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# Enacting the California State Budget: Two-Thirds Is Too Much

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# Enacting The California State Budget: Two-Thirds is Too Much

## TABLE OF CONTENTS

INTRODUCTION .....	68
I. CALIFORNIA'S MODERN LEGISLATIVE STRUCTURE .....	70
A. <i>The California Legislature's Two-Thirds Vote Requirement</i> ..	71
B. <i>Implications of California's Two-Thirds Vote Requirements</i> ..	74
II. CALIFORNIA'S BUDGET .....	79
A. <i>The Budget Process</i> .....	81
B. <i>The Effects of the Two-Thirds Vote Requirements on the</i> <i>1992-93 Budget Process</i> .....	84
1. <i>Assembly Bill 2303</i> .....	85
2. <i>Senate Bill 1280</i> .....	86
3. <i>Senate Bill 1533</i> .....	88
4. <i>Effects of the 1992-93 Budget Impasse</i> .....	88
III. ELIMINATING THE TWO-THIRDS VOTE REQUIREMENT TO PASS	
CALIFORNIA'S BUDGET .....	91
A. <i>Constitutional Revision Commission</i> .....	95
B. <i>Constitutional Convention</i> .....	97
C. <i>Citizen's Initiative</i> .....	99
D. <i>Current Efforts to Eliminate the Two-Thirds Vote</i> <i>Requirement</i> .....	103
IV. CONCLUSION .....	105

INTRODUCTION

The State of California is the world's seventh largest economy,<sup>1</sup> yet it is in the midst of its worst economic slump since the Great Depression.<sup>2</sup> In 1991 and 1992, California recorded the largest budget deficits of any state in United States history.<sup>3</sup> The magnitude of the problem is clear when one realizes that the expected 1993-94 California budget gap reached twenty-two percent of the State's total budget of \$55 billion.<sup>4</sup> Besides the shortfalls, California Governor Pete Wilson signed the 1992-93 State Budget sixty-four days later than required by the State Constitution.<sup>5</sup> Governor Wilson signed California's 1993-94 budget fifteen days later than California's Constitution mandates and less than three hours before the State's 1992-93 fiscal year expired.<sup>6</sup> With a \$7.5 billion annual deficit predicted for 1994, California's budget woes seem here to stay.<sup>7</sup>

Presently, the California Constitution requires the Legislature to pass the State budget by June 15th of each year.<sup>8</sup> California's Constitution also

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1. Haya El Nasser, *Drowning Golden State Groves for Lifeline*, USA TODAY, Jan. 7, 1993, at 3A.

2. See Stryker McGuire & Andrew Murr, *California in the Rearview Mirror*, NEWSWEEK, July 19, 1993, at 24, 25 (reporting California's current economic condition and discussing its impact). In 1991, personal income dropped in California for the first time since the late 1930's. Martha Groves, *The California Puzzle*, L.A. TIMES, Jan. 31, 1993, at D1. A recent study ranked California's economy last in the nation. Carl T. Hall, *In Study of State Economies, California is Ranked 51st*, S.F. CHRON., Dec. 24, 1992, at A1 (citing the release of a study by the Chicago investment firm Kemper Securities); see also *California's Golden Dreams Tarnish in Sea of Disasters*, CHI. TRIB., Jan. 4, 1993, at C2 (profiling California's continuing economic slump).

3. Daniel B. Wood, *California Governor Wilson Tries to End a Losing Streak*, CHRISTIAN SCI. MONITOR, Jan. 6, 1993, at U.S.1 (noting that California's 1991 budget deficit of \$10.7 billion and 1992 deficit of \$14.5 billion were the largest state deficits in United States history).

4. Vlae Kershner, *How California's Tax Policies Brought on a Crisis*, S.F. CHRON., Apr. 8, 1991, at A1. California's budget shortfalls are proportionally the same size as the federal deficit. *Id.* The federal deficit is estimated to reach 22.7% of the total federal budget of \$1.4 trillion. *Id.* Budgetary shortfalls are tentative estimates of the year-end deficit if the Governor and the Legislature do not act to change the situation. Daniel Weintraub, *\$7.5 Billion State Budget Gap Forecast*, L.A. TIMES, Nov. 20, 1992, at A1.

5. Ann Bancroft & Vlae Kershner, *No More IOU's-State Is Back on a Cash Basis*, S.F. CHRON., Sept. 4, 1992, at A26 (reporting the signing of California's 1992-93 State budget 64 days late); *California Budget Crisis Ends*, CHRISTIAN SCI. MONITOR, Sept. 3, 1992, at 2 (detailing the end of California's budget stalemate).

6. Daniel M. Weintraub & Jerry Gillam, *Wilson Signs \$52.1 Billion Budget on Time*, L.A. TIMES, July 1, 1993, at A1; Dan Bernstein, *\$52.1 Billion State Budget Beats Clock*, SACRAMENTO BEE, July 1, 1993, at A1. The "on time" and "beating the budget clock" references in the articles' titles cited directly above refer to the budget's passage before the expiration of the fiscal year, not meeting the June 15th deadline for passing the budget. See, e.g., Ed Mendel, *Governor Happily Signs Budget-[]State Enters Fiscal Year with a Spending Plan*, SAN DIEGO UNION TRIB, July 1, 1993, at A1; Robert Gunnison, *Wilson Signs \$50.6 Billion State Budget, Schools Get Their Money--Welfare Funds Cut*, S.F. CHRON., July 1, 1993, at A1.

7. Jon Matthews, *\$7.5 billion State Deficit Likely by '94*, SACRAMENTO BEE, Nov. 20, 1992, at A1 (noting that the California Legislature's Legislative Analyst, Elizabeth Hill, forecasted that the 1994 deficit may be as high as \$9.3 billion).

8. CAL. CONST. art. IV, § 12(c).

requires the Legislature to pass the budget bill by a two-thirds vote of both houses.<sup>9</sup> In nineteen out of the last twenty-two years, California's Legislature has failed to enact the State budget by the constitutional deadline.<sup>10</sup> Both observers and participants in the process consider the two-thirds vote requirement a significant factor in these budgetary impasses.<sup>11</sup>

Proponents of the two-thirds vote to pass California budgets might argue that since the 1993-94 budget passed with relative ease when compared to the 1992-93 budget the two-thirds vote requirement is not an issue. The problem of enacting California budgets should not, however, be measured year to year. California has had a long tradition of missing budgetary deadlines even when economic conditions were much better than they are now. Therefore, even though the 1993-94 budget process may suggest to some the absence of a problem, given California's history and current economic situation, the problem still remains.

The purpose of this Comment is to discuss what role the California Constitution's two-thirds vote requirement plays in the State's inability to enact budgets, and to propose a change in California's budgetary requirements. Part I of this Comment examines California's two-thirds vote requirement and the implications of the requirement on the Legislature's ability to efficiently conduct business.<sup>12</sup> Part II reviews the mechanics of California's State budget process, and studies the influence of the two-thirds vote requirement in California's 1992-93 budget battles.<sup>13</sup> Lastly,

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9. *Id.* art. IV, § 12(d).

10. *California State Retirements Insufficient to Prevent Layoffs*, THE BUREAU OF NATIONAL AFFAIRS, 30 GOVERNMENT EMPLOYEE RELATIONS REPORT NO. 1467, at 781 (1992) (discussing California's budgetary problems and their possible effect on California State employees).

11. See Walter Zelman, *California's Stalemated Government*, SACRAMENTO BEE, Aug. 5, 1990, at Forum 1 (attributing California's budgetary deadlock to the two-thirds vote requirement); David Roberti, *Preventing Hostage Budget Requires Legislative Reform*, DAILY NEWS, Aug. 14, 1990, at A15 (crediting the two-thirds vote requirement for the budgetary deadlock in the California Legislature). David Roberti is the President Pro Tempore of the California State Senate. *Id.* See Boatwright, *infra* note 111 (citing the two-thirds rule as a cause of budgetary stalemate); SENATE DEMOCRATIC CAUCUS OF CALIFORNIA, Summary of 1992-1993 Budget Action, 1 (1992) (listing the two-thirds vote requirement as one reason why enacting the 1992-93 budget took so long); John Jacobs, *California's Two-Thirds Gridlock*, SACRAMENTO BEE, March 14, 1993, at F4 (predicting that gridlock will continue in the California Legislature as long as the two-thirds vote requirement to pass California budgets is in effect); Dan Bernstein, *Two-Thirds Vote Aids Budget Gridlock, Opponents Say*, SACRAMENTO BEE, April 5, 1993, at A4 (discussing the increased criticism of the two-thirds vote requirement); see also *infra* notes 39-68 and accompanying text (discussing implications of the two-thirds voting requirement).

12. See *infra* notes 15-68 and accompanying text.

13. See *infra* notes 69-162 and accompanying text.

Part III suggests the elimination of California's two-thirds vote requirement to pass State budgets and discusses methods of achieving that change.<sup>14</sup>

## I. CALIFORNIA'S MODERN LEGISLATIVE STRUCTURE

The Constitution of 1879 established the State's government in the form we know it today.<sup>15</sup> California's Constitution separates state governmental powers into three branches: legislative, executive and judicial.<sup>16</sup> The State legislative branch consists of two houses: the Assembly and the Senate.<sup>17</sup>

Each year, California's Legislature responds to California's changing needs by enacting thousands of new state laws or changing existing ones.<sup>18</sup> Provisions of California's Constitution establish the procedures and requirements for the Legislature to pass this legislation.<sup>19</sup> Most significantly, the California Constitution imposes different vote requirements for the passage of different types of legislation.<sup>20</sup>

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14. See *infra* notes 163-252 and accompanying text.

15. See BERNARD L. HYINK, ET AL., *POLITICS AND GOVERNMENT IN CALIFORNIA* 20 (12th ed. 1989) (describing the California Constitution of 1879). The Constitution of 1879 expanded California's first Constitution of 1849. *Id.* The Constitution of 1879 was more detailed and specific than its predecessor. *Id.* See generally HENRY A. TURNER & JOHN A. VIEG, *THE GOVERNMENT AND POLITICS OF CALIFORNIA* 26 (4th ed. 1971) (comparing California's constitutions of 1849 and 1879).

16. CAL. CONST. art. III, § 3. Compare U.S. CONST. art. I, art. II, and art. III (establishing the legislative, executive and judicial branches of the United States government).

17. CAL. CONST. art. IV, § 1. The Assembly has eighty members and the Senate has forty members. *Id.* art. IV, § 2(a).

18. LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *GUIDE TO CALIFORNIA GOVERNMENT* 29 (14th ed. 1992) [hereinafter LEAGUE OF WOMEN VOTERS OF CALIFORNIA] (discussing the legislative powers of the California Legislature).

19. See CAL. CONST. art. IV, § 8 (providing for the introduction, passage and effective date of statutes); *cf. id.* art. IV, § 12 (establishing specific provisions for the introduction, passage and effective date of budget bills and other bills authorizing spending of public money). See *infra* notes 83-110 and accompanying text (discussing California's budget process and its specific requirements).

20. See CAL. CONST. art. IV, § 12(d) (distinguishing between appropriations bills and non-appropriations bills); *id.* art. IV, § 8(d) (distinguishing between urgency and non-urgency bills). The 1879 constitution did not base vote requirements on the subject matter of the proposed legislation. CAL. CONST. of 1879, art. IV., § 15 (establishing procedures and requirements for the passage of a bill). However, a two-thirds vote of both houses is required to override a gubernatorial veto. *Id.* art. IV, § 16.

A. The California Legislature's Two-Thirds Vote Requirement

The California Constitution provides that the Legislature must pass bills by a majority vote.<sup>21</sup> Passing bills by a majority vote requires only forty-one votes in the Assembly and twenty-one votes in the Senate regardless of number of members who actually do vote.<sup>22</sup> In addition to the simple majority vote requirement, the constitution also imposes a more stringent two-thirds vote requirement on the Legislature to pass many types of legislation. Fifty-four votes in the Assembly and twenty-seven votes in the Senate are needed to pass bills requiring a two-thirds vote, similarly disregarding the actual number of members that do vote.

The current California Constitution requires a two-thirds vote of both houses of the Legislature in several situations, including the following: 1) changes in state taxes enacted to increase revenue;<sup>23</sup> 2) approval of appropriations bills, including the state budget, except those funding schools;<sup>24</sup> 3) overriding the governor's veto of a bill or budget item;<sup>25</sup>

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21. CAL. CONST. art. IV, § 8(b); see LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 18, at 36 (defining a bill as a proposal to alter, supplement, or rescind an existing law). The California Constitution also requires a majority vote of the Legislature to remove directors or appeals board members of the Department of Alcoholic Beverage Control. CAL. CONST. art. XX, § 22. Similarly, the California Legislature must pass acts taxing banks, corporations, franchises, and insurers by a majority vote. *Id.* art. XIII, §§ 27-28.

22. *Id.* art. IV, § 2(a).

23. *Id.* art. XIII A, § 3. The constitution specifies that both increases in tax rates and changes in computation methods require a two-thirds vote. *Id.*; see *infra* note 64 (discussing the effects of Proposition 13).

24. CAL. CONST. art. IV, § 12(d). The two-thirds vote requirement has been interpreted to apply only to appropriations from the state general fund. 62 Op. Cal. Att'y Gen. 717 (1979); see *City of Los Angeles v. Post War Pub. Works Review Bd.*, 26 Cal. 2d 101, 116, 156 P.2d 746, 755 (1945) (quoting *Ryan v. Riley*, 65 Cal. App. 181, 187, 223 P. 1027 (1924)) (defining "appropriation" as a setting apart from the revenues of a certain sum of money for a specified purpose); *County of Orange v. Flournoy*, 42 Cal. App. 3d 908, 914, 117 Cal. Rptr. 224, 227 (1974) (citing *City and County of San Francisco v. Kuchel*, 32 Cal. 2d 364, 366, 196 P.2d 545 (1948)) (stating that appropriation legislation need not take any certain form, but an intent to appropriate must be clear); BLACK'S LAW DICTIONARY 102 (6th ed. 1990) (defining an "appropriation bill" as a measure before a law-making body that permits the spending of public moneys in a specified manner). The two-thirds voting requirement, as it applies to the budget process, has its roots in a Depression Era California tax reform program. See Memorandum from California Legislature Senate Office of Research to California State Senator Bill Lockyer 2-3 (Dec. 17, 1990) [hereinafter Memorandum] (copy on file with the *Pacific Law Journal*) (reviewing the history of the two-thirds vote rule as it applies to the adoption of California budgets). The tax program, known as the Riley-Stewart Plan, was put on the ballot by 1933 Senate Constitutional Amendment 30. STATUTES AND AMENDMENTS TO THE CODES OF CALIFORNIA 3072 (1933) (providing the text of 1930 Senate Constitutional Amendment 30, enacted as Chapter 63); *id.* at xc (noting that Chapter 63 appeared on California's June 27, 1933 Special Election ballot as Proposition 1). The amendment specified that any appropriations during the next two years, except those for public schools, could not exceed 5% of the prior year's appropriations without a two-thirds vote of the Legislature. SECRETARY OF THE STATE OF CALIFORNIA, PROPOSED AMENDMENTS TO THE CONSTITUTION AND PROPOSITIONS, SPECIAL ELECTION JUNE 27, 1933, at Pt. II p. 1 (providing the text of Proposition 1). Proponents of Proposition 1 argued that its purpose was to help lift California from its economic crisis and instability by equalizing taxation and returning billions of dollars to local government. *Id.* at Pt. I p. 3. Nineteen State Senators signed the argument in favor of Proposition 1. *Id.* No arguments against Proposition

4) enactment of an urgency statute;<sup>26</sup> 5) legislation to submit to the voters a constitutional amendment<sup>27</sup> or state obligation bond act;<sup>28</sup> and 6) suspension for one year of the constitutionally required minimum funding for school and community college districts.<sup>29</sup>

Requiring more than a simple majority vote of the Legislature to take action is not a new concept in the California Constitution.<sup>30</sup> California is among only a handful of American states that demand more than a majority vote, or what is generically termed a supermajority vote, to take

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1 appeared in the ballot pamphlet. *Id.* A clear majority California voters approved the measure. SECRETARY OF THE STATE OF CALIFORNIA, STATEMENT OF THE VOTE, SPECIAL ELECTION JUNE 27, 1933, at 12 (June 1933) (reporting that the ballot measure received 717,319 votes in favor and 440,413 votes against). In 1962, Californians passed ballot Proposition 16, which made technical corrections in the Constitution and formulated the current version of the two-thirds vote requirement as it applies to appropriations bills. *See* STATUTES AND AMENDMENTS TO THE CODES OF CALIFORNIA 5044 (1961) (providing the text of Assembly Constitutional Amendment 11, enacted as Chapter 255); STATUTES AND AMENDMENTS TO THE CODES OF CALIFORNIA *cxviii* (1963) (stating that Chapter 255 appeared on California's November 6, 1962 General Election ballot as Proposition 16); *see also* Memorandum, *supra* (reviewing the history of the two-thirds vote rule as it applies to the adoption of state budgets). The language of California Constitution § 12(d) specifically exempts appropriations for public schools from the two-thirds vote requirement. CAL. CONST. art. IV, § 12(d). California's 1993-94 State budget devoted \$18.5 billion or 48.1% of the State's total budget to kindergarten through high school and higher education. Pete Wilson, Governor of California, California State Budget 1993-94, at 3 (copy on file with the *Pacific Law Journal*).

