

1926

## CORPORATIONS

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**CORPORATIONS.** Assembly Constitutional Amendment 14. Amends Section 11 of Article XII of Constitution by requiring that any increase of stock or bonded indebtedness of a corporation be assented to by the holders of at least two-thirds of the amount in value of the stock instead of by a majority, as now provided, and eliminates the present provision requiring that such increase be made at a meeting called for that purpose after sixty days' public notice.

YES

NO

(For full text of Measure see page 21, Part II.)

**Argument in Favor of Assembly Constitutional Amendment No. 14.**

It is proposed to amend section 11 of article XII of the constitution in two particulars:

1. By providing that an increase in the capital stock or bonded indebtedness of a corporation shall be consented to by two-thirds, instead of a majority, of the stockholders.
2. By eliminating the requirement that the stockholders' consent must be obtained at a meeting, notice of which has been published for sixty days.

It is sufficient, in support of the first proposition, to say that the law now requires the consent of the holders of two-thirds of the stock before a corporation may change any provision of its articles of incorporation (with two unimportant exceptions). Therefore, in the important matter of increasing capital stock or bonded indebtedness, the constitution should require a similar consent. This change will place no additional burden on corporations as the same requirement now appears in section 359, Civil Code.

Concerning the second proposal, there can be no valid objection to dispensing with the requirement that a *meeting* be held in such cases. If the proposal is supported by two-thirds of the stockholders, how can it matter whether such support is evidenced by a vote at a meeting or by written consents? In creating bonded indebtedness, decreasing capital stock or making other amendments, corporations are permitted by law to obtain written assents in lieu of holding meetings and they should be granted the same alternative in increasing their bonded indebtedness or capital stock. The ratification of this amendment will remove the present bar to the amendment of section 359, Civil Code, to provide for this alternative.

There is nothing novel in the provision dispensing with the publication of notice. Sections 317 and 320a, Civil Code, now provide, respectively, that meetings of stockholders and directors may be held by unanimous consent and are as valid as if regularly called and noticed, so that it is possible to avoid publication of any notice required only by statute. The amendment will permit corporations to increase their capital stock or bonded indebtedness without publishing notice for sixty days, as is now required by section 359, Civil Code, provided all stockholders waive such notice. It will

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thus offer relief to a great number of small corporations but most of the large corporations will continue to publish notice as they will be unable to obtain waivers from all their stockholders. The vote of two-thirds of the stockholders is necessary, so it is of no importance whether this vote is obtained pursuant to public notice or by a waiver.

The practical effect of the present constitutional provision is to prevent corporations from quickly obtaining necessary funds by selling additional stock or bonds. Often a delay of sixty days in raising money would mean disaster which a corporation can only avoid by reincorporating with a larger capital stock, at great expense.

The records of the Secretary of State's office disclose hundreds of instances where the directors of a corporation were its only stockholders, and yet, in increasing the capital stock or bonded indebtedness, it was necessary for them to meet as stockholders pursuant to a sixty-day publication of notice, even though they all attended the directors' meeting and voted in favor of the resolution calling the stockholders' meeting. Little can be said in defense of such red tape.

No ulterior motive underlies this proposal. The amendment was introduced at the request of Secretary of State Jordan, who assures me that it has the unanimous support of corporation lawyers throughout the state. In fact, the Committee of Amendments of the California Bar Association recently recommended the repeal of the provision necessitating such publication of notice.

The protection which this section may afford minority stockholders in rare instances is greatly outweighed by the fact that it seriously and needlessly hampers the great mass of corporations and retards entirely legitimate activities.

The legislature adopted the amendment by a vote of 66 ayes and 2 noes in the assembly and 29 ayes and no noes in the senate. Vote "YES."

ALBERT A. ROSENSHINE,  
Assemblyman, Thirty-first District.

FRANK C. WELLER,  
Assemblyman, Sixty-first District.

**Argument Against Assembly Constitutional Amendment No. 14.**

The present section 11 of article XII of the state constitution relates to the issue of corporation stocks and bonds and to in-

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**PART II**

**Appendix**

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is registered, within two weeks of the election, in which such ballots are to be counted.

**EXISTING PROVISIONS.**

(Provisions proposed to be repealed are printed in italics.)

Section 1. Every native citizen of the United States, every person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been resident of the state one year next preceding the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; provided, any person duly registered as an elector in one precinct and removing therefrom to another precinct in the same county within thirty days of an election, shall for the purpose of such election be deemed to be a resident and qualified elector of the precinct from which he so removed until after such election; provided, further, no *native of China*, no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this state; provided, that the provisions of this amendment relative to an educational qualification shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who had the right to vote on October 10, 1911, nor to any person who was sixty years of age and upwards on October 10, 1911; provided, further,

that the legislature may, by general law, provide for the casting of votes by duly registered voters who, by reason of their occupation, are *regularly* required to travel *about the state* and who, by such affidavit as the legislature may prescribe, show that they *will* be absent from their respective precincts on the day on which any primary or general election is held, or who, by reason of their being engaged in the military or naval service of the United States or of the state, may be absent from their respective precincts on the day on which any primary or general election is held; which votes (a) may be cast in the office of the registrar of voters, or of the county clerk of the county or city and county in which such voters respectively reside, and on a day prior to the date of such election, under such provisions as the legislature may see fit to make; or (b) may be cast in the city, county and town within this state in which such voters may be on the day on which such election is held, under such provisions as the legislature may see fit to make, and shall be forwarded in such manner as the legislature may prescribe to the officers respectively of the city, county and town having charge of the counting of the ballots cast at such election; or (c) in cases where said voters are engaged in such military or naval service, may be cast at any place, under such provisions as the legislature may see fit to make, and shall be forwarded in such manner as the legislature may prescribe to the officers respectively of the city, county and town having charge of the counting of the ballots at such election; all of which votes shall be kept in such manner and counted by such methods as the legislature may prescribe; provided, that it must be required that all ballots cast in any other place than the precinct of the voter must be received by the county clerk of the county in which the voter is registered, within two weeks of the election, in which such ballots are to be counted.

**CORPORATIONS.** Assembly Constitutional Amendment 14. Amends Section 11 of Article XII of Constitution by requiring that any increase of stock or bonded indebtedness of a corporation be assented **14** to by the holders of at least two-thirds of the amount in value of the stock instead of by a majority, as now provided, and eliminates the present provision requiring that such increase be made at a meeting called for that purpose after sixty days' public notice.

YES

NO

Assembly Constitutional Amendment No. 14—  
A resolution to propose to the people of the State of California an amendment to section eleven of article twelve of the constitution of the State of California, relating to the issuance of stock or bonds by corporations.

Resolved, by the assembly, the senate concurring, That the legislature of the State of California, at its forty-sixth regular session, commencing on the fifth day of January, one thousand nine hundred twenty-five, two-thirds of all the members elected to each of the two houses of said legislature voting therefor, hereby proposes to the people of the State of California that section eleven of article twelve of the constitution of the state be amended so as to read as follows:

**PROPOSED AMENDMENT.**

(Proposed changes in provisions are printed in black-faced type.)

Sec. 11. No corporation shall issue stock or

bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding *at least two-thirds of the amount* in value of the stock.

**EXISTING PROVISIONS.**

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