

Date of Hearing: August 27, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Paul Fong, Chair  
ACA 6 (Gatto) – As Amended: August 21, 2014

RE-REFERRED TO COMMITTEE PURSUANT TO ASSEMBLY RULE 77.2

PRIOR COMMITTEE CONSIDERATION:

<u>ELECTIONS</u>	<u>5-2</u>	<u>APPROPRIATIONS</u>	<u>12-5</u>
------------------	------------	-----------------------	-------------

Ayes: Fong, Bocanegra, Bonta, Hall, Weber    Ayes: Gatto, Bocanegra, Bradford,  
Ian Calderon, Campos, Eggman,  
Gomez, Hall, Ammiano, Pan, Quirk,  
Weber

Nays: Donnelly, Logue    Nays: Harkey, Bigelow, Donnelly, Linder,  
Wagner

SUBJECT: Constitutional amendments: voter approval.

SUMMARY: Requires a measure that amends or revises the state constitution to receive 55% of the vote in order to be approved, unless the measure reverses a previously adopted constitutional amendment or revision, as specified. Specifically, this constitutional amendment:

- 1) Requires a proposed amendment or revision of the state constitution, except as provided below, to receive a minimum of 55% of votes cast thereon in support in order to be approved.
- 2) Provides that a proposed amendment or revision of the state constitution may be approved by a majority of the votes cast thereon if the sole effect of that amendment or revision is to reverse one or more of the changes made to the constitution by a previous amendment or revision that, prior to the operative date of this measure, was adopted by a majority of the votes cast thereon.

EXISTING LAW provides that a constitutional amendment or revision shall take effect if approved by a majority of votes cast thereon.

FISCAL EFFECT: According to the Assembly Appropriations Committee, one-time General Fund costs of about \$220,000 to include an analysis of this measure, and arguments for and against the measure, in the state voter information guide.

COMMENTS:

- 1) Initiatives vs. Ballot Measures: Although the terms "initiative" and "ballot measure" are sometimes used interchangeably, the two terms are not synonymous. An "initiative" is a measure that qualifies to appear on the ballot through the presentation of petitions containing the signatures of a specified number of voters. All initiatives that qualify for the ballot are

"ballot measures." However, the term "ballot measure" includes not only initiatives, but also includes referenda, recall measures, and measures placed on the ballot by the Legislature.

Proposals to amend the California Constitution can be placed on the ballot in two different ways. Voters may propose to amend the constitution through an initiative measure by presenting the Secretary of State with a petition that sets forth the text of the proposed amendment to the Constitution that is certified to have been signed by electors equal in number to 8% of the votes for all candidates for Governor at the last gubernatorial election. Constitutional amendments placed on the ballot in this manner are "initiative constitutional amendments." Alternately, the Legislature may place a proposed amendment to or revision of the Constitution on the ballot by a two-thirds vote of each house. Constitutional amendments that are placed on the ballot in this manner are "legislative constitutional amendments."

- 2) Prior Committee Consideration of This Measure: In May of last year, this committee considered and approved this measure on a 5-2 vote. At that time, this measure would have required initiative constitutional amendments, but not legislative constitutional amendments, to receive at least 55% of the vote in order to be approved. Subsequent to the committee's approval of this measure, it was amended on the Assembly Floor to increase the vote requirement for legislative constitutional amendments, in addition to affecting the vote threshold for initiative constitutional amendments. After the adoption of those amendments, this measure was re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.
- 3) Purpose of the Measure: According to the author:

ACA 6 requires any constitutional amendment that adds any new sections pass with a 55% supermajority 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, would occur by the same threshold that was required to insert that language into the Constitution.

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 a higher pedestal—just as we do with 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... constitutional amendments to protect the document's sacredness.

- 4) Constitutional Amendment History: Since 2004, California voters have voted on 99 ballot measures. Of those 99 measures, 47 proposed to amend the state constitution. During that time, about 45% of ballot measures that amended the constitution were approved, compared

to 48% of ballot measures that did not propose to amend the constitution.

- 5) Supermajority Vote Requirement: 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 statewide ballot would require more than a simple majority to be approved by voters.

Among the high profile ballot measures that passed and amended the constitution, 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); Proposition 11 of 2008 (redistricting commission); and Proposition 14 of 2010 (top two primary).