25. CAL. CONST. art. IV, § 10(a).

26. *Id.* § 8(d); *see id.* (defining an "urgency statute," sometimes referred to as an "urgency bill," as one needed to preserve the public peace, health or safety). Urgency statutes go into effect immediately upon their enactment. *Id.* § 8(c)(3).

27. *Id.* art. XVIII § 1; *see* JOSEPH ALLAN BEEK, THE CALIFORNIA LEGISLATURE 235 (7th ed. 1974) (defining a constitutional amendment as a resolution affecting the constitution, adopted by the Legislature or presented by initiative, requiring an affirmative vote of the voters to become effective).

28. CAL. CONST. art. XVI, § 1. State obligation bonds also must be approved by a majority vote of Californians. *Id.* Bonds are interest bearing loans to the government which the government promises to repay at the end of a specific time period. An "obligation bond" is a bond repaid using funds from California's General Fund. LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 18, at 167. The General Fund, used to finance most of California's operations, contains monies which are not specified by law to go to any other fund. RICHARD KROLAK, CALIFORNIA'S BUDGET DANCE: ISSUES AND PROCESS 112 (1990). The other types of funds used in California, generically referred to as "special funds," are used in areas where state money is designated by law for a particular use. *Id.* at 115.

29. CAL. CONST. art. XVI, § 8(h). The listing in the text is not exhaustive. *See id.* art. XA § 4 (requiring a two-thirds vote to amend, repeal or add to Division six of the Water Code, so long as the action taken does not reduce that division's protections); *see also id.* art. VII § 2 (requiring a two-thirds vote to remove a member of the State Personnel Board); *id.* art. IV §, 4(b) (mandating a two-thirds vote to define travel and living expenses for Members of the Legislature). California's Constitution requires more than a two-thirds vote in only one situation. *See id.* art. IV, § 8(a) (specifying that three-fourths of the Legislature must agree to suspend the Constitutional requirement that bills may not be acted upon until 31 days after they are introduced into the Legislature).

30. *See* CAL. CONST. of 1849, art. IV, § 17 (requiring two-thirds vote of the Assembly and the Senate to override a Governor's veto); *id.* art. IV, § 18 (specifying that the Senate must approve by two-thirds a conviction for impeachment).

action on certain types of bills.<sup>31</sup> Over time, the number of circumstances where Californians have desired a two-thirds vote has increased dramatically.<sup>32</sup> For example, some of the 480 successful amendments<sup>33</sup> to the California Constitution since 1884 have placed supermajority voting requirements upon the Legislature.<sup>34</sup>

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31. See 28 THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 177 (1990-1991) (listing those states whose legislatures are required to take certain actions or pass certain bills by extraordinary votes). California is one of only five American states to require an extraordinary vote to pass tax bills in its Senate. *Id.* at 175. The other four states are Arkansas, Delaware, Louisiana and South Dakota. *Id.* Most states do not require a supermajority vote to enact fiscal or tax legislation. *Id.* at 175-77. Only California, North Carolina, Arkansas, Delaware, Louisiana and South Dakota require an extraordinary vote for tax measures to pass the lower house of their legislatures. *Id.* at 177. Additionally, California is among only five states, including Arkansas, Louisiana, Mississippi, and South Dakota, that require more than a majority vote to pass revenue increasing bills in the State budget context. *Id.* at 290-91.

32. See *supra* notes 23-29 and accompanying text (citing specific instances where a two-thirds vote is currently required by California's Constitution).

33. California's Constitution may be changed three ways; The first method is by Legislative amendment or revision. CAL. CONST. art. XVIII, § 1. This method allows the Legislature, by a two-thirds vote, to propose an amendment or revision to the Constitution. *Id.* To take effect, the proposed amendment must be approved by a majority of California's voters. *Id.* art. XVIII, § 4. See generally 29 THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 22 (1992-93) [hereinafter THE COUNCIL OF STATE GOVERNMENTS] (comparing state constitutional amendment procedures by state governments). An amendment is more limited in scope and typically affects only one or more constitutional provisions. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, THE CALIFORNIA BUDGET PROCESS: PROBLEMS AND OPTIONS FOR CHANGE 18 (Nov. 28, 1990). A revision is considered a more substantial change of the entire constitution. *Id.*; see Michael G. Colantuono, Comment, *The Revision of American State Constitutions: Legislative Power, Popular Sovereignty, and Constitutional Change*, 75 CAL. L. REV. 1473, 1478 (1987) (noting that the distinction between an amendment and a revision is simply a matter of degree because both involve adopting new constitutional language). The second method of changing the California Constitution is by constitutional convention. CAL. CONST. art. XVIII, § 2. The Legislature may, if approved by a two-thirds vote, put before voters the question of whether to call a constitutional convention. *Id.* If a majority of voters approve a convention the Legislature has six months to provide the convention. *Id.* Delegates to the convention are elected by voters. *Id.* To take effect, any proposed revisions or amendments must be approved by a majority of California's voters. *Id.* art. XVIII, § 4. See generally THE COUNCIL OF STATE GOVERNMENTS, *supra*, at 25 (comparing procedures for calling state constitutional conventions). The third method of changing the California Constitution is a ballot initiative. CAL. CONST. art. XVIII, § 3. Initiatives may be proposed by first submitting a petition signed by a constitutionally specified number of voters to California's Secretary of State. *Id.* art. II, § 8(b). The Secretary of State must place the proposal on the next statewide general election ballot at least 131 days after the proposal qualifies or at any statewide special election. *Id.* art. II, § 8(c). Initiatives dealing with more than one subject are not eligible to be submitted to the voters and have no effect. *Id.* art. II, § 8(d). In order to become effective a majority of voters must approve the initiative. *Id.* art. XVIII, § 4. The only other states that allow for constitutional amendment by initiative are Arizona, Arkansas, Colorado, Florida, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. THE COUNCIL OF STATE GOVERNMENTS, *supra*, at 24. See EUGENE C. LEE, 6 CALIFORNIA POLICY CHOICES, CHAPTER 10: REPRESENTATIVE GOVERNMENT AND THE INITIATIVE PROCESS, (1990) (detailing the specifics of the initiative process). See generally Kara Christenson, *Interpreting the Purposes of Initiatives: Proposition 65*, Note, 40 HASTINGS L.J. 1031, 1033 (1989) (examining the history of initiatives in California).

34. THE COUNCIL OF STATE GOVERNMENTS, *supra* note 31, at 20. California is second only to Alabama, which has had 538 constitutional amendments, in the number of constitutional amendments adopted. *Id.* Californians have used ballot initiatives several times to implement two-thirds vote requirements. See, e.g., CAL. CONST. art. XVIII, § 1 (requiring a two-thirds vote of the Legislature to call a constitutional convention as



Moreover, some of California's current two-thirds vote requirements were included in the original language of the 1879 California Constitution.<sup>35</sup> The implications of the history and widespread application of the two-thirds vote requirement in California are of great consequence.<sup>36</sup> In the 1960's and 1970's, the requirement played an important role in the final outcome of two significant issues facing California: water delivery between northern and southern California and property tax reform.<sup>37</sup> In addition, as recently as the 1992-93 budget negotiations, the two-thirds vote requirement hampered the California Legislature's ability to pass a budget on time.<sup>38</sup> The implications of the two-thirds vote requirement have not, however, been limited historically within the context of the California budget. The two-thirds vote requirement has created difficulty in the passage of other legislation essential to California as well.

### *B. Implications of California's Two-Thirds Vote Requirements*

Supermajority voting requirements significantly enhance the power of the minority party in the California Legislature by allowing it to prevent the passage of many important pieces of legislation.<sup>39</sup> This partially

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required by Proposition 16 on the November 3, 1970 ballot); *id.* art. XIII, § 3 (requiring a two-thirds vote to increase tax rates or change computation methods as mandated by Proposition 13 on the June 6, 1978 ballot); *id.* art. XVI, § 8(h) (requiring a two-thirds vote to suspend minimum funding levels for schools or community colleges as mandated by Proposition 98 on the June 5, 1990 ballot). The California Legislature has also used ballot initiatives to implement two-thirds vote requirements. *See, e.g.*, CAL. CONST. art. IV, § 8(d) (requiring a two-thirds vote to enact an urgency bill as required by Proposition 1A on the November 8, 1966 General Election ballot). Proposition 1A was the product of 1966 Assembly Constitutional Amendment 13. SECRETARY OF THE STATE OF CALIFORNIA, CALIFORNIA VOTERS PAMPHLET, GENERAL ELECTION NOVEMBER 8, 1966, at Pt. II, p. 1 (providing the text and background of Proposition 1A). California voters approved Proposition 1A by a large majority. SECRETARY OF THE STATE OF CALIFORNIA, STATEMENT OF THE VOTE, GENERAL ELECTION NOVEMBER 8, 1966, at 27 (Nov. 1966) (reporting that Proposition 1A received 4,156,416 votes in favor and 1,499,675 votes against).

35. *See* CAL. CONST. art. IV, § 10(a) (requiring a two-thirds vote of both houses of the Legislature to override a Governor's veto); *id.* art. IV, § 18(a) (requiring a two-thirds vote in the State Senate to convict for impeachments).

36. *See infra* notes 39-68 and accompanying text (discussing the significance of the two-thirds vote requirement).

37. *See infra* notes 45-68 and accompanying text (describing the two-thirds vote requirement's effect on the Legislature's enactment of the Burns-Porter Act and attempts at property tax reform).

38. *See infra* notes 111-162 and accompanying text (detailing the effects of the two-thirds vote requirement on the enactment of the 1992-93 California State budget).

39. *See* WALTER ZELMAN, 5 CALIFORNIA POLICY CHOICES, CHAPTER 12: POLITICAL STALEMATE AND DRIFT (1989) (characterizing supermajority voting requirements as potentially both threatening and protecting democracy); *see also* MICHAEL J. ROSS, CALIFORNIA: ITS GOVERNMENT AND POLITICS 153 (3d ed. 1987) (discussing the holdout role the minority party can play in budgetary legislation); Interview with Steve Larson,

defeats the democratic ideal of rule by majority.<sup>40</sup> Supermajority votes effectively prevent California's Legislature from responding to specific public demands, at least as far as the majority of legislators perceives them.<sup>41</sup> Highly partisan legislatures, such as California's, enhance the minority party's power when combined with two-thirds vote requirements because minority support is frequently needed to enact legislation.<sup>42</sup> The highly partisan voting practices of the California Legislature exacerbate the inherent difficulties created by the supermajority voting requirements.<sup>43</sup> When one explores the significant impact such voting requirements have had on two particular pieces of California legislation, the problems created by supermajority voting requirements are evident.<sup>44</sup>

In 1959, the California Constitution required a two-thirds vote of both houses of the Legislature to place state obligation or general bond obligation acts on a Primary ballot.<sup>45</sup> However, if the proposed bond act was to be voted on during the General election in November, a simple majority vote would be sufficient to place the act on the ballot.<sup>46</sup> In 1960,

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Chief of Staff, California State Senate Budget and Fiscal Review Committee, in Sacramento, CA (Nov. 4, 1992) [hereinafter Interview] (notes on file with the *Pacific Law Journal*) (characterizing the two-thirds voting requirement as an obstacle in all circumstances); *infra* notes 45-68 and accompanying text (highlighting that the outcomes of two significant pieces of legislation were determined by the two-thirds vote requirement).

40. See ZELMAN, *supra* note 39, at 248 (commenting on the impact of minority power on democratic principles); see also ROSS, *supra* note 39, at 153 (discussing the minority party's role in stalling agreement on budgetary legislation to have its demands met); Interview, *supra* note 39 (characterizing the two-thirds voting requirement as a real restraint on the California Legislature, limiting the ability of the majority to rule).

41. See ZELMAN, *supra* note 39 (discussing the value of supermajority voting requirements). Supermajority voting requirements have been described as obstructions to harnessing political power. *Id.*

42. See Andrea Margolis & Richard Zeiger, *Bleeding Hearts, Stone Hearts: A California Journal Survey of Legislative Voting Records*, CAL. J. 30 (Jan. 1987) (characterizing California's Legislature as highly polarized along party lines). A determined minority party will gain substantial leverage if it can gather enough votes to deny the required two-thirds. KROLAK, *supra* note 28, at 3. As of December 14, 1992, during the 1992-94 session, the Democrats controlled both the Assembly and the Senate with 48 out of 80 and 22 out of 40 seats respectively. Quick Reference Guide to the California State Legislature, SACRAMENTO NEWSL., December 14, 1992, at 3-4. As of December 14, 1992, Senatorial districts 2 and 16 were vacant and two members were Independent. *Id.* The political party division of California's Legislature is illustrated by a recent study indicating that 83% of California's Legislators voted along party lines 85% of the time. Margolis & Zeiger, *supra*, at 30-33. The survey studied 47 bills during California's 1985-86 Legislative session to categorize the voting records of both individual Legislators and each house as a whole. *Id.*

43. See Margolis & Zeiger, *supra* note 42 (describing the results of a recent study of degree of partisanship of voting practices of the California Legislature).

44. See *infra* notes 45-68 and accompanying text (discussing two specific instances where the two-thirds vote requirement affected the outcome of legislation).

