

A Supermajority Vote on all Taxes Can Stop the Trend of Governing by Referendum

Currently, a majority of a quorum of each house of the Florida Legislature can raise or lower state taxes. This means that as few as one member more than a quarter of the membership of the Florida Senate and House of Representatives can pass a new or increased state tax. Admittedly, that is not a common occurrence. But it opens the door to the possibility of real minority rule. The potential of this fact and the public's lack of confidence and trust in Florida government lend merit to a requirement of a supermajority action of the legislature to effect changes in taxes. Such supermajority can range from a 2/3 vote through a 3/5 vote down to some level greater than a simple majority of the full membership of the respective houses.

This action could be one of the best ways to assure citizens and business leaders that Florida will have a more stable and predictable tax structure. It would be a major inducement for the formation of capital and the creation of sorely needed well paying jobs throughout the state. It also would discourage the tax option from being the first option used in meeting the state's needs.

Given the public mood and the pending proposed adoptions of more draconian measures in the state's constitution through the initiative process, serious consideration should be given to a proposed joint resolution of the Legislature for a constitutional amendment to section 1 Art. VII of the Florida State Constitution. As passed out of the Senate Ways and Means Committee on 2/23/95, it would require a supermajority vote of 2/3 of the membership of each of the legislative houses to raise taxes. Though the exact number of the supermajority may be open to question, this action may be a step to restore the peoples' confidence in their state government and in the consensus decisions of their elected state officials.

The public's distrust of government should be viewed with no small measure of concern. It has reached a peak that has brought significant political change and even the emergence of viable third party candidates for president. This discontent may go further. Those in government must attend to this concern lest governance fall prey to options that are not supportive of our representative democratic institutions.

The peoples' pervasive dissatisfaction and lack of credibility in government calls for a swift, sound and structural response. Growing popularity of direct voter control threatens the viability of representative government. If carried to an extreme it speaks to a hyper-democracy based on a single issue system that would ultimately have government operate through plebiscite.

There is real merit in the peoples' direct endorsement on some issues and the right of the people to take initiative on issues of their concern. However, emphasis and dependence on such initiatives can have some very significant adverse and unintended consequences.

The basic nature of government in the American system is one that focuses on consensus building, accommodation and the preservation of the rights and property of those who would be vulnerable in a direct majoritive populist system. Such minorities can range from an economic underclass to corporate entities with magnificent resources. In hyper-democracy, both can suffer the tyranny of the majority. (This construct is established in The Federalist Papers, Alexander Hamilton, James Madison and John Jay 1787-1788, especially numbers 10 and 53).

The legislative process historically has been the vehicle upon which this consensus building is realized. Evidently a

substantial number of the electorate in Florida felt that the process lacked equity and was not working. Consequently, some 700,000 voters sought resolution in the four initiatives introduced by the Tax Cap Committee. Only one of the initiatives survived the Florida Supreme Court's review and the voters approved it on November 8, 1994. But the federal appellate court may revisit one or more of the other three initiatives. Given the public's mood and in the face of the alternatives in place, the remaining three amendments probably will pass if the courts restore them or the Tax Cap Committee puts them on the ballot under the auspices of the recently passed Amendment 4, which allows multiple subjects in citizen initiatives restricting the ability of government to raise revenue.

However, the passage of a supermajority requirement to change the tax rate or base probably would restore public confidence and significantly lessen the public's predisposition toward the control of government through referendum. A supermajority vote of the membership assures that if an issue passes it has broad support. It would also assure that coalition and consensus building take place. Moreover, the legislature's deliberative processes would ensure that consideration of the unanticipated outcomes of political action is more likely to occur.

Such exchange and review is fundamental to our legislative processes. It is not typical to the public's discourse associated with popular referendum or the dialogue that generally moves people in support of citizen initiatives.

If the "Save Our Homes" Amendment, which passed in the 1992 election, had been drafted by the legislature rather than as a popular initiative it may not have become a threat to renters as well as business and commercial property interests. Subsequently, its potential to harm economic development may have been forestalled. And it might have led to the thoughtful consideration of the fate of renters, who often are less financially able to pay for passed-along tax increases. In fact, it could have been crafted to suit the concerns of a much broader constituency than it presently benefits.

Why is a supermajority needed over a simple majority vote of a quorum of members present in the respective houses of the legislature? A simple majority, particularly a simple majority of a quorum, can mask unresolved conflict between the electorate and lack of real acceptance of the law by the public. In a society marked by alienation and normlessness, it is the obligation of elected officials to present political leadership based on the most substantive public consensus. A supermajority to raise or even lower taxes would provide such a consensus.