- 6) Other States: According to the National Conference of State Legislatures, all states except Delaware require voter approval in order to adopt a proposed amendment to the state constitution. While almost all states require a supermajority vote of the legislature in order to propose a constitutional amendment to the voters, most states permit the voters to adopt a proposed constitutional amendment by a simple majority vote.

In fact, just one state—Florida—requires a supermajority vote for the approval of any constitutional amendment. 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% of voters in order to take effect. Additionally, 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.

Other states do require a supermajority vote to approve a constitutional amendment in certain circumstances, however. In Illinois, 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. Constitutional amendments proposed by the Legislature in these three states require a simple majority to pass.

Nevada does not require a supermajority vote on constitutional amendments, but initiative constitutional amendments must receive a majority vote at two consecutive general elections in order to pass. Constitutional amendments that are proposed by the Legislature, however, do not need to be approved at two consecutive elections.

- 7) Status Quo Bias? Under a provision of this measure, a previously approved constitutional amendment that required a majority vote of the people at the time that it was adopted could be reversed by a majority vote. That provision ensures that a majority of the voters today can reverse an action that was approved by a slim majority of voters at some point in the past.

Any *change* to a previously adopted constitutional amendment other than a reversal, however, would require 55% of the vote in order to be approved. For example, Proposition

98, dealing with school funding, received 50.7% of the vote at the 1988 statewide general election. While this measure would allow Proposition 98 to be *reversed* by a simple majority of voters, a proposal to change the school funding formulas contained in Proposition 98 would require 55% of the vote.

Similarly, Proposition 11, dealing with redistricting, received 50.9% of the vote in 2008. Although this measure would allow Proposition 11 to be *reversed* by a majority vote, a proposal to change the criteria used by the Citizens Redistricting Commission when creating Legislative, Congressional, and Board of Equalization districts would require 55% of the vote. If voters in the future wished to retain the major elements of Proposition 11 while making changes to certain aspects of that measure, it would require 55% of the vote to approve such changes, even though those elements were added to the constitution by a measure that received less than 55% of the vote. In essence, this measure would permit the policy preferences of less than 51% of the voters in 2008 to prevail over the policy preferences of 54.9% of the voters at a future election.

Notwithstanding the fact that this measure allows previously adopted constitutional amendments to be reversed by a majority vote, by making it more difficult to *amend* previously adopted constitutional amendments, this measure nonetheless may prejudice the constitution in favor of policies that were adopted by a slim majority of the voters in prior elections.

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

ACA 6 represents the gravest attack to the initiative process in years. It strips away the ability of the people to engage in the democratic process when the Legislature refuses to confront important issues, including increased property taxes. Such was the case in 1978 prior to the passage of Proposition 13, when seniors on fixed incomes were getting foreclosed on their homes because they couldn't pay the property taxes. Thousands were able to continue to live out the American Dream as a direct result of the initiative process.

As drafted, ACA 6 makes it harder for individuals to engage in this process. It could lead to majority vote attacks to eliminate the entirety of Proposition 13, or create a split roll commercial property tax. Any attempt to restore or protect against future loopholes created by the legislative or judicial branches of government would require a 55% vote. Under such a scenario, Proposition 26, a 2010 constitutional amendment would not have been approved.

The language of ACA 6 is plagued by the same ambiguity as previous versions. Under this language, a brand new provision added to the constitution (which should need 55% approval under this bill) could be passed with a simple majority if lawyers convinced a court that the sole effect of the new language was to "reverse changes made" to the Constitution by a previous amendment. For example, the new provision need only start with the phrase, "Notwithstanding Article XIII A ...". In this way, the new provision could do much more than simply delete an existing provision of the constitution (like Proposition 13) and

could replace it with a whole new policy or program.

- 9) Previous Legislation: ACA 11 (Gatto) of the 2011-12 Legislative Session, would have required initiative constitutional amendments, but not legislative constitutional amendments, to receive 55% of the vote in order to be approved, except as specified. 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% of the vote in order to be approved, except as specified, 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.

- 10) 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

American Council of Engineering Companies California  
Associated General Contractors of California  
Association of California Life & Health Insurance Companies  
California Apartment Association  
California Association of Bed & Breakfast Inns  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Hotel & Lodging Association  
California Manufacturers and Technology Association  
California Taxpayers Association  
Howard Jarvis Taxpayers Association  
National Federation of Independent Business

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094