45. CAL. CONST. art. XVI, § 1 (amended 1962).

46. *Id.* This constitutional provision distinguished between the General Election and Primary Election ballot by specifically requiring a two-thirds vote of the Legislature to place such measures on Primary Election ballots while imposing no special requirements for placement on the General Election ballot. *Id.* See generally Albert S. Rodda, Jr., *The Constitutional Structure of California State Government: Does it Encourage Responsible Democratic Representative Government?* (Sept. 15, 1991) (unpublished paper) (copy on file with

the Legislature utilized this provision of the California Constitution to pass the Burns-Porter Act, placing it on the November General Election ballot.<sup>47</sup> The Burns-Porter Act, approved by voters in November of 1960,<sup>48</sup> authorized the construction of the state water project which currently supplies water to southern California from northern California.<sup>49</sup>

The year after the Burns-Porter Act was passed, the California Legislature and voters approved an amendment to the constitution that removed the distinction between primary and general election ballots in terms of bond acts.<sup>50</sup> As a result, California's Constitution now requires a two-thirds vote of the Legislature to place all state bond acts before the voters regardless of whether the Legislature places a bond act on the primary election or the general election ballot.<sup>51</sup> The Burns-Porter Act might not have passed had the new two-thirds vote requirement been in effect when the Legislature considered it, and consequently would not have been placed before the voters.<sup>52</sup>

The two-thirds vote requirement has also impacted a second area of California legislation, the problem of property taxation. In the late 1960's

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the *Pacific Law Journal*) (discussing California's political and legislative structure during the Pat Brown gubernatorial administration). Albert S. Rodda served as a California State Senator from 1958-1980. *Id.* at ii.

47. 1959 Cal. Stat. ch. 1762, sec. 1, at 505 (enacting CAL. WATER CODE §§ 12930-12941). In the Senate, the bill secured twenty-five ayes and twelve noes; two aye votes short of two-thirds, but four votes more than necessary to pass by majority. 2 JOURNAL OF THE SENATE OF CALIFORNIA 2943 (1959 Regular Session) (citing the Senate's passage of SB 1106 on May 29, 1959). In the Assembly, the bill received fifty ayes and thirty noes; four aye votes short of two-thirds, but nine votes more than necessary to pass by majority. 4 JOURNAL OF THE ASSEMBLY OF CALIFORNIA 5661 (1959 Regular Session) (reporting the Assembly's passage of SB 1106 on June 17, 1959).

48. SECRETARY OF STATE OF CALIFORNIA, STATEMENT OF THE VOTE, GENERAL ELECTION NOVEMBER 8, 1960, at 23 (Nov. 1960) (reporting the official results of the 1960 General Election). The ballot measure received 3,008,328 votes in favor and 2,834,384 votes against. *Id.*

49. See 1959 Cal. Stat. ch. 1762, sec. 1, at 505; LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 18, at 82 (describing the California State Water Plan created by the Burns-Porter Act); see also MARC REISNER, CADILLAC DESERT: THE AMERICAN WEST AND ITS DISAPPEARING WATER 366-67 (1986) (detailing the history of water resources in California); RICHARD B. HARVEY, THE DYNAMICS OF CALIFORNIA GOVERNMENT AND POLITICS 203 (2d ed. 1985) (discussing California's longstanding political conflict over water in the context of the State Water Project).

50. 1960 Cal. Stat. ch. 35, sec. 1, at 505 (amending CAL. CONST. art XVI) (1960 1st Extraordinary Session) (passing Assembly Constitutional Amendment (ACA) 6); SECRETARY OF STATE OF CALIFORNIA, STATEMENT OF THE VOTE, CONSOLIDATED DIRECT PRIMARY ELECTION PRESIDENTIAL PRIMARY ELECTION SPECIAL ELECTION JUNE 7, 1960 (June 1960) (identifying Proposition 3 as ACA 6 and as amending CAL. CONST. art XVI, § 1); see CAL. CONST. art. XVI, § 1 (as amended June 7, 1960) (requiring a two-thirds vote of the Legislature to submit bond proposals to the people for their approval).

51. CAL. CONST. art. XVI, § 1 (as amended June 7, 1960) (requiring a two-thirds vote of the Legislature to submit bond proposals to the people for their vote).

52. The Act passed by such a slim margin that, while it passed by a majority vote, it did not gather enough votes to pass by two-thirds. See *supra* note 47 (citing the vote record of both the Assembly and the Senate on the Burns-Porter Act).

and 1970's, nearly ten years after passage of the Burns-Porter Act, the California Legislature attempted to respond to spiraling increases in property taxation by enacting extensive property tax reform.<sup>53</sup> Throughout this period California's constitution required a two-thirds vote of the Legislature to pass bills which would increase taxes on personal property.<sup>54</sup>

More than a dozen tax relief measures were introduced in 1976 alone, but a divided California Legislature was unable to reach a consensus on the tax reform issue.<sup>55</sup> The Legislature made a final attempt to enact tax reform legislation on the last night of the 1977 legislative session.<sup>56</sup> The Assembly passed Senate Bill (SB) 154 and Governor Jerry Brown committed to signing it into law.<sup>57</sup> However, Senate Republicans and three Democrats, rejected the bill, thereby denying SB 154 the needed two-thirds vote.<sup>58</sup> As a result, the California Legislature failed to pass much needed tax reform.<sup>59</sup> This failure to enact tax reform prompted supporters of the Jarvis and Gann Tax Reform Association to work toward

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53. Between 1967 and 1977 the Legislature enacted 19 measures aimed at relieving the property tax burden. CALIFORNIA ASSEMBLY REVENUE & TAXATION COMMITTEE, FACTS ABOUT PROPOSITION 13, THE JARVIS/GANN INITIATIVE, 58 (1978). During this period California voters attempted to implement property tax relief. In 1968, Proposition 9, proposing a 1% limit on the tax rate, was defeated. *Id.* at 7. In 1972, Proposition 14, which proposed to limit the tax rate from 1.75% to 2%, also failed. *Id.*

54. CAL. CONST. art. XIII, § 14 (repealed Nov. 5, 1974 by Proposition 8). Proponents of Proposition 8 argued that its purpose was merely to make the California Constitution easier to read and understand, but not to change California's tax structure. SECRETARY OF THE STATE OF CALIFORNIA, CALIFORNIA VOTERS PAMPHLET, GENERAL ELECTION NOVEMBER 5, 1974, at 31 (Nov. 1974). No ballot argument against Proposition 8 appeared on the ballot. *Id.*

55. See LENNY GOLDBERG, TAXATION WITH REPRESENTATION: A CITIZEN'S GUIDE TO REFORMING PROPOSITION 13 at 4 (1991) (noting the California Legislature's failure to provide property tax relief); TERRY CHRISTENSON & LARRY GERSTON, THE CALIFORNIA CONNECTION 211-12 (1984) (detailing the circumstances surrounding the adoption of Proposition 13).

56. 4 J. SENATE CAL. 7251 (1977-78 Regular Session) (reporting the Senate's consideration of SB 154 on Sept. 15, 1977). Senate Bill 154 sought, *inter alia*, to revise the method of calculating maximum property tax rates to allow local agencies to receive specified amounts of tax revenue and to provide property tax assistance payments to qualified homeowners or renters. CALIFORNIA STATE SENATE, SB 154 3-4 (as amended June 22, 1977); see Rodda, *supra* note 46, at 19 (describing the 1977 Legislature's attempts to enact property tax reform).

57. 5 J. ASSEMBLY CAL. 8662 (1977-78 Regular Session) (reporting the Assembly's passage of SB 154). The Assembly approved SB 154 on Sept. 2, 1977, by a vote of 56-22, exceeding the required two-thirds by two votes. *Id.*; see Rodda, *supra* note 46, at 19 (documenting Governor Jerry Brown's commitment to sign SB 154).

58. 4 J. SENATE CAL. 7345 (1977-78 Regular Session). The Senate cast twenty-one votes in favor of the bill, and fifteen votes against. *Id.* The measure would have passed had a majority vote requirement been in place at the time. *Id.*

59. *Id.*

the passage of property tax reform in California.<sup>60</sup> The Association's efforts were instrumental in the ultimate qualification,<sup>61</sup> approval,<sup>62</sup> and judicial affirmation of the property tax reform initiative commonly known as Proposition 13.<sup>63</sup> The adverse effects of Proposition 13 have been widespread and significant.<sup>64</sup> The events leading to the passage of Proposition 13 epitomize how the supermajority vote requirement can prevent the Legislature from enacting laws clearly supported by a majority of California's legislators.<sup>65</sup>

As shown above, supermajority voting requirements mandated by the California Constitution have played an important role in at least two significant pieces of California law, the Burns-Porter Act and Proposition 13.<sup>66</sup> Just like the Burns-Porter Act, Proposition 13, or any other

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60. Kershner, *supra* note 4. Lenny Goldberg, head of the California Tax Payer's Association, attributes Proposition 13 to the Legislature's failure to respond to a tax system out-of-control. *Id.* See generally Rodda, *supra* note 46, at 19 (discussing the events leading to Proposition 13).

61. The constitution requires supporters of a proposed initiative to gather signatures equal in amount to 8% of the total votes cast in the last gubernatorial election in order to qualify the proposition for the ballot. See CAL. CONST. art. II, § 8(b). In the 1978 election 499,846 signatures were required to qualify. SECRETARY OF STATE OF CALIFORNIA, STATEMENT OF THE VOTE, PRIMARY ELECTION JUNE 6, 1978, at vi (June 1978). The association gathered 1,264,000 million signatures in qualifying Proposition 13. CALIFORNIA ASSEMBLY REVENUE & TAXATION COMMITTEE, *supra* note 53, at 1.

62. See SECRETARY OF STATE OF CALIFORNIA, STATEMENT OF THE VOTE, PRIMARY ELECTION JUNE 6, 1978, at 39 (June 1978) (reporting the official results of the 1978 special election). Proposition 13 received 4,280,689 (64.8%) votes in favor and 2,326,167 (35.2%) votes against. *Id.*

63. See *Nordlinger v. Hahn*, 112 S. Ct. 2326, 2336 (1992) (upholding the validity of the property taxation system established by Proposition 13); see generally Steven T. Lawrence, Note, *Solving the Proposition 13 Puzzle: From Amador to Nordlinger—Judicial Challenges and Alternatives*, 24 PAC. L.J. 1769 (1993) (examining California's property taxation system and the most recent challenge to the system, *Nordlinger v. Hahn*).

64. One year after Proposition 13 was enacted approximately 100,000 public sector jobs were eliminated. GOLDBERG, *supra* note 55, at 4. Under Proposition 13, California has lost an estimated \$120 billion in tax revenue. *Id.* Revenues of local government and schools have dropped by about \$7 billion since the enactment of Proposition 13. *Paying the Price of Proposition 13*, BUS. WK., Oct. 19, 1981, at 124B (detailing the financial effects of Proposition 13). Also, the ability of schools to raise funds locally has been virtually eliminated. CALIFORNIA LEGISLATURE, JOINT LEGISLATIVE BUDGET COMMITTEE, PROPOSITION 13, TEN YEARS LATER 6 (1987). Proposition 13 requires lawmakers to pass tax increases by a two-thirds vote, making enactment of state tax increases in California very difficult, even where a majority of the members favor it. CAL. CONST. art. XIII A, § 3 (adopted by Proposition 13) (specifying the vote requirement necessary to increase state taxes); see GOLDBERG, *supra* note 55, at 52 (characterizing the two-thirds vote requirement to raise taxes as the single most powerful tool used by special interests to protect their advantages under California's tax scheme); see also *supra* notes 39-43 and accompanying text (discussing the role of the minority party when supermajority votes are required).

65. See *supra* notes 53-58 and accompanying text (discussing the California Legislature's attempts at property tax reform which were approved by a majority of the Legislature).

66. See 1959 Cal. Stat. ch. 1762, sec. 1, at 4234 (enacting CAL. WATER CODE § 12930-12941); CAL. CONST. art. XIII A (enacted by Proposition 13 on June 6, 1978); see also *supra* notes 47-65 and accompanying text (discussing the Burns-Porter Act and the California Legislature's attempts at property tax reform); *supra* notes 22-29 and accompanying text (citing instances where the California Constitution requires a supermajority

legislation proposed by the Legislature, the budget bill is also subject to Constitutional restrictions on its passage.<sup>67</sup> A supermajority voting requirement is one of those restrictions, and it plays a pivotal role in the California Legislature's ability to pass budgets by the constitutionally mandated deadline.<sup>68</sup>

## II. CALIFORNIA'S BUDGET

California's annual budget bill is one of the most important pieces of legislation enacted by the State Legislature.<sup>69</sup> It impacts nearly every facet of life.<sup>70</sup> If California's current fiscal year expires before a budget for the next fiscal year is enacted, the State is no longer authorized to spend money from the State Treasury.<sup>71</sup>

Without authority to spend, the State may be forced to issue registered warrants to creditors or to not pay its creditors at all.<sup>72</sup> Issuing these warrants is costly both in terms of the interest the warrants bear and in terms of their potential negative effect on the State's financial health.<sup>73</sup>

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vote).

67. See CAL. CONST. art. IV, § 8 (establishing waiting periods for legislative action, the requirement for three readings of a bill, the effective date of statutes, and providing for urgency statutes); *id.* art. IV, § 12 (creating the procedures governing budget bills).

68. See *infra* notes 111-144 and accompanying text (discussing the effects of the two-thirds vote requirement on the 1992-93 California budget process); notes 145-162 and accompanying text (examining the effects of the 1992-93 budget impasse).

69. See KROLAK, *supra* note 28, at 1-2 (characterizing the state budget as the most significant policy document created by a state government in any given year). A state budget is the State's official authorization to spend money. *Id.* The State budget is also considered the monetary reflection of state policy and programs. CHARLES G. BELL & CHARLES M. PRICE, CALIFORNIA GOVERNMENT TODAY: POLITICS OF REFORM? 250 (3d ed. 1988).

70. See generally KROLAK, *supra* note 28, at 1-2 (describing the policy importance of a state budget).

71. CAL. CONST. art. XVI, § 7 (providing that money may be drawn from the Treasury only by appropriation or warrant); see CAL. GOV'T CODE § 17300 (West Supp. 1992) (defining and authorizing issuance of warrants). A budget from a preceding year is not automatically reappropriated if no budget act is passed for the upcoming year. Op. Cal. Leg. Counsel, 1958 A.J. 64 (2nd Ex. Sess.). California's fiscal year begins on July 1 and ends on June 30. JOHN H. CULVER & JOHN C. SYER, POWER AND POLITICS IN CALIFORNIA 201 (3d ed. 1988).

72. CAL. GOV'T CODE § 17300 (West Supp. 1992) (defining and authorizing issuance of registered warrants). On July 1, 1992, California issued registered warrants for the first time since the Great Depression. Kari Zimmerman, *From A-OK to IOU*, CAL. J., Sept. 1992, at 426.

73. Bancroft, *supra* note 5 (reporting the effects of California's issuance of registered warrants); see Joyce Price, *California's Treasury Issues IOU's: Empty Coffers affect 324,000*, WASH. TIMES, July 18, 1992, at A5 (describing the effects of California's issuance of registered warrants). This year registered warrants paid 5% interest. Kenneth N. Gilpin, *Credit Markets: S & P Stuns Bond Market By Cut in California Rating*, N.Y. TIMES, July 16, 1992, at D15. California issued \$3.4 billion worth of registered warrants during the 1992-93 budget crisis. Robert Reinhold, *63 Days After Its Cash Ran Out, California Passes Austere Budget*, N.Y. TIMES, Sept. 3, 1992, at A1.

