purpose of allowing voters within the jurisdiction to voice their opinions on the issue. Provides that an advisory question is approved only if a majority of the votes cast on the question are in favor. Provides that the results of the advisory vote are not controlling on the local governing body.
- 3) Provides that this measure shall be known, and may be cited, as the Protect and Retain the Majority Vote Act.
- 4) Contains a severability clause.
- 5) Makes a conforming change.

**EXISTING LAW:**

- 1) Permits voters to propose statutes or amendments to the Constitution by initiative. (California Constitution, Article II, §8)
- 2) Provides that a state initiative statute that is approved by a majority of votes cast thereon takes effect on the fifth day after the Secretary of State (SOS) files the statement of the vote for the election at which the measure is voted on. (California Constitution, Article II, §10(a))
- 3) Provides that a proposed constitutional amendment that is approved by a majority of votes cast thereon takes effect on the fifth day after the SOS files the statement of the vote for the election at which the measure is voted on. (California Constitution, Article XVIII, §4)
- 4) Permits each city, county, school district, community college district, county board of education, and special district to hold an advisory election for the purpose of allowing voters to voice their opinions on substantive issues, as specified. (Elections Code §9603(a))

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

The Protect and Retain the Majority Vote Act, ACA 13, would retain the majority vote requirement for passage of state and local initiatives. ACA 13 will require proposed initiatives that seek to increase vote thresholds on future ballot measures to pass with that same proportional higher vote threshold. For example, a measure that would impose a two-thirds vote threshold on future measures should also pass with a two-thirds vote.

Cities and counties also often place non-binding advisory measures on the ballot to allow voters to weigh in on various issues. This is a critical tool that allows voters to advise local government, and ACA 13 would protect the right of cities to place advisory questions on the ballot to ask voters their opinion on issues.

2) **Supermajority Vote Requirements:** Under existing law, any *state* ballot measure can be approved by a simple majority vote of the electorate, regardless of the changes to state law made by the measure. By contrast, some *local* ballot measures are subject to higher vote requirements. For instance, a local measure that is placed on the ballot by a local governing body and that proposes a special tax (a tax for which the proceeds will be used for a specific purpose) requires a two-thirds vote of the electorate.

If this measure qualifies for the ballot and is approved by voters, it would mark the first time that any state ballot measure would require more than a simple majority vote to be approved. Specifically, state ballot measures that (1) are initiative measures (the term “initiative” refers exclusively to a proposed law that qualifies for the ballot through the collection of voters’ signatures on an initiative petition), (2) propose to amend the state constitution, and (3) propose to increase the vote required for voters to approve a state or local ballot measure would be subject to a voter approval threshold that is greater than a simple majority vote.

3) **Prior Effort to Impose Supermajority Vote Requirement on State Ballot Measures:** Notwithstanding the fact that all state ballot measures require a simple majority to pass, at least one prior initiative measure sought to impose a supermajority vote requirement on certain state ballot measures.

Specifically, Proposition 136, which appeared on the ballot at the November 1990 statewide general election, would have required any state special taxes that were proposed by a state initiative measure to be approved by two-thirds of the voters, among other provisions. Proposition 136 failed narrowly, receiving 47.9% of the vote.

4) **Voter Approval Thresholds Only:** The provisions of this measure related to the vote requirement for initiative constitutional amendments apply only to initiatives that seek to make it more difficult for *voters* to take a specified action by approving a ballot measure. It does not affect the vote requirement for initiative constitutional amendments that seek only to make it harder for a *governmental body* to approve a specified action by increasing the vote

by which that body must approve an action.

For example, an initiative constitutional amendment that required a two-thirds vote of the local electorate to approve any ballot measure that sought to rezone parcels would need to be approved by two-thirds of the voters if this measure takes effect. By contrast, an initiative constitutional amendment that required a two-thirds vote of a local *governing body* to rezone parcels would be subject to a simple majority vote (provided that the initiative did not also include other provisions that affected the vote requirement for actions taken by voters).

- 5) **Pending Initiative:** On February 1, 2023, the SOS certified that initiative #1935—a measure that would amend the California Constitution to change the rules for how the state and local governments can impose taxes, fees, and other charges—is eligible to appear on the ballot at the November 5, 2024, statewide general election. The proponent of that initiative can withdraw it at any time through June 27, 2024. If the proponent does not withdraw the initiative by that deadline, the SOS will certify that the measure is qualified and it will appear on the November 5, 2024, statewide general election ballot.

Among other provisions, initiative #1935 requires that *any* local special tax be approved by a two-thirds vote of the electorate to take effect. Recent case law suggests that local special taxes that are proposed by a local initiative measure can be approved by a majority vote of the electorate. By contrast, local special taxes that are placed on the ballot by a local governmental body must be approved by a two-thirds vote of the electorate. Additionally, initiative #1935 prohibits an advisory measure from appearing on the same ballot as a local measure that proposes a general tax if the advisory measure would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

If this measure applied to the voter’s consideration of initiative #1935, it appears that initiative #1935 would need to be approved by two-thirds of the voters in order to take effect. However, while this measure likely would affect the vote requirement for initiative #1935, its effects are not limited to that initiative. Rather, the provisions of this measure would apply to any initiative constitutional amendment that appears on the ballot in the future and that proposes to increase the vote requirement for a state or local ballot measure.