The people of Florida have shown their desire to demand a supermajority vote of the legislature to increase revenues

through their recent acceptance of the Revenue Limit Amendment, initiated by the legislature and approved by the voters in the November 8, 1994 general election. The supermajority vote to raise state taxes will ensure that taxes raised within the limits of the revenue cap also require a substantial consensus of support before they are enforced on the public.

The Corporate Income Tax requires a supermajority, setting precedence for such a provision to be applicable to all taxes, not just those applying to business. Why should the taxes on the public need less legislative support than taxes on the net income of (large) corporations? The plain truth is that all taxes, which by their very nature constitute an involuntary exaction of the citizens' income or property for a potential public purpose, should meet this high threshold of legislative consensus.

A supermajority vote of the membership is preferable to voter referendum on each revenue or tax issue. Dependence on referendum could generate a gridlock that is unparalleled in the state's history. Moreover, it could generate a tax inequity that would only further frustrate the public and harm the economic vitality and prosperity of the state's citizens.

If the legislature supports a supermajority for state tax increases, the inclination of the public to support initiatives under the mandate of Amendment 4 that allows multi-subject voter initiatives may be curtailed. Speculation as to what might happen if some choose to politically exploit this option is troubling. According to the Florida Supreme Court, "Single-subject provisions are a rule of restraint, designed to insulate Florida's organic law from precipitous change" (noted in Florida TaxWatch's *Briefings*, Volume III, Issue 1, entitled, "Amendment Four: Will It Help or Hurt Florida's Taxpayers?", November, 1994). Amendment 4 removed this protection to issues related to the raising of taxes. This could invite some very interesting "log rolling," (combining less popular or beneficial initiatives with a more popular one) in which people are encouraged to accept something they oppose or do not understand to obtain a more desirable outcome.

In an environment dominated by media, money, psychological marketing, single issue focus, professional promotion and special interest advocacy, the voters' perceptions may be subject to some questionable manipulations. It is conceivable that the balance of power between the various branches may be upset by multi-subject public initiatives. For example, a governor or other Cabinet member might no longer seek legislative cooperation on an issue such as tax reform. Instead, he or she might go directly to the people and seek their support through the initiative process. This could lead to rank demagoguery and a serious breakdown in the balance of power between the branches of government.

If citizen initiatives become the norm, the courts may reach heights of unprecedented judicial legislating. Unrestrained by the record of legislative intent, the ultimate interpretation of the citizens' initiated amendments would be left to the courts' interpretations. Reflection on that possibility causes expressions of dread by those who value our nation's system of separation of powers among the respective branches of government.

To prevent such alternatives and outcomes, it would be wise to assure the public that their taxes would be controlled by a reasonable consensus or supermajority of their elected representatives. A supermajority vote on tax issues would support the most cherished construct of our governmental system -- namely, the protection of the minority from the dominance of the majority. This is effected by the system of representative government that fosters a political process

that focuses on accommodation and compromise. As history has well documented, no such protection is offered in the plebiscite form of government.

Some discussion is warranted regarding what constitutes a sufficient supermajority -- 2/3 or 3/5 of the membership of the respective houses. The table below illustrates the history of some major tax and fee increases since 1988. Five out of nine would have passed the 2/3 requirement, while eight out of nine would have passed the 3/5 criteria. Obviously, the existence of a supermajority would formulate a different configuration and political reality. Both levels would be much better than the simple majority of a quorum, which we currently have. If the legislature cannot in its wisdom support a supermajority, let them at least require that a majority of the membership of each house be required to affirm any increase in taxes.