For example, California's most recent issuance of registered warrants in the summer of 1992 adversely affected the State's credit rating with major ratings services.<sup>74</sup> The downgrading of the State's credit rating adversely affects California's ability to sell bonds and raise revenue, or at least makes the process significantly more expensive.<sup>75</sup>

Given the importance of the California budget and its impact on the state's fiscal future, parties involved in the process try to maximize gains while giving away as little as possible.<sup>76</sup> In California, however, agreement by a majority of legislators is insufficient to approve a budget bill.<sup>77</sup> Only two other American states, Arkansas and Nebraska, require more than a majority vote to pass standard budget legislation.<sup>78</sup> In California, the group that controls one-third of either chamber of the Legislature effectively retains veto power over the entire budget.<sup>79</sup>

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74. Martha Groves & Virginia Ellis, *S & P Drops State's Bond Rating to A+*, L.A. TIMES, July 16, 1992 at A3 (describing the downgrading of the state's credit rating). Moody's, another major credit rating agency, reduced California's credit rating on July 6, 1992. *Id.*; see *3rd Agency Lowers State Bond Rating*, L.A. TIMES, Feb. 15, 1992, at A28 (discussing California's downgrading by Fitch Financial Services); Gilpin, *supra* note 73 (reporting Standard & Poor's criticism of California's widespread issuance of warrants); Lou Cannon, *Taxers and Spenders: The Hard Reality*, WASH. POST, Sept. 6, 1992, at C7 (characterizing California as a national laughing-stock after its issuance of registered warrants). California's credit rating fell from one of the nine top rated states to one of the four worst rated states. Bancroft, *supra* note 5.

75. See LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 18, at 167 (discussing bond ratings and their effect on a state's ability to raise revenue). Bond ratings depend on the state's ability to raise enough money to guarantee regular payments to the bond purchaser. The lower the bond, rating the higher the interest rate that State taxpayers must pay on bonds. *Id.* A spokesman for California State Treasurer Kathleen Brown warned that higher interest rates on California bonds could cost the state \$200 million over the next 30 years. Bancroft, *supra* note 5. According to Brown, the downgrading could cost taxpayers as much as \$85 million in additional interest costs over the life of twenty-year \$10 billion bonds pending issuance. The downgrade could also affect \$13 billion in state bonds already issued, if holders elect to sell them rather than hold them until maturity. Groves, *supra* note 74 (describing Standard & Poor's downgrading of the state's credit rating).

76. See *supra* notes 69-71 and accompanying text (discussing the important and lasting policy role the state budget plays in California).

77. CAL. CONST. art. IV, § 12(d) (requiring a two-thirds vote to pass the budget).

78. THE COUNCIL OF STATE GOVERNMENTS, *supra* note 33, at 355-56 (comparing state constitutional and statutory budgetary provisions). Arkansas law requires a three-fourths vote to pass state budgets. ARK. CONST. art. V, § 39 (requiring a three-fourths vote of Arkansas' General Assembly to appropriate more than \$2.5 million for any two-year budget period, except monies to pay State debts). Nebraska law requires approval of three-fifths of its Legislature. NEB. CONST. art. IV, § 7 (establishing a three-fifths vote requirement to make appropriations in excess of those recommended by the Governor). Maine requires a two-thirds vote for the emergency enactment of a budget. ME. CONST. art. IV, Pt. 3, § 16 (requiring a two-thirds vote to enact emergency bills).

79. Barry Keene, *Why the Budget is Always Late*, SAN JOSE MERCURY NEWS, July 3, 1991, at B3 (citing the two-thirds majority vote requirement to pass a budget as the reason why California failed to meet its June 15 budget deadline). Barry Keene is a former California State Senator from District 2 in Vallejo. *Id.* California's Constitution formally empowers only the Governor with veto power. CAL. CONST. art. IV, § 10(a). See *supra* note 38 (discussing the power of the minority party).

While an integral part of the budget process generally, the two-thirds vote requirement played an especially important part in 1992.<sup>80</sup> Future budgets will likely be affected by the requirement as well.<sup>81</sup> The complexities of the California budget process as a whole must be explored to better understand how the two-thirds vote requirement affects the budget's passage.<sup>82</sup>

### A. The Budget Process

California is one of seven states whose budgetary process is constitutionally mandated.<sup>83</sup> The entire process, which ideally should last eighteen months, begins when the various agencies within the executive branch develop budgetary figures.<sup>84</sup> By January 10th of each year, the Governor must submit an itemized budget proposal to the Legislature for the following fiscal year.<sup>85</sup> Unlike other bills, the budget bill is always introduced by either the Chairperson of the Assembly Ways and Means Committee, or the Senate Budget and Fiscal Review Committee.<sup>86</sup>

Once the bill has been introduced, the Legislative Analyst's Office (LAO) prepares comprehensive evaluations of and recommendations on the Governor's budget proposal.<sup>87</sup> In February of each year, the LAO releases

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80. See *infra* notes 110-143 and accompanying text (discussing the effect of the two-thirds vote requirement on the passage of the 1992-93 budget); notes 145-162 and accompanying text (examining the effects of the 1992-93 budget impasse).

81. See *infra* notes 154-159 and accompanying text (discussing predictions of California's economic future).

82. See *infra* notes 83-110 (summarizing the California budgetary process).

83. THE COUNCIL OF STATE GOVERNMENTS, *supra* note 31, at 171 (comparing the Legislative appropriation processes of all 50 states). The other states whose budgetary processes are mandated by their state constitution are Georgia, Maryland, Massachusetts, Missouri, New York and West Virginia. *Id.*; see CAL. CONST. art. IV, § 12 (establishing California's budgetary process).

84. CULVER, *supra* note 71, at 202. The initial part of the process, which lasts for the first twelve of the eighteen months, is not open to the public. *Id.*; see *infra* notes 108-41 and accompanying text (discussing the 1992-93 budget process, which lasted a total of 22 months).

85. CAL. CONST. art. IV, § 12(a) (establishing the mechanics for the budget process); see *supra* note 71 (defining California's fiscal year).

86. CAL. CONST. art. IV, § 12(c) (providing that the budget bill must be introduced by the chairpersons of the committees considering appropriations). Authorship rotates between the chairpersons each year and the chairpersons must introduce the bill regardless of whether they agree with it. CULVER, *supra* note 71, at 205.

87. CULVER, *supra* note 71, at 206. The Legislative Analyst's Office is charged with providing all members of the Legislature with an independent evaluation of all measures, including ballot measures, which expend public funds. *Id.* In their analysis, the Legislative Analyst will report on each item of appropriation and make recommendations on them. NOEL J. STOWE, CALIFORNIA GOVERNMENT: THE CHALLENGE OF CHANGE 131 (1975). The Analyst may also suggest changes in certain areas in order to promote efficiency and cut expenditures. *Id.* Responding to Legislative budget cuts mandated by Proposition 140, passed by California voters in 1990, the Assembly has refused to continue funding for the LAO beyond the 1992-93 fiscal year.



its analysis to the Legislature, which holds public hearings in subcommittees over a ten week period.<sup>88</sup> During mid-May, the Governor usually submits an updated version of the budget proposal to the Legislature which reflects revisions in budgetary figures.<sup>89</sup> The budget bill should arrive on the floor of the Legislature for a vote by the end of May.<sup>90</sup>

The California Constitution requires that the budget bill be passed no later than June 15.<sup>91</sup> Due to this early passage requirement, it must be enacted as an urgency bill, also requiring a two-thirds vote,<sup>92</sup> which goes into effect immediately upon the Governor's signature.<sup>93</sup> However, if either house of the Legislature amends the budget bill in committee, the other chamber must adopt identical amendments in order for the bill to pass.<sup>94</sup> If either house of the Legislature fails to adopt the amendments of the other, a conference committee is convened to resolve the differences.<sup>95</sup> A great deal of bargaining and compromise must take

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*Assembly to Pull Plug on Analyst*, SACRAMENTO NEWSL., Jan. 4, 1993, at 2. The Senate, however, has pledged to support the LAO during the 1993-94 fiscal year. *Id.*; see generally California Senate Office of Research, *After the Election: Analysis of Successful Propositions on the November 1990 Ballot 11* (1990) (analyzing policy effects of Proposition 140); Sherry Bebitch Jeffe, *Requiem for an Institution: California's Legislature*, L.A. TIMES, Jan. 12, 1992, at M6 (discussing the ramifications of Proposition 140).

88. CULVER, *supra* note 71, at 206. The subcommittee hearings typically include a critique of a department's budget by an LAO analyst, testimony from members of the department under review, testimony from legislators not on the subcommittee, and testimony from private citizens and activists. *Id.* at 207. Subcommittees generally concern themselves only with areas where the governor's request and LAO's recommendations are different. *Id.* Referral to subcommittee versus full committee is significant to the final determination of the budget for two reasons: (1) subcommittee members have the opportunity to acquire more expertise in the area over which their subcommittee has jurisdiction; (2) budgetary decisions made at the subcommittee level are concentrated in the hands of very few legislators. *Id.* For example, each subcommittee of the Senate Budget and Fiscal Review Committee consists of three members, so only two votes are required to recommend budget amendments to the Senate. *Id.* The various subcommittees of the Assembly Ways and Means Committee are composed of five to seven members, so just three or four votes are needed to recommend budgetary changes to the Assembly. *Id.*

89. CULVER, *supra* note 71, at 207.

90. *Id.*

91. CAL. CONST. art. IV, § 12(c) (setting the June 15 deadline for passage of a budget bill); *Id.* art. IV, § 12(d) (requiring two-thirds vote to pass appropriations bills).

92. *Id.* at § 8(d).

93. CAL. CONST. art. IV, § 8(c)(3). Normally bills go into effect on January 1 following a 90-day waiting period from the statute's date of enactment. *Id.* at § 8(c)(1).

94. TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rules 25-27 (1991-92) (establishing bill amendment rules); see BEEK, *supra* note 27, at 231 (defining amendment as a change either made or proposed to a bill, motion, or clause); *id.* (defining "adoption" as approval or acceptance, usually applied to amendments or resolutions).

95. TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 28 (1991-92) (providing for the establishment of conference committees). A conference committee is a group of six members, with three representatives appointed from each house, who consider matters on which the houses cannot agree. *Id.* The Senate Rules Committee and the Speaker of the Assembly each select two members from the majority group

place in this committee to achieve the necessary two-thirds vote.<sup>96</sup> Ordinarily, the conference committee report is returned to the floor of each house during the second week in June, just a few days before the constitutionally mandated deadline of June 15.<sup>97</sup> Should either house not adopt the report by the required super majority vote, another conference committee will normally be called and this portion of the process repeats.<sup>98</sup>

When both houses pass the bill, it is then presented to the Governor for signature.<sup>99</sup> Once the Governor signs the bill, it becomes law.<sup>100</sup> Rather than sign the bill, the Governor may veto the entire bill<sup>101</sup> or exercise line item veto power to reduce or strike individual items of the bill.<sup>102</sup> The Legislature may, in turn, override the Governor's veto by a two-thirds vote.<sup>103</sup>

When the budget process is complete, California's budget actually consists of three separate types of legislation.<sup>104</sup> The first is the actual statutory budget language, referred to as the budget bill, which allocates money to the various state agencies and programs.<sup>105</sup> The second is supplemental language consisting of legislative intent and findings stating

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and one member from the minority group in the disagreement to sit on the conference committee. *Id.* at Rule 28.1. Meeting and reporting procedures of the conference committee are governed by the Joint Rules. *Id.* at Rule 29. Though the committee may adopt modifications by a simple majority vote, it usually works to achieve consensus instead. BEEK, *supra* note 27, at 234. The committee often achieves compromise by striking offending language or inserting new amendments. *Id.* The amendments must be adopted by each house in order to pass. TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 30 (1991-92).

96. See STOWE, *supra* note 87, at 133 (discussing use of the budget conference committee). Should the committee be unable to settle the problems the required two-thirds may be difficult to achieve. *Id.*

97. CULVER, *supra* note 71, at 210 (discussing legislative amendment to the Governor's budget proposal); see CAL. CONST. art. IV, § 12(c) (setting June 15th as the deadline for passage of the budget).

98. See CULVER, *supra* note 71, at 210 (discussing legislative amendment to the Governor's budget proposal). A maximum of three conference committees may be appointed on any one bill. TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 29 (1991-92). In the last 10 years, the Legislature has never appointed a new conference committee on the State budget. Interview, *supra* note 39.

99. CAL. CONST. art. IV, § 10(a).

100. *Id.* Bills not returned by the Governor within 12 days of presentment become law without the Governor's signature. *Id.* at § 10(b)(3). *But see id.* at § 10(b)(1) (providing that if the Legislature, by its recess to reconvene in the second year of its session, presents bills to the Governor that affect election districts, the Governor will have 30 days to consider the bills); *id.* at § 10(b)(2) (allowing the Governor 30 days to consider bills passed by the Legislature before September 1 in the second year of its session and presented to the Governor on or after September 1).

101. CAL. CONST. art. IV, § 10(a).

102. *Id.* art. IV, § 10(e). The Governor has line item veto power only over appropriations bills. *Id.* *But see* Harbour v. Deukmejian 43 Cal. 3d 1078, 1102, 742 P.2d 1290, 1305, 240 Cal. Rptr. 569, 584 (1987) (refusing to allow the Governor to apply line item veto power to portions of a budget implementation bill).

103. CAL. CONST. art. IV, § 10(a).

104. See Interview, *supra* note 39 (describing the three types of budget language).

105. *Id.*

specifically how funds are to be used.<sup>106</sup> The third type are trailer bills, which change California law as needed to accommodate any changes required by the budget bill itself.<sup>107</sup>

Gathering the required votes in both the Assembly and Senate to pass the budget bill, the first type of legislation referred to above, is a determinative step in the budget process.<sup>108</sup> The 1992-93 budget process proved to be no different.<sup>109</sup> The two-thirds vote requirement played an meaningful role in the California Legislature's ability to pass the 1992-93 budget within its constitutionally dictated time frame.<sup>110</sup>

### *B. The Effects of the Two-Thirds Vote Requirements on the 1992-93 Budget Process*

In recent years it has become increasingly difficult to formulate a budget acceptable to both two-thirds of the Legislature, and to the governor by the required deadline.<sup>111</sup> Increasingly, both observers and participants blame the super majority requirement for the budget impasses.<sup>112</sup> The 1992-93 budget was not signed by the Governor until September 2, a full sixty-three days after the constitutionally specified

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106. *Id.* The supplemental language bills are not appropriation bills because they do not authorize the expenditure of funds and consequently require only a majority vote. Compare CAL. CONST. art. IV, § 8(b) (requiring a majority vote for the passage of bills) with *id.* art. IV, § 12(d) (requiring two-thirds vote to pass appropriations bills). See also *supra* notes 23-29 and accompanying text (describing types of California legislation requiring supermajority votes).

107. Interview, *supra* note 39 (describing the three types of budget language). The actual budget bill itself lacks the legal authority to change laws currently in effect. BELL, *supra* note 69, at 255. The Legislature uses trailer bills to make required changes in statutes or programs to implement the new budget. KROLAK, *supra* note 28, at 44; Linda Dailey Paulson & Richard Zeiger, *Blundering Toward a Budget*, CAL. J., Sept. 1992, at 429 (defining a "trailer bill" as legislation that permits the spending contained in the budget bill itself). See generally Richard Thomson & Robert Fairbanks, *Trailer Bills: The Legislature's Incredible Hulk*, CAL. J., Sept. 1983 (discussing the origins of the trailer bill).

