

REQUIRING A SUPERMAJORITY FOR INCREASING TAXES & FEES CAN PROTECT TAXPAYERS

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Governor Rick Scott recently announced he would be recommending that the 2018 Legislature pass a joint resolution to put a proposed constitutional amendment before the voters that would require a supermajority vote for lawmakers to “pass or raise taxes or fees.” Currently, it takes a simple majority vote of a quorum of legislators voting to pass most bills, including most tax increases.

Having led in the enactment of Florida’s current constitutional state revenue limitation, Florida TaxWatch has been recommending a simpler and higher standard to pass tax increases since 1995.

Even though there has not been a major state tax increase since 2009 and the Legislature has instead cut taxes in every session since then, a well-crafted supermajority requirement is still an important taxpayer safeguard. It would ensure that a broad consensus is reached before Floridians are required to contribute more of their hard-earned money to support a bigger state government. A thoughtful, non-draconian supermajority vote requirement not only protects taxpayers, it can also help avoid a more severe tax or revenue limit that could improperly and imprudently constrain state government.

The concept of a supermajority vote to raise taxes is not new to Florida. With the support of an Amicus Brief by Florida TaxWatch, the Constitution already requires a proposed constitutional amendment to create a new state tax or fee to be approved by not fewer than two-thirds of the voters voting in the election. In addition, the Legislature is prohibited from raising the corporate income tax rate above the current rate of 5.5 percent without a three-fifths vote of the membership of each chamber of the Legislature.

The Legislature also requires supermajority votes for local governments to raise many of their limited array of tax options. Several local option sales, motor fuel, and tourist development taxes require a supermajority vote of the local governing body (or referendum) to enact. A two-thirds vote of a local governing body is also required to levy a property tax millage

rate that exceeds the rolled-back rate and a unanimous vote is required to exceed the rolled-back rate by more than 10 percent. A majority plus one vote is required to increase local business taxes in certain circumstances.

THE CURRENT STATE REVENUE LIMITATION DOES NOT PROTECT TAXPAYERS

One of the reasons Florida TaxWatch has recommended a supermajority vote for tax increases is that it is a simpler, more direct, and effective approach to ward off excessive taxation than the current constitutional revenue limitation, which has been rendered largely meaningless.

In November 1994, Florida voters approved an amendment¹ to the state Constitution—brought to the ballot by the Legislature—to limit the growth in state revenues. The revenue limit is determined annually by multiplying the average annual growth rate in Florida personal income over the previous five years by the maximum amount of revenue permitted under the limitation in the previous year.

State revenue is defined as taxes, licenses, fees, and charges for services imposed by the Legislature. However, the following revenues are excluded from the limit: Revenues necessary for debt service on state bonds; most revenue used to provide matching funds for the Medicaid program;² lottery proceeds returned as prizes; receipts of the Florida Hurricane Catastrophe Fund; balances carried forward from prior fiscal years; local taxes, licenses, fees, and charges for services; and revenue required to be imposed by any amendment or revision to the Constitution after July 1, 1994.

¹ Article VII, subsection 1(e), Florida Constitution.

² With the exception of revenues used to support the Public Medical Assistance Trust Fund and matching funds used for elective expansions made after July 1, 1994.

The Legislature may adjust the limitation in the event of a transfer of responsibility for the funding of governmental functions between the state and other levels of government.

If the limit is exceeded, excess revenues are deposited into the Budget Stabilization Fund until that fund reaches its maximum balance of 10 percent of general revenue collections in the previous fiscal year. Any additional funds are then to be refunded to taxpayers as provided by general law. The Legislature can increase the revenue limit in any year by a two-thirds vote of the membership of each house.