History of Major Tax and Fee Increases since 1988							
Year	Bill #	Tax Change	Est. Revenue Increase (millions)	Vote		Would pass by 2/3?	Would pass by 3/5?
				House	Senate		
1987	cs/sb 777 & cs/hb 1506	Services Tax Increase		83 to 31	24 to 14	no, Senate: yes, House	yes
1987	cs/cs/sb/5d&6d (special)	Sales Tax Increase 5% to 6%		75 to 42	29 to 9	no, House: yes, Senate	yes
1988	N/A						
1990	cs/hb 3695	Surcharge per oz. of liquor, wine, beer.	129.8	74 to 40	28 to 6	no, House: yes, Senate	yes
	"	Cigarette tax increase 9.9 cents/pack.	123.8				
	"	Documentary Stamp Tax increase	132.4				
	"	Gross Receipts Tax increase	78.9				
	cs/sb 1316	Motor and special fuel tax increase to 6%	88.3	98 to 17	34 to 3	yes	yes
1991	hb 1413	Preservation 2000, Doc Stamp on deeds 5 cents/\$100	26.9	111 to 4	38 to 0	yes	yes
1992	sb 26 (special)	Intangible tax 1.5 to 2 mills	134.7	54 to 53	21 to 15	no (Both)	no (Both)
	"	Sales tax on nonresidential communications	86				
	cs/cs/sb 94	Documentary Stamp tax increase		84 to 20	34 to 3	yes	yes
	hb 2477	Tax for inland production of pollutant	7.6	105 to 0	38 to 0	yes	yes
*1994	hb 2817	Dry cleaners gross rec., pollutants fees	13.2	109 to 2	39 to 0	yes	yes
						5 pass, 4 fail	8 pass 1 fails
						Minimum of 27 Senate and 80 House	Minimum of 24 Senate, 72 House

* This is the only substantial (over 10 million), non-local tax increase in 1994.

Sources: Florida Tax Handbook, 1994; Florida's Fiscal Analysis, years 1988 - 94; House and Senate Committees on Appropriations; the Florida Legislature; and Florida TaxWatch

Benefits Obtained by Requiring a Supermajority Vote of the Membership of Each House to Levy New or Higher State Taxes

1. The precedent for a supermajority vote on tax increases has already been set. A 3/5 vote of the membership is required to increase corporate income taxes. Why should it be easier to increase taxes on individuals than it is to increase taxes on the net income of (large) corporations?
2. Requiring a supermajority of the membership of both houses of the legislature to pass tax increases will force greater consensus on tax policy before it is enacted or implemented. A much larger number of legislators will have to decide whether a tax increase is truly necessary and how taxes should be raised. This should encourage more responsible tax policy and a more responsive, cost-effective and accountable spending policy.

3. Tax policy will become more stable, as decisions on taxing Florida's citizens will not be made by a small number of legislators. Currently only a majority of a quorum is needed to pass a tax increase. This means that currently, as few as 31 members of the House, and 11 members of the Senate can enact tax increases and make annual shifts that create more volatility in Florida's tax policies. Requiring a supermajority vote of both houses to change tax policy will create a more stable tax environment in Florida.
4. The citizens of Florida will be able to hold their legislators accountable for voting on tax policy. Changing tax rates or implementing new taxes would require legislators to be proactive if they wish to pass tax policy changes, so lack of action would be more noticeable to constituents. An abstention would effectively be a "no" vote.
5. This tax reform adds much needed stability and predictability to Florida's tax policy. This would further improve the business base in the state, as it would make Florida a more stable environment into which businesses can take market risks to create capital and foster good jobs.
6. This supermajority requirement would make tax increases one of the last resorts of the legislature rather than the first response to fiscal needs. Increasing taxes is too often the first or only answer to addressing the public service wants and needs of Floridians. This amendment would encourage other courses of action to make spending more responsive, accountable, and cost effective.
7. There are nine other states that have such supermajority requirements: Arizona, Arkansas, California, Colorado, Delaware, Louisiana, Mississippi, Oklahoma and South Dakota. Three of these states adopted supermajority restrictions in 1992 (Arizona, Colorado and Oklahoma). Six of these nine states also have constitutional spending limits similar to the revenue limit the Florida voters enacted November 8, 1994 (Arizona, California, Colorado, Delaware, Louisiana and Oklahoma). While the revenue cap is designed to maintain a reasonable level of growth in state revenues collected from the Florida taxpayers, the supermajority vote to change tax policy ensures that changes made to the tax structure within the limits of the cap are reasonable, responsible and agreed upon by a diverse consensus of the Florida Legislature, and thus the voting citizens across our state.
8. If legislators do not allow the citizens of Florida to vote on this issue, the voters are likely to place much harsher restrictions on the Legislature's ability to perform even the simplest of tax changes. This proposed constitutional amendment is a sound tax reform initiative and meaningful substitute for a more serious and possibly irresponsible initiative (voter approval of all taxes) that would drastically diminish the democratic republic (representative democracy form of government) established by our nation and state founders.

States having supermajority votes:

*Arizona, 2/3 of members ■ Arkansas, 3/4 of members ■ California, 2/3 of members ■ Delaware, 3/5 of members
Kentucky, 2/3 of members ■ Louisiana, 2/3 for taxes, majority for fees ■ Mississippi, 3/5 of members
Oklahoma, 3/4 of members ■ South Dakota, 2/3 of members*

And yet government goes on.

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