108. See CAL. CONST. art. IV, § 12(d) (providing that no budget bill may be passed without two-thirds vote).

109. See *infra* notes 111-143 and accompanying text (exploring the effects of the two-thirds vote requirement on the 1992-93 budget process).

110. See CAL. CONST. art. IV, § 12 (providing the constitutional deadlines for the introduction and passage of the budget).

111. *November Ballot Propositions*, CAL. J. at 6 (1992); see Daniel Boatwright, *To End Chaos, Legislature Must Drop Two-Thirds Rule*, VALLEY TIMES, Aug. 12, 1990 at 15A (noting that as of 1990, seven of California's 12 prior fiscal years had begun without a budget in place). Daniel Boatwright is a California State Senator from District 7. *Id.*

112. See *supra* note 11 (citing California legislators who criticize the role of the two-thirds vote requirement in California's budgetary process).

deadline.<sup>113</sup> The recorded votes on the various bills proposed during the 1992-93 budget process suggest that critics of the super majority vote requirement are correct in their assessment that the requirement creates budgetary gridlock in the California Legislature.<sup>114</sup>

During the budget process for the 1992-93 fiscal year, the California Legislature introduced several bills in an effort to pass a State budget.<sup>115</sup> Only one of the bills, Assembly Bill (AB) 979, gathered the necessary two-thirds vote to pass and become California's budget.<sup>116</sup> Three of the bills introduced, AB 2303, Senate Bill (SB) 1280 and SB 1533, failed to receive the required vote.<sup>117</sup> The budget process actually began, however, in January, 1992 with the introduction of companion bills<sup>118</sup> AB 2303 and SB 1280, both of which were introduced as the "Budget Act of 1992."<sup>119</sup>

### 1. Assembly Bill 2303

On April 2, 1992, the Assembly read AB 2303 for a third time on its floor, as required by the California Constitution, and brought the bill to a vote.<sup>120</sup> As an urgency bill, AB 2303 required two-thirds, or fifty-four

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113. Reinhold, *supra* note 73 (describing California's passage of a 1992-93 budget); see CAL. CONST. art. IV, § 12(c) (specifying that the Legislature must pass a budget by June 15).

114. See *infra* notes 120-144 and accompanying text (discussing attempted 1992-93 budget bills).

115. The bills, all introduced in the 1991-92 session, were: AB 2303, 1991-92 Legislative Session (1992) (introducing a bill to make appropriations for the support of the State government); SB 1280, 1991-92 Legislative Session (1992) (introducing a bill to make appropriations for the support of the State government); SB 1533, 1991-92 Legislative Session (1992) (introducing a bill that would have revised the budget bill); AB 979, 1991-92 Legislative Session (1992) (as-amended Aug. 29, 1992) (amending an existing bill to make appropriations for the support of the government of the State).

116. 1992 Cal. Legis. Serv. ch. 587, at 1831 (West) (enacting AB 979 as the Budget Act of 1992). In the Senate, the bill received 33 ayes and five noes. FLOOR ROLL CALL VOTE, CALIFORNIA STATE SENATE, AB 979 (Roberti), (Aug. 29, 1992). The Assembly cast 54 ayes and 24 noes and passed the bill by the minimum required to achieve two-thirds. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, AB 979 (Roberti) (Aug. 29, 1992).

117. See *infra* notes 120-144 and accompanying text (detailing the failures of AB 2303, SB 1280, and SB 1533).

118. See JAY M. SHAFRITZ, THE DORSEY DICTIONARY OF AMERICAN GOVERNMENT AND POLITICS 53 (1988) (defining "companion bills" as identical bills introduced separately into each House of a two house legislature).

119. AB 2303, California State Assembly, 1991-92 Legislative Session (as introduced Jan. 9, 1992) (1992); SB 1280, California State Senate, 1991-92 Legislative Session (as introduced Jan. 9, 1992) (1992). See generally SENATE DEMOCRATIC CAUCUS OF CALIFORNIA, *supra* note 11, at 9-11 (detailing the chronology of the 1992-93 California budget).

120. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, AB 2303 (Vasconcellos), AB 2303 Vasconcellos third reading urgency, (Apr. 2, 1992); see CAL. CONST. art. IV, § 8(b) (mandating that the legislature not pass any bills that have not been read by title on three days in each house). This requirement may be waived by a two-thirds vote. *Id.*

out of eighty votes, to pass.<sup>121</sup> The bill received forty-five ayes and thirty-one noes.<sup>122</sup> Thus, though the bill received a majority of the votes cast by the Assembly, it nevertheless failed because of the supermajority vote requirement.<sup>123</sup>

On April 6, 1992, the Assembly reconsidered an amended version of AB 2303 which removed the urgency and appropriation language so that the bill only required a majority vote to pass.<sup>124</sup> In this vote, the measure received forty-five ayes and thirty-two noes, therefore passing.<sup>125</sup> The bill, however, could not enact a State budget without appropriation and urgency language.<sup>126</sup> The Senate received the bill the same day and assigned it to the Senate Committee on Budget and Fiscal Review.<sup>127</sup> The Committee took no action on AB 2303 and the Joint Rules of the Legislature prevented it from being reconsidered later in the same session.<sup>128</sup>

## 2. *Senate Bill 1280*

The companion bill to AB 2303, SB 1280, passed through the Senate and was sent to the Assembly on April 30, 1992.<sup>129</sup> The Assembly passed the bill and sent it back to the Senate for concurrence with

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121. CAL. CONST. art. IV, § 12(d).

122. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, AB 2303 (Vasconcellos), AB 2303 Vasconcellos third reading urgency, (Apr. 2, 1992). Of the ayes, 45 were Democrats and zero were Republicans. *Id.* Of the noes, one was a Democrat and thirty were Republicans. *Id.*

123. *Id.*

124. See CAL. CONST. art. IV, § 8(b) (requiring a majority vote to pass a typical bill).

125. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, AB 2303 (Vasconcellos), AB 2303 Vasconcellos third reading, (Apr. 6, 1992). Of the ayes, 45 were Democrats and zero were Republicans. *Id.* Of the noes, one was a Democrat and 31 were Republicans. *Id.*

126. Standing Rules of the Assembly, Rule 66.6 (1991-92) (requiring language of appropriation to appropriate funds); see *supra* notes 91-92 and accompanying text (explaining why urgency language is necessary to enact a State budget).

127. See California Bill Tracking, 1991-92 Regular Session, Assembly Bill 2303 (1992), available in LEXIS, Cal library, Catrck file. The Joint Rules specify that in even numbered years the last day for each house to pass bills is August 31. Therefore, AB 2303 expired at the end of the 1990-92 session. TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 61 (1991-92). This requirement may be suspended by a two-thirds vote. *Id.* at Rule 61(i); see also CAL. CONST. art. IV, § 3(a) (noting that California's regular two-year legislative session convenes at noon on the first Monday in December of each even-numbered year and adjourns at midnight on November 30 of the following even-numbered year).

128. See TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 62(a) (1991-92) (requiring that bills not receiving committee consideration or failing to get the required votes to pass the committee not be considered again during that session).

129. California Bill Tracking, 1991-92 Regular Session, Senate Bill 1280 (1992), available in LEXIS, Cal library, Catrck file.

Assembly amendments.<sup>130</sup> The Senate refused to concur on May 7, 1992, thus creating the need for a conference committee.<sup>131</sup>

After a series of failures to adopt the conference committee report on the floor of the Assembly, and a series of reconsiderations,<sup>132</sup> the bill once again reached the Assembly floor for a vote.<sup>133</sup> On August 10, 1992, the Assembly cast forty-six ayes and twenty-three noes for the conference report on the Assembly floor.<sup>134</sup> This was a mere eight votes short of the required two-thirds supermajority.<sup>135</sup> The Senate took up the report the same day.<sup>136</sup> The report received twenty-four ayes and thirteen noes, thus failing to receive the needed two-thirds vote.<sup>137</sup> Again, the measure received a clear majority of the votes cast, but less than the required two-thirds.<sup>138</sup> Had the constitution required only a majority vote, the bill might have passed the Senate and the Senate might then have forwarded the bill to the Governor, for possible signature, almost three weeks before the date the budget was actually signed.<sup>139</sup>

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130. CALIFORNIA LEGISLATURE, ASSEMBLY DAILY J., May 6, 1992, at 6759 (documenting the Assembly's passage of SB 1280); see TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 26 (1991-92) (specifying that a house must either concur or refuse to concur in amendments made to a bill in the other house).

131. CALIFORNIA LEGISLATURE, SENATE DAILY J., May 7, 1992, at 5841 (documenting the Senate's refusal to concur with the amended version of SB 1280); see TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 28 (1991-92) (requiring the establishment of a conference committee when a house refuses to concur in the other house's amendments); see also *supra* notes 95-98 and accompanying text (defining a conference committee and discussing its role in the budget process).

132. The conference committee report was rejected in the Assembly on June 23 and August 9, 1992 and once in the Senate on June 23, 1992. California Bill Tracking, 1991-92 Regular Session, Senate Bill 1280 (1992), available in LEXIS, Cal library, Catrck file (listing the dates of actions taken on the bill).

133. California Bill Tracking, 1991-92 Regular Session, Senate Bill 1280 (1992), available in LEXIS, Cal library, Catrck file; see TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 62(a) (1991-92) (providing for reconsideration of committee reports); BEEK, *supra* note 27 (defining "reconsideration" as a motion which, when granted, allows another vote nullifying or validating a prior action).

134. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, SB 1280 (Alquist) (Aug. 10, 1992). Forty-six Democrats and zero Republicans voted in favor with zero Democrats and 23 Republicans voting against. *Id.*

135. See *id.*; CAL. CONST. art. IV, § 12(d) (requiring a two-thirds vote to pass appropriations bills); see also TEMPORARY JOINT RULES OF SENATE AND ASSEMBLY, Rule 29 (1991-92) (requiring a two-thirds vote to adopt conference committee reports on the budget bill).

136. See California Bill Tracking, 1991-92 Regular Session, Senate Bill 1280 (1992), available in LEXIS, Cal library, Catrck file (listing the dates of actions taken on the bill).

137. FLOOR ROLL CALL VOTE, CALIFORNIA STATE SENATE, SB 1280 (Alquist) (Aug. 10, 1992). Twenty-three Democrats and one Republican voted in favor with two Democrats and 11 Republicans voting against. *Id.*

138. FLOOR ROLL CALL VOTE, CALIFORNIA STATE ASSEMBLY, SB 1280 (Alquist) (Aug. 10, 1992) and FLOOR ROLL CALL VOTE, CALIFORNIA STATE SENATE, SB 1280 (Alquist) (Aug. 10, 1992).

139. See CAL. CONST. art. IV, § 10(a) (specifying that every bill passed by the Legislature will be presented to the Governor for signature). If the bill is signed by the Governor, it becomes law. *Id.*

### 3. *Senate Bill 1533*

SB 1533 proposed an amendment to the budget bill.<sup>140</sup> On August 31, 1992, the Assembly overwhelmingly passed SB 1533 with sixty votes cast in favor and eleven against.<sup>141</sup> The Senate cast twenty-four votes in favor and eight votes against the bill the same day.<sup>142</sup> The bill failed to pass because it received three votes less than the twenty-seven required to pass the Senate by the two-thirds requirement.<sup>143</sup> Had a majority vote requirement been in effect, this measure might have passed the Senate with a three vote cushion, and modified the budget bill.<sup>144</sup>

### 4. *Effects of the 1992-93 Budget Impasse*

If the California Constitution required only a majority vote to pass State budget bills, California's 1992-93 budget crisis could have been resolved as early as April 2, 1992,<sup>145</sup> more than two months before the constitutionally mandated deadline of June 15th.<sup>146</sup> The resulting damage of the budget impasse to California's credit rating cost the State *hundreds of millions of dollars*.<sup>147</sup> This needless expense could have been avoided by a timely budget, since neither Standard and Poor's nor Moody's, two of the three major credit rating services, downgraded California's credit rating until July 1992.<sup>148</sup> Therefore, the \$200 million or more that California stands to lose over the next thirty years due to the drop in California's credit rating, might have been saved if the California Legislature had passed the 1992-93 State budget on time.<sup>149</sup> Missing the 1992-93 budget deadline also cost Californians the five percent interest

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140. See FLOOR ROLL CALL VOTE, CALIFORNIA STATE SENATE, SB 1533 (principal co-author Vasconcellos) (Aug. 31, 1992) (citing the topic of the bill as "Budget Act of 1992: revisions").

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. See *supra* notes 119-122 and accompanying text (discussing the Apr. 2, 1992 passage of AB 2303 by a majority vote).

146. CAL. CONST. art. IV, § 12(c).

147. See *supra* notes 72-74 (discussing the cost of California's issuance of registered warrants during the 1992-93 budget crisis).

148. See *supra* note 73 (detailing the downgrading of California's credit rating in response to California's 1992-93 budget stalemate).

149. *Id.*

that was paid on the \$3.4 billion in registered warrants California issued between July and September.<sup>150</sup>

The budget impasse of 1992-93 also could have been resolved on August 10, 1992 if California's Constitution required a bare majority vote to pass budget bills.<sup>151</sup> Unfortunately, California's credit rating could not have been saved by that time, but the interest on an additional three weeks worth of registered warrants would have been prevented.<sup>152</sup> Furthermore, damage to California's reputation as a national economic and political leader, an effect of the 1992-93 budget battles which is difficult to translate into a dollar loss, could have been avoided with the timely passage of a budget.<sup>153</sup>

While it remains unclear precisely how much money and prestige California will lose as a result of its 1992-93 budget crisis, it is certain that California's weakened economy will play a controlling role in the state's continuing budgetary crisis.<sup>154</sup> According to California's Commission on State Finance, California's budget will face significant pressures even if the economy does begin to improve.<sup>155</sup> Experts predict that California's economic condition, which has not been worse since the 1930's, will

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150. See *supra* note 74 (detailing the effects of California's issuance of registered warrants during the 1992-93 State budget crisis).

151. See *supra* notes 131-138 and accompanying text (describing the California Senate's Aug. 10, 1992 adoption of a budget conference committee report by a majority vote, but not the two-thirds required).

152. See *supra* note 73 (describing California's issuance of registered warrants during the 1992-93 State budget crisis).

153. See Cannon, *supra* note 74 (characterizing California as a national laughing-stock after its issuance of registered warrants); see also John Balzar, *California's Image: Fad to a Funk*, L.A. TIMES, Dec. 19, 1992, at A1 (reporting that many Americans entertain a diminished perception of California in light of its recent economic, political and racial difficulties).