- 6) **Oregon Measure 63:** The vote requirement provisions of this measure are similar to the provisions of a constitutional amendment approved by Oregon voters in 1998. Specifically, Measure 63 amended the Oregon Constitution to provide “any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action shall become effective only if approved by at least the same percentage of voters specified in the proposed voting requirement.” Measure 63 was approved with 55% of the vote.
- 7) **Advisory Measures:** As detailed above, the California Elections Code already permits cities, counties, school districts, community college districts, county boards of education, and special districts to submit advisory questions to their voters. This measure proposes to add a similar provision to the state constitution.

As detailed above, a pending initiative measure that is eligible to appear on the November 5,

2024, statewide general election ballot would limit the ability of a local government to place an advisory measure on the ballot if the measure is related to the potential use of revenues derived from a general tax that is appearing on the same ballot. If approved by voters, that constitutional limitation on local advisory measures would prevail over the general provisions of the Elections Code that permit local advisory measures.

If both this measure and the pending initiative measure were to be approved by voters, the California Constitution would include potentially conflicting provisions governing local advisory measures. In such a situation, it is unclear which provision would prevail if a local jurisdiction sought to place an advisory measure on the ballot related to the use of revenues from a general tax appearing on the same ballot.

- 8) **Arguments in Support:** In support of this measure, the California Special Districts Association writes:

Under current law, an initiative constitutional amendment that proposes to amend the California Constitution requires a simple majority of voters casting votes in favor of the measure for the amendment to be approved. Notably, this simple majority requirement is irrespective of any of the provisions contained within the proposed constitutional amendment; should the text of the proposed constitutional amendment contain provisions that would otherwise require voter thresholds in excess of a simple majority in the future, those increased vote thresholds may nonetheless be imposed with a simple majority of voters. Phrased another way, this allows a simple majority of voters to insert a three-fifths, two-thirds, four-fifths, or higher vote threshold into the California Constitution, even without the corresponding level of support in terms of votes cast in favor of the original amendment proposal.

ACA 13 would propose to California voters a solution to this quirk in the initiative process: if approved by two-thirds of the California Legislature, California voters would be asked to decide whether an initiative constitutional amendment containing provisions that increase vote thresholds should be required to attain the same proportion of votes in favor of the amendment that the proposed increased vote thresholds would demand. In this way, ACA 13 would ensure that a proposal cannot impose vote thresholds on our communities and our State that exceed the level of support for imposing such thresholds.

ACA 13 protects the democratic process in local communities by ensuring that a simple majority of statewide voters cannot restrict the will of a supermajority of voters in a local community.

- 9) **Arguments in Opposition:** In opposition to this measure, the Howard Jarvis Taxpayers Association writes:

ACA 13 reminds us of the recently failed effort in Ohio to make it more difficult to pass constitutional amendments. Many in this Legislature decried that as

undemocratic. How is creating a two-tiered system for amending the California Constitution any less undemocratic? We would argue it is even more so.

This is a blatant attempt to erode the citizen initiative process by creating content-based distinctions to pass certain types of constitutional amendments. It also begs the question why the Legislature would impose such a content-based standard. Since there is no precedent for setting different standards as it relates to the passage of constitutional amendments, this seems an obvious attempt to undermine an initiative that has already qualified for the ballot. The Taxpayer Protection and Government Accountability Act would restore the voter thresholds that the state Constitution requires for new and higher taxes. These thresholds were set by voters when they approved Propositions 13 and 218.

Clearly then, ACA 13 is yet another attempt by the Legislature to make it not only easier to raise taxes but also directly attack Proposition 13.

10) **Approval by Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Alliance San Diego  
American Federation of State, County and Municipal Employees, AFL-CIO  
Asian Pacific Environmental Network  
California Calls  
California Environmental Justice Alliance Action, a Project of Tides Advocacy  
California Federation of Teachers, AFL-CIO  
California Green New Deal Coalition  
California Labor Federation, AFL-CIO  
California Professional Firefighters  
California School Employees Association  
California Special Districts Association  
California State Association of Counties  
California State Council of Service Employees International Union  
California Teachers Association  
Catalyst California  
Central Coast Alliance United for A Sustainable Economy  
City of San Diego  
Communities for A New California  
Community Coalition  
Congregations Organized for Prophetic Engagement  
Corporation for Supportive Housing  
Courage California  
Dolores Huerta Foundation  
Innecity Struggle

League of California Cities  
Million Voters Project  
Oakland Rising  
San Francisco Rising  
Strategic Concepts in Organizing and Policy Education  
Working Partnerships USA

**Opposition**

California Business Roundtable  
Howard Jarvis Taxpayers Association  
2 individuals

**Analysis Prepared by:** Ethan Jones / ELECTIONS / (916) 319-2094