154. See El Nasser, *supra* note 1 and McGuire, *supra* note 2, at 24 (discussing California's current economic recession). Shortly after the end of California's 1992-93 budget crisis, Governor Pete Wilson's Deputy Director of Finance conceded that unless the State economy improved substantially, a budget dilemma for the 1993-94 fiscal year would be likely. See Daniel M. Weintraub, *Fiscal Outlook for State Still Shaky*, L.A. TIMES, Sept. 4, 1992, at A1 (reporting predictions of future budgetary problems in the wake of the signing of California's 1992-93 State budget). Republican Assemblyman Tom McClintock labeled the day after the signing of the 1992-93 State budget as, "the first day of the next budget crisis." *Id.*

155. Commission on State Finance, Quarterly General Fund Forecast, at E-17 (June 1993). The Commission on State Finance, created more than 10 years ago, serves as a bipartisan "fiscal watchdog" presenting State economic projections independent of both the Governor's Department of Finance and the Legislature's Legislative Analyst. Statement by State Treasurer Kathleen Brown, California State Treasurer's Office News Release, July 1, 1993, at 1 (copy on file with the *Pacific Law Journal*). The 1993-94 California budget cut \$532,000 in funding from the Commission on State Finance. Dan Morain, *Wilson Cuts Funding for State Finance Commission*, L.A. TIMES, July 2, 1993, at A3. This cut, made via a line item veto by Governor Wilson, leaves the Commission with only enough money to close itself down. *Id.*



continue to stagnate.<sup>156</sup> Specifically, economic forecasters predict California's general economic health will remain weak through 1994.<sup>157</sup> Forecasters further predict that California's General Fund will experience deficits in both the 1992-93 and 1993-94 fiscal years.<sup>158</sup> Early estimates suggest a budget deficit as great as \$9.3 billion, or \$300 for every Californian, by the year 1994.<sup>159</sup>

Faced with a 1992-93 budget gap of \$10.7 billion, the Legislature battled for sixty-four days longer than the constitution allots to pass a State budget.<sup>160</sup> In the 1992-93 budget process, the two-thirds vote requirement blocked the passage of bills which would have concluded the stalemate before the constitutionally required deadline.<sup>161</sup> Throughout California's current financial crisis, the two-thirds vote requirement to pass State budgets has been one of the obstacles to resolving budget conflict.<sup>162</sup>

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156. See Patrick Lee, *U.S., State Economies Still Struggling*, L.A. TIMES, Sept. 18, 1992, at D1 (reporting that the release of a UCLA Business Forecasting Project predicted that California's economy will continue to stagnate). California's current economic slump is worse than the Texas oil bust of the mid-1980's. *Id.* In its first report to President Clinton, the Federal Reserve Board's characterization of California's fiscal outlook was grim. Constance Sommer, *Outlook for State Remains Bleak, Analysts Say*, L.A. TIMES, Jan. 22, 1993, at D2.

157. Commission on State Finance, *supra* note 155, at E1 (characterizing California's economic growth over the next two years as anemic); Commission on State Finance, Quarterly General Fund Forecast, at E2 (Oct. 1992) (summarizing the Commission's prediction of California's economic condition through the 1993-94 fiscal year); see Matthews, *supra* note 6 (reporting that the state deficit will exceed the Commission on State Finance's October 1992 predictions); Wejntraub, *supra* note 4 (indicating that current California economic forecasts would produce \$5 billion less in State revenue than originally anticipated for the period ending June, 1994); Carl Hall, *supra* note 2 (noting that southern California, the weakest area in the state, might not recover until 1995).

158. Commission on State Finance, *supra* note 155, at 153 (predicting that California's current economic situation will produce future unbalanced budgets); see also Commission on State Finance, *supra* note 155, at 10 (reporting that General Fund revenues will decline in 1992-93 and 1993-94 before increasing slightly in 1994-95); see *supra* note 36 (defining the General Fund and distinguishing it from other funds).

159. Matthews, *supra* note 7 (quoting predictions made by Elizabeth Hill, the California Legislature's Legislative Analyst); see *supra* note 87 and accompanying text (discussing the role of the Legislative Analyst in the budget process).

160. See *Veto Hits California Budget Deal*, The Financial Times Ltd., Sept. 2, 1992, at 4 (discussing the closure of California's budget gap); *supra* notes 83-110 and accompanying text (discussing the California budgetary process).

161. See *supra* notes 119-143 and accompanying text (analyzing bills in the 1992-93 budget process whose outcome was determined by the supermajority voting requirements).

162. See Keene, *supra* note 79 (citing the two-thirds majority vote requirement to pass a budget as the reason why California failed to meet its June 15 budget deadline). Those very close to the budget process characterized the two-thirds vote requirement as the "ace in the minority's hand" during the 1992-93 budget process. See Interview, *supra* note 38; see also *supra* note 11 (listing other critics of the two-thirds vote requirement to pass budget bills, who characterize the requirement as a barrier to timely budget solutions).

### III. ELIMINATING THE TWO-THIRDS VOTE REQUIREMENT TO PASS CALIFORNIA'S BUDGET

The California Legislature has a long and consistent history of missing budget deadlines, even during robust economic times.<sup>163</sup> With budgetary problems anticipated for years to come, California faces its worst economic future since the great Depression.<sup>164</sup> The Legislature is also notoriously divided along party lines.<sup>165</sup> There is simply no reason for immediate optimism that the two-thirds vote requirement will be any less significant in the California Legislature's efforts to pass the 1994-95 State budget or any other future state budget.<sup>166</sup> The California Constitution will continue to still require a two-thirds vote to pass a State budget.<sup>167</sup> According to political insiders, California's budget process evolves in response to crisis.<sup>168</sup> California is currently facing an economic crisis, and it is time for California's budgetary process to evolve accordingly.<sup>169</sup>

Given the tough economic road ahead, budgetary reform will be critical in dealing with California's upcoming financial difficulties.<sup>170</sup> Tough choices must be made to deal with California's fiscal dilemma. The current requirement of a two-thirds vote to pass budget legislation operates as a roadblock to achieving consensus and passing fiscal legislation.<sup>171</sup>

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163. See *California State Retirements Insufficient to Prevent Layoffs*, *supra* note 10, at 781 and accompanying text (noting that in 19 out of the last 22 years, California's Legislature has failed to enact the State budget by the constitutionally specified deadline).

164. See *supra* notes 152-59 and accompanying text (documenting California's current and predicted future economic crisis).

165. See *supra* note 42 and accompanying text (citing a recent study revealing the highly partisan nature of the California Legislature).

166. See Mathews, *supra* note 6 (noting that the California Legislature's Legislative Analyst, Elizabeth Hill, predicted that the 1994 deficit may be as high as \$9.3 billion). As long as the minority political party retains at least one-third of the seats in the California Legislature, it can frustrate efforts to pass the budget. BELL, *supra* note 69, at 260 (discussing the partisanship of the California budget process).

167. CAL. CONST. art. IV, § 12(d).

168. Interview, *supra* note 39 (characterizing California's budget process).

169. See *supra* notes 152-159 and accompanying text (detailing California's predicted poor economic outlook).

170. See Commission on State Finance, *supra* note 155, at E1 (concluding that California must include budgetary reform as part of the solution to the budget crisis); CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 3 (suggesting that California must mix changes in internal procedures, state statutes and the state Constitution in order to resolve the increasing difficulty in developing the budget).

171. Alvin Solokow, University of California at Davis, Professor of Political Science, credits a deadlocked government with blocking effective resolution of current budgetary shortfalls. Kershner, *supra* note 4 (quoting Professor Solokow); see *supra* notes 39-65 and accompanying text (discussing the effects of supermajority voting requirements). In the context of the 1992-93 budget process, the two-thirds vote prevented the passage of budget bills in April, May, and August of 1992. See *supra* notes 120-138 (discussing the roles of AB 2303 and SB 1280 in the 1992-93 budget process). The requirement further prevented passage of budget revisions in September

The California Constitution mandates a simple majority vote to pass most bills, allowing a majority of the Legislature to establish policy in sensitive areas such as crime, the environment, and industry.<sup>172</sup> A majority of those persons elected by the citizens of the State of California should also be sufficient to set policy in the form of passing budgets.<sup>173</sup> The California Constitution already provides the Legislature with the authority to spend nearly one-half of California's budget by a majority vote.<sup>174</sup> Requiring more than a simple majority vote in the area of budgeting, as the California Constitution currently does, often results in "tyranny by the minority," especially in a crisis like the one currently confronting California's economy because of pressure on the Legislature to respond to the crisis via budgetary solutions.<sup>175</sup>

Arguments for retaining the two-thirds vote requirement are based upon a fear that requiring a simple majority vote will in fact result in "tyranny by the majority."<sup>176</sup> Specifically, critics argue that eliminating the super majority requirement would allow a bare majority of California's

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1992; *supra* notes 140-44 and accompanying text (examining the role of SB 1533 in the 1992-93 budget process).

172. See CAL. CONST. art. IV, § 8(b) (requiring a majority vote of both the California Assembly and the Senate to pass bills); see also *supra* note 21 (describing instances where the California Constitution specifically requires a majority vote of the Legislature). But see CAL. CONST. art. IV, § 12(d) (requiring that the Legislature pass any bill appropriating money from California's General Fund, except those funding public schools, by a two-thirds vote regardless of subject).

173. See *supra* notes 69-75 and accompanying text (discussing the policy role of a state budget).

174. See CAL. CONST. art. IV, § 12(d) (exempting appropriations for public schools from the two-thirds vote requirement). California's 1993-94 State budget devoted \$18.5 billion or 48.1% of the State's total budget to education. Pete Wilson, Governor of California, California State Budget 1993-94 at 3 (copy on file with the *Pacific Law Journal*). An alternative to eliminating the two-thirds vote requirement to pass appropriations bills, which includes the Budget Bill, would be to simply exempt state budgets from the two-thirds vote requirement. See *infra* notes 247-252 (discussing Assembly Constitutional Amendment (ACA) 3, which proposes to exempt the Budget Bill from the two-thirds vote requirement).

175. See Peter Schrag, *Why California Doesn't Work: Constitutional Gridlock*, 255 THE NATION 390 (Oct. 12, 1992) (discussing the power the minority party has in a constitutionally gridlocked government). Tyranny by the minority describes a scenario where a group in the minority has the power to control the majority. *Id.* In the case of a Legislature, the term refers specifically to situations where there are so many obstacles in the way of enacting legislation that the minority party has the ability to hold power, like a refusal to agree, over the heads of the majority. *Id.* The result has been described as a dangerous perversion of democracy. *Id.* California Assembly Speaker Willie Brown has described one of the problems in resolving budgetary problems as "you can't get the Republicans to vote for anything." Douglas Shuit, *Speaker's Plea for Easing of Tax Law Given Little Hope*, L.A. TIMES, Mar. 15, 1989, at pt. 1 p. 3. See *supra* note 39 (commenting on the power that the two-thirds vote requirement gives the minority party). But see Joel Fox, *When is Majority Rule Too Easy?*, L.A. TIMES, Feb. 18, 1992, at B5 (arguing that supermajority vote requirements provide important protections).

176. See Fox, *supra* note 175 (arguing that supermajority voting requirements were designed to give certainty to significant decisions and to protect the rights of minorities). But see ZELMAN, *supra* note 39, at 248 (characterizing supermajority voting requirements as being as threatening to democratic government as they are protective of it).

legislators to control the State's budget and lawmaking. Removing the two-thirds vote requirement to pass California budgets, however, would not leave the power of the majority in the Legislature unchecked.<sup>177</sup> The California Constitution already addresses concerns about excessive power in the hands of the California Legislature through procedural checks and balances between the executive and legislative branches.<sup>178</sup> For example, even if only a simple majority vote were required to pass California State budgets, the Governor would still have the power to veto any bill presented by the Legislature.<sup>179</sup> The Governor would also retain the power of the line item veto.<sup>180</sup> Moreover, the Legislature retains the power to override the Governor's veto by a two-thirds vote.<sup>181</sup>

Opponents of reducing the vote requirement further argue that the Governor could veto California's budget, and the Legislature would still need a two-thirds vote to override such a veto; consequently, a consensus of two-thirds of the Legislature would effectively still be needed to pass budgets.<sup>182</sup> Critics also argue that since the Constitution has always required a two-thirds vote of the Legislature to override a veto, the two-thirds vote requirement to pass budgets should be retained.<sup>183</sup> This argument misses the point. The critical problem confronting California is the initial passage of the budget, not the effect of veto or veto override requirements. The effect of a simple majority vote requirement to pass State budgets, and a supermajority to override a veto would likely be positive, not negative. The Governor would be forced to take a public position and be subjected to public scrutiny for blocking a budget endorsed by a majority of California's Legislature. It would be the Governor, not Legislative gridlock, preventing the enactment of a California State budget.

Republican members of California's Legislature also argue that retaining the two-thirds vote requirements serves Californians well by

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177. See *infra* notes 178-181 and accompanying text (discussing procedural protections already in place that promote a balance of power between the California Legislature and Governor).

178. See CAL. CONST. art. III, § 3 (providing for the separation of the legislative, executive and judicial branches). No person empowered to use the powers of one branch may use the powers of another, unless the constitution provides otherwise. *Id.* The purpose of a constitutional system of checks and balances is to make it difficult for a majority to form and govern without considerable support. ZELMAN *supra* note 39, at 248.

179. CAL. CONST. art. IV, § 10.

180. See *id.* art. IV, § 10(e) (allowing the Governor to reduce or strike one or more items in appropriations bills).

181. *Id.* art. IV, § 10.

182. See Dan Bernstein, *Two-Thirds Vote Aids Budget Gridlock, Opponents Say*, SACRAMENTO BEE, Apr. 5, 1993, at A4 (reporting arguments on both sides of the two-thirds vote requirement issue).

183. CAL. CONST. of 1849 art. IV, § 17; CAL. CONST. of 1879 art. IV, § 16 (providing the Legislature with the power to override a Governor's veto by a two-thirds vote).

making it harder to raise taxes.<sup>184</sup> While budgetary issues inevitably involve taxation, this argument proves too much. The two-thirds vote required to raise taxes, which has a separate place in California's Constitution,<sup>185</sup> is not the problem at hand. Again, the specific problem is the initial passage of California's budget. A requirement that cost Californians hundreds of millions of dollars in the 1992-93 budget process and made California the laughing stock of our nation does no service to Californians.<sup>186</sup>

A majority vote requirement would enable the Legislature to enact more effective budgets. Under the current budget process, participants must make such extreme compromises to satisfy the minority that Legislators may be forced to withdraw effective solutions. The concessions which the majority party must make in order to achieve the necessary two-thirds vote often increase the level of expenditures, thereby producing a larger budget overall.<sup>187</sup> If California's Constitution did not force the majority party to cater to demands of the minority party, the majority party might feel more free to offer its best suggestions without being concerned about seeking minority approval.<sup>188</sup>

At a time when the California economy demands consensus and agreement to reach budgetary solutions, further restricting the California Legislature by retaining the two-thirds vote requirement to pass State budgets is extremely difficult to justify.<sup>189</sup> In light of the procedural safeguards already in place, the California Legislature's sixty-four day budget fiasco during the summer of 1992, and California's weakened economy, California should follow the lead of an overwhelming majority of American states and reduce the vote requirement to pass State budgets to a simple majority.<sup>190</sup> Several alternative methods exist to reform

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184. Bernstein, *supra* note 182; *see supra* notes 145-162 and accompanying text (discussing the effects of the 1992-93 budget delay).

185. CAL. CONST. art. XIII, § 3.

186. *See Cannon, supra* note 74.

187. Bernard L. Hyink, *California Revises Its Constitution*, 22 W. POL. Q. 637, 645 (discussing the effects of the two-thirds vote requirement to pass California State budgets). The requirement played a controversial role in the 1960's Constitutional Revision Commission's deliberations on Article IV of California's Constitution. *Id.*; *see infra* notes 192-205 and accompanying text (describing the Constitutional Revision Commission).

188. Bernstein, *supra* note 182.

189. *See supra* notes 154-159 and accompanying text (noting predictions for California's economic future); *supra* notes 111-144 and accompanying text (discussing the impact of the two-thirds vote requirement on the 1992-93 budget process).

190. *See supra* notes 77-78 and accompanying text (noting that California is one of a slim minority of states that require supermajority votes to pass state budgets). For a State budget to become effective immediately, either an exemption to the standard urgency rule must be made or the Budget Bill must go into effect

## 1993 / Enacting The California State Budget

California's budgetary process by removing the two-thirds vote requirement from the California Constitution, including a Constitutional Revision Commission, constitutional convention, and citizen's initiative.<sup>191</sup> The first method available to eliminate the two-thirds vote requirement is the Constitutional Revision Commission.

### A. Constitutional Revision Commission

The Constitutional Revision Commission method, used extensively in the 1960's, involves bringing together community leaders and legislators as delegates to discuss changing the California Constitution to better meet the needs of the people.<sup>192</sup> The Constitutional Revision Commission has been one of the most important vehicles for recommending changes to the California Constitution.<sup>193</sup> By 1960, for example, the California Constitution contained about 80,000 words and was the second longest of

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immediately without the help of the urgency clause. See CAL. CONST. art. IV, § 8(c)(1) (providing that most bills go into effect on January 1 following a 90-day waiting period from the statute's date of enactment). Because the Budget Bill must currently be enacted as an urgency statute, merely eliminating the two-thirds vote requirement to pass the budget would not alone remedy the problem because urgency statutes must also receive a two-thirds vote to pass. *Id.* § 12(c) (requiring the Legislature to pass the budget by June 15); *id.* § 8(d) (specifying that urgency statutes must pass by a two-thirds vote). An exemption to the urgency clause would alter California's current Constitutional requirement and therefore a constitutional amendment would be necessary to bring about such an exemption. *Id.* Similarly, for the Budget Bill to go into effect immediately without an urgency clause a constitutional amendment would also be needed. *Id.* § 12 (failing to provide that the Budget bill is an exception to the general rule providing when bills go into effect). See *supra* note 33 (explaining the three methods that the California Constitution provides for change).

191. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 18 (setting forth three available methods of changing California's Constitution).

192. See CAL. CONST. art. XVIII (establishing the methods of amending or revising the California Constitution); STOWE, *supra* note 87, at 48-49 (discussing methods of changing California's constitution); HYINK, *supra* note 187, at 641 (reviewing the appointment of California's 1963 Constitutional Revision Commission); *supra* note 33 (distinguishing between a constitutional amendment and a revision).

193. See Eugene C. Lee, *The Revision of California's Constitution*, 3 CALIFORNIA POLICY SEMINAR (CPS) BRIEF, April 1991, at 4 (discussing the role of the 1963 Constitutional Revision Commission in changing the California Constitution). Eugene Lee is a professor emeritus of the Department of Political Science, University of California, Berkeley and served as the Director of the Institute of Governmental Affairs from 1967 to 1988. *Id.* at 7; Judge Bruce Sumner, *Constitution Revision by Commission in California*, STATE GOVERNMENT, Spring 1972, at 135 (analyzing the work of the Constitutional Revision Commission created in 1963). Judge Sumner served as the Chairman of the Commission. *Id.* The mission of the 1963 Commission was to provide the Legislature with facts and recommendations on revising California's Constitution. *Id.*; Hyink, *supra* note 187, at 642-654 (describing the extensive efforts of the Constitution Revision Commission during the 1960's); Ira Reiner & George Size, *The Law Through a Looking Glass: Our Supreme Court and the Use and Abuse of the California Declaration of Rights*; 23 PAC. L.J. 1183, 1249 (1992) (characterizing the creation of the Constitutional Revision Commission as the beginning of California's process of constitutional revision).

any state.<sup>194</sup> As a result of the Commission's efforts, which ended in 1971, all but two articles were revised and more than 40,000 words were deleted from the California Constitution.<sup>195</sup>

The first step in using the Constitutional Revision Commission process to eliminate the two-thirds vote requirement to pass state budgets, is for the Legislature to assemble a commission to study the requirement.<sup>196</sup> The 1963 Commission operated independently from the Legislature and selected its own chairperson, created its own rules and procedures, and reported its findings directly to the Legislature.<sup>197</sup> A modern Constitutional Revision Commission should be similarly structured. All recommendations of the Commission must receive approval from two-thirds of the Legislature in order to be placed on the ballot for voter consideration.<sup>198</sup> Only a simple majority of voters is required to adopt such recommendations.<sup>199</sup>

The Constitutional Revision Commission approach has several advantages. First, the Commission allows for in-depth study of the ramifications of eliminating the two-thirds vote requirement to enact state budgets.<sup>200</sup> Second, the Commission's diverse membership tends to reduce the politics and partisanship that may accompany other methods, specifically a constitutional convention.<sup>201</sup> Finally, the Commission's members will work in conjunction with members of the Legislature to devise solutions.<sup>202</sup> The Commission method is a community effort to create solutions to a problem affecting the State as a whole.

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194. Hyink, *supra* note 187, at 640. During this period the California Constitution was 12 times longer than the United States Constitution. *Id.* Article XI alone, dealing with local government, was longer than the United States Constitution. *Id.*

195. Lee, *supra* note 193, at 7.

196. TURNER, *supra* note 15, at 31 (discussing the process of establishing constitution revision commissions). The 1963 Commission was made up of 60 members appointed by the Joint Committee on Legislative Organization as well as three Assembly members, and three Senators. Hyink, *supra* note 187, at 641 (describing the composition of the Commission). The Commission's other members included a former Chief Justice of the California Supreme Court, several former legislators, two past presidents of the State Bar, the president of the state AFL-CIO, three university and college presidents, and six past presidents of the League of Women Voters. *Id.*

197. Sumner, *supra* note 193, at 135; Hyink, *supra* note 187, at 641.

198. See CAL. CONST. art. XVIII, § 1 (requiring a two-thirds vote of the Legislature to propose any amendment or revision to the Constitution).

199. *Id.* art. XVIII, § 4.

200. Sumner, *supra* note 193, at 138.

201. *Id.* The Commission method also tends to be less expensive than a constitutional convention. *Id.*; see *infra* notes 206-215 and accompanying text (discussing eliminating the two-thirds vote requirement via a constitutional convention).

202. See BEEK, *supra* note 27, at 235 (discussing a citizen's role in the Legislature).

A downside to utilizing a Commission is that the Legislature may be constrained by the very ills it will be trying to correct. The reality is that, while hardly impossible, the process of constitutional revision is acutely political.<sup>203</sup> The Legislature may not be able to gather the support of two-thirds of its members to act on proposals that eliminate a two-thirds vote requirement for passing California budgets.<sup>204</sup> Another drawback to the Commission method is that it may take many months or even years. As a result, by the time a Commission studies the two-thirds vote requirement and makes a recommendation, public interest may have declined and consensus may be difficult to achieve.<sup>205</sup>

Utilizing the Constitutional Revision Commission method to eliminate the two-thirds vote requirement to pass State budgets requires the California Legislature to overcome the very obstacle that it is trying to correct. Considering the difficulty the California Legislature has had in achieving a consensus of two-thirds of its membership to pass budgets, it seems unlikely that, if a Constitutional Revision Commission were formed, the Commission's recommendations would be implemented. Another method available to eliminate the two-thirds vote requirement is the constitutional convention.

### B. Constitutional Convention

The purpose of a constitutional convention is different from that of a Constitutional Revision Commission.<sup>206</sup> A constitutional convention allows delegates the freedom to propose rewrites of the entire California constitution.<sup>207</sup> To establish such a convention, the Legislature must first approve, by a two-thirds vote, a ballot measure asking California voters

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203. Lee, *supra* note 193, at 7 (describing the characteristics of constitutional revision).

204. See *supra* notes 39-65 and accompanying text (discussing the negative implications of supermajority voting requirements).

205. Sumner, *supra* note 193, at 138.

206. See JOHN ALEXANDER JAMESON, A TREATISE ON CONSTITUTIONAL CONVENTIONS 1-2 (1972) (reprinting the original 1887 version) (discussing the general purposes of Constitutional conventions).

207. WINSTON W. CROUCH, ET AL. CALIFORNIA GOVERNMENT AND POLITICS 34 (6th ed. 1972) (describing amending the California Constitution by convention). Convention delegates, however, are subject to the same political pressures facing members of legislative branches. CITIZENS LEGISLATIVE ADVISORY COMMISSION, CALIFORNIA LEGISLATURE, FINAL REPORT TO THE CALIFORNIA LEGISLATURE AND TO THE CITIZENS OF CALIFORNIA, March 1962, at 43 (discussing why constitutional conventions are not always the most practical method of constitutional reform).



whether a convention should be called.<sup>208</sup> If the calling of a convention is approved by a majority of voters, delegates will be chosen by the people, and, ultimately, the recommendations of the convention must be submitted directly to the voters for approval.<sup>209</sup>

A constitutional convention allows for sweeping reform outside of procedural roadblocks, such as the two-thirds vote requirement, that prevents the Legislature from acting.<sup>210</sup> Once the initial hurdle of calling the convention is crossed, a convention would allow for change within the shortest timelines and would be the most efficient.<sup>211</sup> Using a constitutional convention, however, has several drawbacks.

Considering that the two-thirds vote requirement to pass State budgets is found in only one provision of the California Constitution, a constitutional convention is probably too broad an alternative to eliminate one constitutional provision.<sup>212</sup> Conventions are typically called to make widespread reform, and limiting a convention to one issue would be very difficult.<sup>213</sup> Furthermore, it would be financially impractical to call a

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208. CAL. CONST. art. XVIII, § 2. The last constitutional convention was called in 1878. Hyink, *supra* note 15, at 19 (discussing California's Constitutional Convention of 1878). Voter approval of the 1878 constitutional convention was a response to the growing social and economic conflict, in part stemming from the Depression of 1873. LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 18, at 3 (discussing the social climate surrounding the Constitutional convention of 1878). Compare ANDREW F. ROLLE, CALIFORNIA, A HISTORY 405-412 (1963) (describing California's second Constitutional convention) with *id.* at 228-232 (characterizing the Constitutional Convention of 1849, which drafted California's first constitution, as a response to a combination of Congress' third refusal to provide statehood for California and the swelling desire of Californians for a constitutional convention); see also *supra* note 15 (commenting on the differences between the Constitution of 1879 and the Constitution of 1849). In 1898, 1914, 1920, and 1930, California voters rejected proposals made by the Legislature to call constitutional conventions. Hyink, *supra* note 187, at 639.

209. See CAL. CONST. art. XVIII, § 2 (requiring a majority vote of the voters to authorize the calling of a constitutional convention). Delegates to the convention must have the same qualifications as members of the Legislature. The California Constitution requires approval by a majority of voters for a proposed amendment or revision to go into effect. *Id.* art. XVIII, § 4; see also *supra* note 33 (discussing the difference between a constitutional amendment and revision).

210. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 21 (describing the degree of change possible through a constitutional convention). Yet the chances of a convention making wild and reckless changes are minor. BARRY KEENE, THE DANGERS OF GOVERNMENTAL GRIDLOCK AND THE NEED FOR A CONSTITUTIONAL CONVENTION 7 (1992) (published by The Center for California Studies, California State University, Sacramento) [hereinafter *Dangers*]. Barry Keene is the former California Senate Majority Leader. *Id.* at 8; see Barry Keene, *Platform, The People's Choice*, L.A. TIMES, June 28, 1992, at M5 [hereinafter *Platform*] (characterizing a constitutional convention as a no-risk solution).

211. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 22.

212. See *id.* (noting the impracticality of calling a constitutional convention solely to address fiscal issues). Once convened, it is difficult to limit the scope of the convention or the recommendations it makes. *Platform*, *supra* note 210, at 2.

213. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 21.

state-wide constitutional convention to address only one issue.<sup>214</sup> Lastly, those close to the process suggest that changing a constitution tends to be intensely political, and the risks to existing governmental structures might be too serious to leave in the hands of such a convention.<sup>215</sup> A third alternative, the citizen's initiative, combines some of the positive attributes from both the Constitutional Revision Commission and constitutional convention and is likely to be the best method for eliminating the two-thirds vote requirement to pass State budgets.

### C. Citizen's Initiative

The initiative process may be the only way to circumvent the constraints of the Constitutional Revision Commission approach and the constitutional convention.<sup>216</sup> By employing the initiative process, the mandate to remove the two-thirds vote requirement to pass California budgets would originate directly from the people.<sup>217</sup>

Those supporting change through the initiative process cite notions of self-governance by popular decision making.<sup>218</sup> More importantly, observers of the initiative process assert that it is an effective way to

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214. *Id.*; see Sumner, *supra* note 193, at 138 (noting that the convention method of constitutional revision is more expensive than other methods like the Constitutional Revision Commission).

215. CALIFORNIA LEGISLATURE JOINT LEGISLATIVE BUDGET COMMITTEE, *supra* note 33, at 21. Those close to the process characterize a constitutional convention as a "freewheeling device." *Id.*

216. See *supra* notes 204-206 and accompanying text (discussing how the two-thirds vote requirement to implement both Constitutional Revision Commission recommendations or pose the question of calling a constitutional convention may make it more difficult to remove the two-thirds vote requirement to pass California budgets); *supra* note 32 (setting forth California's initiative process).

217. See CAL. CONST. art. IV, § 1 (reserving to the people the power of initiative); Charles Bell & Charles Price, *Are Ballot Measures the Magic Ride to Success?*, CA GOV'T & POLITICS ANN., at 93 (1992-93) (noting that citizens turn to the initiative process to achieve change while not involving the government). Elected officials historically used mechanisms for change existing within the legislative and executive branches. *Id.*

218. See LEAGUE OF WOMEN VOTERS OF CALIFORNIA, INITIATIVE AND REFERENDUM IN CALIFORNIA: A LEGACY LOST? 85 (1984) (discussing the arguments supporting direct legislation). Decisions embodying the will of the people are considered the most legitimate of all. *Id.*; see Kara Christenson, Comment, *Interpreting the Purposes of Initiatives: Proposition 65*, 40 HASTINGS L.J. 1031, 1034 (1989) (discussing the advantages and disadvantages of the initiative process).

overcome legislative inactivity.<sup>219</sup> Furthermore, law passed by initiatives also tends to be more permanent than law enacted by the Legislature.<sup>220</sup>

Opponents argue that even though initiatives can only encompass one subject,<sup>221</sup> voters are not equipped to respond responsibly to the complex issues presented by many initiatives.<sup>222</sup> Critics further insist that initiatives sidestep important legislative processes such as deliberation, discussion, and compromise which are desirable to effective law making.<sup>223</sup> Lastly, critics contend that special interest groups have taken over the initiative process.<sup>224</sup>

In spite of these general criticisms, use of the initiative process to eliminate a two-thirds vote requirement that produced legislative gridlock for sixty-four days during the summer of 1992 would avoid the very problem that led to the stalemate.<sup>225</sup> Legislative deliberation, discussion, and compromise is precisely what is *not* needed to deal with the two-thirds vote requirement to pass budgets.<sup>226</sup> Utilizing the initiative process would eliminate the need to have two-thirds of the Legislature vote to place Constitutional Revision Commission recommendations on the ballot or

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219. D. MAGLEBY, *DIRECT LEGISLATION* 28 (1984); see Bell & Price, *supra* note 217 (citing reasons why state elected officials turn to the initiative process). Specifically, conservative Republicans in the California Legislature have turned to the initiative process as a means of aggravating Democrats and circumventing tight Democratic party control while still implementing Republican policy goals. *Id.* at 94.

220. See Bell & Price, *supra* note 217, at 94-95 (listing permanence of change as an advantage of the initiative process and one reason why many state office holders use the initiative process). Changes through initiatives are not amendable, except by voter approval, which is the reason such changes are more permanent than laws passed by the Legislature. *Id.*

221. CAL. CONST. art. II, § 8(d) (stating that initiatives dealing with more than one subject cannot be put before the voters and have no effect).

222. LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 218, at 86.

223. MAGLEBY, *supra* note 219, at 29-30; LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *supra* note 218, at 85.

224. Jerry Roberts & Susan Yoachim, *Some Say Initiative Process Is a Mess*, S.F. CHRON., Aug. 10, 1990, at A8 (characterizing the initiative process as the will of special interests rather than the will of the people). The increased influence of special interests is undermining the initiative process as a grass-roots campaign for change, the purpose for which the process was designed. *Id.* See generally Charles Price & Robert Waste, *Initiatives: Too Much of a Good Thing?*, CA. GOV'T. & POLITICS ANN., 1992-93, at 96 (discussing factors pointing to the need for reform of California's initiative process).

225. See Bernstein, *supra* note 182 (reporting that reducing the vote requirement to pass state budgets would probably need to be done via the initiative process); *Activists Urge Major State Budget Reforms*, UPI, Apr. 1, 1993 (available on LEXIS, Nexis Library, Papers File, keyword: CA-BUDGET) (noting that eliminating the supermajority vote requirement by means other than a ballot initiative would be difficult since minority Republicans would block such measures in the Legislature); *supra* notes 111-144 and accompanying text (discussing the 1992-93 budget process which lasted 64 days longer than allowed by law).

226. See *supra* notes 176-181 and accompanying text (discussing the procedural protections that would remain in effect even if the two-thirds vote requirement were removed).

vote to put forth the question of calling a constitutional convention.<sup>227</sup> Moreover, a simple initiative that confronted only the very narrow problem of the supermajority vote requirement to pass California budgets would address the criticism that voters cannot effectively understand the ramifications of modern initiatives.

While the initiative process is an attractive means of eliminating the two-thirds vote requirement, as a practical matter, getting an initiative on the ballot and approved by the voters is a complicated, multi-step process.<sup>228</sup> In order to maximize the chances of success, an initiative proposing to eliminate the two-thirds vote requirement should be sponsored by a bipartisan group of community leaders. By crossing party lines, a group representing both sides of the political aisle would be better suited to cut through the rhetoric accompanying most initiatives. A bipartisan group would also be in a much better position to raise the funds necessary to get the initiative qualified for the ballot because of its ability to draw funds from sources on both sides of the political aisle. The cost of an initiative would certainly be less than the cost of California's budgetary delays.

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227. See Bell & Price, *supra* note 217, at 94 (discussing how elected officials are increasingly turning to the initiative process to achieve policy goals while bypassing the increasingly gridlocked and partisan formal channels); *supra* notes 42-43 and accompanying text (describing the partisan nature of the California Legislature).

228. See *supra* note 33 (describing the general process of getting an initiative on the ballot and approved). Any citizen interested in pursuing a change in the California Constitution or a statute may begin the process by submitting his or her proposal to the Secretary of State. CAL. CONST. art. II, § 8(a) (providing that the initiative is the power of the voters); *id.* at § 8(b) (requiring that initiative measures be presented to the Secretary of State). Following submission to the Secretary of State, the California Attorney General prepares an official title and a summary of the proposed initiative which includes any financial impacts of the measure. Lee, *supra* note 33, at 234. The first major hurdle facing the sponsor of an initiative is gathering the appropriate signatures that the California Constitution requires to place the measure on the ballot. See CAL. CONST. art. II, § 8(b) (requiring signatures equal to 8% of the votes for all candidates for Governor in the last gubernatorial election to qualify a constitutional amendment for the ballot). Initiatives proposing solely statutory changes require only signatures equaling 5% of the votes. *Id.* Since the number of signatures needed to qualify is so large, usually between 500,000 and 1,000,000, an overwhelming majority of initiatives have qualified for the ballot have done so with the help of professional signature gathering firms. Lee, *supra* note 33, at 235. These firms act as campaign managers, doing everything from hiring petition circulators to soliciting campaign contributions to pay for the initiatives. *Id.* Utilizing either of two firms renowned for their success, Kimball Petition Management, Inc. or American Petition Consultants, virtually guarantees qualification on the ballot. *Id.* at 234. This success rate comes with a hefty price tag, with initiative campaigns sometimes costing more than \$1 million, or approximately \$1 or \$2 for every signature. *Id.* at 236. The battle does not end when a measure is qualified for the ballot or even approved. Successfully approved initiatives often need to be implemented by statute. *Id.* at 241. Initiatives approved by California voters must frequently withstand judicial review as well. *Id.* at 242. See generally Douglas C. Michael, Note, *Pref[-]Election Judicial Review: Taking the Initiative in Voter Protection*, 71 CAL. L. REV. 1216 (1983) (arguing that the pre-election review of initiatives is necessary to adequately protect voters).

A narrowly-tailored initiative dealing with the single subject of the two-thirds vote requirement to enact state budgets would likely be upheld in court.<sup>229</sup> The initiative itself should be very simple, proposing that California state budgets go into effect immediately and require only a majority vote of the Legislature to pass.<sup>230</sup> Courts will generally not intervene in disputes over an initiative's constitutionality before an election, but a court will step in before an election to weigh procedural objections.<sup>231</sup> Therefore, the only attack that opponents of such an initiative could make before the election would have to be on procedural grounds. The group sponsoring the initiative must, as a result, pay careful attention to following the correct procedures. The help of professional initiative managers can be obtained to eliminate such procedural concerns.

The remaining challenge that opponents of the initiative could make could only focus on the measure's constitutionality. In the past, the court has struck down or limited initiatives which violated the "single subject rule" or granted powers to the Legislature in violation of the California Constitution.<sup>232</sup> The initiative should address only a single issue: changing the vote requirement to pass a bill. Voting requirements have been successfully changed in the past.<sup>233</sup> Consequently, an initiative proposing to eliminate the two-thirds requirement to pass California budgets, if attacked in court, would very likely be upheld. Given the serious side effects of the two-thirds vote requirement, if an initiative were presented before California voters, it seems likely the voters would approve it. Members of the California Legislature have taken note of these side effects and have recently acted to attempt to remove the two-thirds vote requirement.<sup>234</sup>

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229. See Lee, *supra* note 33, at 242-48 (discussing the increased judicial scrutiny that courts give initiatives). Professor Lee characterizes the end of the line for initiatives to be not the voters, but the California Supreme Court. *Id.* at 242.

230. See *supra* note 26 (defining an urgency statute); *supra* note 190 (discussing urgency statutes and why the California budget must be passed as an urgency statute).

231. See Lee, *supra* note 33, at 242 (quoting California Supreme Court Justice Joseph Grodin).

232. *Id.*

233. See *supra* note 34 (detailing specific instances where ballot initiatives have changed the requirements to pass certain bills).

234. California Bill Tracking, 1993-94 Regular Session, Senate Constitutional Amendment (SCA) 1 (1992), available in LEXIS, Cal Library, Catrck file (documenting the Dec. 7, 1992 introduction of SCA 1 by Senator Kopp, an Independent from San Francisco); California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment (ACA) 2 (1992), available in LEXIS, Cal Library, Catrck file (documenting the Dec. 7, 1992 introduction of ACA 2 by Assembly Member Hannigan, a Democrat representing District 4); California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 3 (1993), available in LEXIS, Cal Library, Catrck file (listing the Feb. 1, 1993 introduction of ACA 3 by Assembly Member Richter, a Republican from Chico). In the California Legislature's 1991-92 Regular Session, Senator Lockyer introduced

*D. Current Efforts to Eliminate the Two-Thirds Vote Requirement*

Early in the 1993-94 Regular Session, members of the California Legislature introduced three constitutional amendments that would affect California's budget process.<sup>235</sup> One of these amendments, Senate Constitutional Amendment (SCA) 1, proposed to exempt appropriations in the budget bill from the two-thirds vote requirement.<sup>236</sup> The second of the amendments, Assembly Constitutional Amendment (ACA) 2, provided that statutes enacting budget bills would go into effect immediately, thus eliminating the two-thirds vote requirement.<sup>237</sup> The third amendment, ACA 3, simply proposes to exempt the budget bill from the two-thirds vote requirement.<sup>238</sup>

If the Legislature had passed SCA 1 and the voters had approved it, the amendment would have eliminated the two-thirds vote requirement to pass California state budgets.<sup>239</sup> The full Senate passed SCA 1 on June 17, 1993, and sent it to the Assembly.<sup>240</sup> On June 20, 1993, the Assembly gutted SCA 1, removing the language that would have eliminated the two-thirds vote requirement to pass state budgets.<sup>241</sup> SCA 1 now merely

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SCA 6, which proposed to reduce to a majority the vote requirement to pass state budgets. California Bill Tracking, 1991-92 Regular Session, Senate Constitutional Amendment 6 (1990), *available in* LEXIS, Cal Library, Catrck file (reflecting the Dec. 17, 1990 introduction of SCA 6 by Senator Lockyer). The amendment passed the Senate, but failed to pass the Assembly. *Id.* During that session, Assembly Member O'Connell also introduced a similar constitutional amendment in the Assembly. California Bill Tracking, 1990-91 Regular Session, Assembly Constitutional Amendment 7 (1990), *available in* LEXIS, Cal Library, Catrck file (documenting the Dec. 3, 1990, introduction of ACA 7 by Assembly Member O'Connell, a Democrat from Sacramento). ACA 7 proposed to delete the requirement that appropriations from the General Fund pass by a two-thirds vote, thereby allowing State budgets to be passed by a simple majority vote. *Id.* The Assembly Rules Committee received the bill on Feb. 7, 1991, but the amendment was not referred to another committee for hearing, thus, it never reached the Assembly floor for a vote. *Id.*

235. See *supra* note 234 (discussing recent attempts by the Legislature to eliminate the two-thirds vote requirement to pass California budgets).

236. California Bill Tracking, 1993-94 Regular Session, Senate Constitutional Amendment 1 (1992), *available in* LEXIS, Cal Library, Catrck file (summarizing the effects of SCA 1). The amendment also proposed to amend the California Constitution to require members of the Legislature and the Governor to give up any salary or reimbursement for travel and living expenses during any time beyond June 15 that California is without a state budget. *Id.*

237. California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 2 (1992), *available in* LEXIS, Cal Library, Catrck file (summarizing the effects of ACA 2); see *supra* note 190 (explaining why the Legislature must currently enact the budget bill as an urgency statute).

238. California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 3 (1993), *available in* LEXIS, Cal Library, Catrck file (listing the Feb. 1, 1993 introduction of ACA 3 by Assembly Member Richter, a Republican from Chico).

239. California Bill Tracking, 1993-94 Regular Session, Senate Constitutional Amendment 1 (1993), *available in* LEXIS, Cal Library, Catrck file.

240. *Id.*

241. *Id.*

proposes the addition of a new section to the California Constitution relating to taxation.<sup>242</sup>

After the December 7, 1992 introduction of ACA 2, the bill sat idle for more than two months until February 1993 when it was referred to the Assembly Ways and Means Committee.<sup>243</sup> That committee scheduled ACA 2 for hearing twice in March 1993 and twice in April 1993.<sup>244</sup> In May 1993, the Assembly Ways and Means Committee approved ACA 2.<sup>245</sup> After a third reading, the Assembly referred ACA 2 to the inactive file on August 31, 1993.<sup>246</sup> ACA 2 is now effectively dead.

The third amendment, ACA 3, does not propose the elimination of the two-thirds vote requirement to pass appropriations bills.<sup>247</sup> ACA 3 simply proposes to exempt the Budget Bill from the two-thirds vote requirement.<sup>248</sup> Moreover, ACA 3 specifies that statutes enacting a Budget Bill would go into effect immediately upon their enactment.<sup>249</sup> This important second component to ACA 3 would eliminate the need to formally enact California budgets as urgency bills.<sup>250</sup> As a result, only a simple majority vote of the Legislature would be necessary to pass state budgets.

As of August 23, 1993, ACA 3 was waiting to be heard in the Assembly Committee on Elections, Reapportionment & Constitutional Amendments.<sup>251</sup> Should both the Assembly and the Senate pass ACA 3, it will then be put before California voters, who must approve the amendment by a majority vote to make ACA 3 effective.<sup>252</sup> In light of the fact that the California Legislature must approve ACA 3 by the very two-thirds vote requirement it is trying to eliminate, the probability of

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242. *Id.* SCA 1, in its current version, would impose an additional ½% sales tax, the proceeds of which are designated exclusively for public safety. *Id.*

243. California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 2 (1993), available in LEXIS, Cal Library, Catrck file (listing the dates of action taken on ACA 2).

244. *Id.*

245. *Id.*

246. *Id.*

247. California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 3 (1993), available in LEXIS, Cal Library, Catrck file.

248. *Id.*

249. *Id.*

250. See *supra* note 26 (defining urgency statutes); *supra* notes 92-93 (comparing urgency bills to non-urgency bills).

251. California Bill Tracking, 1993-94 Regular Session, Assembly Constitutional Amendment 3 (1993), available in LEXIS, Cal Library, Catrck file (listing the dates of action taken on ACA 3).

252. CAL. CONST. art. XVIII, § 4; see *supra* note 33 (discussing the process by which the California Legislature may amend or revise the California Constitution).

exempting the budget from the two-thirds vote requirement via ACA 3 is small.

#### IV. CONCLUSION

The California Constitution is riddled with instances where two-thirds of the Legislature must agree before a bill may be passed.<sup>253</sup> These supermajority vote requirements have hampered the California Legislature's ability to effectively resolve issues confronting the State.<sup>254</sup> Presently, the two-thirds vote requirement to pass California state budgets hinders the Legislature's ability to pass budgets by the constitutionally mandated deadline. A majority of the California Legislature, which the Constitution vests with authority to dictate policy in a vast majority of areas and to spend nearly one-half of California's total budget,<sup>255</sup> ought to be sufficient to create fiscal policy for the State.

In these times of economic hardship, Californians need to remove the two-thirds vote requirement to enact state budgets. Doing so would make the Legislature's job of establishing the budget easier while still preserving democratic rule. Maintaining the two-thirds vote requirement to pass budgets is likely to cause only further delay and gridlock in passing the most important piece of legislation the Legislature introduces.

The initiative process is the most viable method available to eliminate the two-thirds vote requirement. Initiatives are truly the voice of the people. California's citizens deserve better than a Legislature consistently disregarding its constitutional responsibility to pass budgets by June 15. While initiatives are not without their costs, these costs would undoubtedly be less than those that will likely follow from the 1992-93 budget process. Regardless of how the two-thirds vote requirement is removed, the idea of future gridlock, cost, and embarrassment to Californians should be reason enough to remove the requirement.

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253. See *supra* notes 23-29 and accompanying text (discussing situations where California's Constitution requires a two-thirds vote to pass certain types of legislation).

254. See, e.g., *supra* notes 53-65 and accompanying text (discussing the inability of the Legislature to enact property tax reform in the late 1970's).

255. See *supra* note 174 and accompanying text (noting that the current version of the California Constitution vests the Legislature with the power to appropriate funds for education which totals 48.1% of the 1993-94 California budget by a majority vote only).