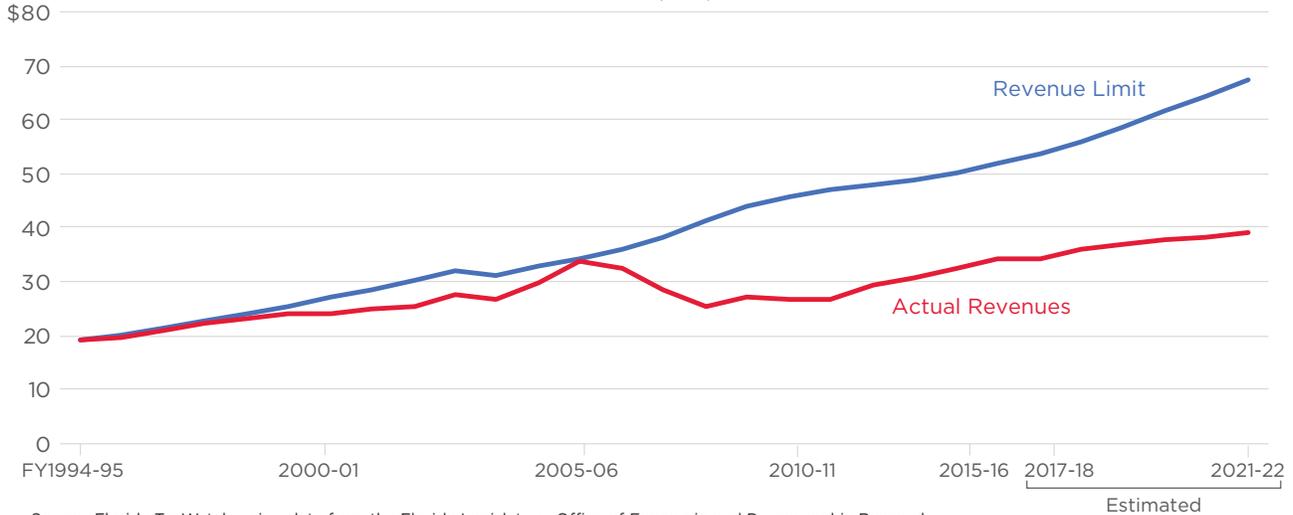
The existing constitutional limitation is basically irrelevant. This is because the limitation is cumulative; the growth in personal income is applied to the maximum allowed revenue in the previous year, not the actual amount of revenue. This allows any excess allowed revenue to be maintained in future years. And since Medicaid matching funds—which are growing more than twice as fast as total revenues—are excluded, that limitation’s “cushion” continues to grow.

While the growth in total revenue has exceeded the personal income growth factor in 10 of the 22 years since the limit was enacted (including the last six years), the revenue limit has never been exceeded (see chart on next page). After a \$613.4 million cushion in the first year (FY 1995-96), it dropped to \$331.3 million in the next year, which is smallest amount in the limitation’s history. The cushion then started growing, reaching almost \$5 billion (nearly 20 percent of revenue) in FY2002-03.

Revenue growth, stoked by the economy and the housing bubble, caused the cushion to decrease to \$658.2 million in FY2005-06. But when the bubble burst, the state experienced an unprecedented decrease in

MAXIMUM REVENUE ALLOWED VS. ACTUAL REVENUE

FY1994-95 – FY2021-22 (EST.) // \$ IN BILLIONS



Source: Florida TaxWatch, using data from the Florida Legislature, Office of Economic and Demographic Research

revenue collections. But the personal income factor remained high (due to using the last 5 years) and the cushion mushroomed to \$20.6 billion (77 percent of revenue) in FY2011-12. The state collected \$26.6 billion in revenue that year—the cap would have allowed \$47.2 billion. The cushion has been reduced slightly in recent years, but the latest state forecast estimates it will grow to \$28.6 billion by FY2021-22.³ To put that in perspective, the state sales tax brought in \$25.8 billion in FY2016-17.

TAX/REVENUE LIMITATIONS IN OTHER STATES

Most states (31) have some form of state revenue, appropriation and/or tax limitation.⁴ This includes 15 states⁵ that require a supermajority vote of the Legislature or a vote of the people to raise taxes. Most of revenue/expenditure limitations are based on the growth—or set at a specified percentage—

³ Florida Legislature, Office of Economic and Demographic Research, “Revenue Limitation Forecast”, February 2017.

⁴ National Association of State Budget Officers, “Budget Processes in the States,” Spring 2015.

⁵ Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Oregon, Rhode Island, Washington, and Wisconsin.

of personal income. Most revenue/expenditure limitations can be overridden by the Legislature (some majority, some supermajority), but four states require a vote of the people to override the limit.

As for supermajority legislative votes to raise taxes, there are requirements of three-fifths (2 states), two-thirds (9 states), and three-fourths (1 state). There are also three states that require a vote of the people to raise taxes.⁶ The very strict nature of some of these limitations show what future voters could impose on Florida.

NEEDED REVENUE INCREASES WOULD STILL HAVE HAPPENED WITH A SUPERMAJORITY VOTE REQUIREMENT

The last major state tax increase was in 2009. In response to the Great Recession and the resulting drop in revenues, the Legislature passed three major tax/fee increases, totaling more than \$2 billion. These were an \$1.00 per pack tax increase on cigarettes and a 60

⁶ One of these states—Missouri—requires a vote of the people for tax increases that exceed 1 percent of state revenue. For smaller tax increases, a simple majority of the Legislature is required.

percent surcharge on other tobacco products, multiple increases to motor vehicle-related taxes and fees, and multiple court-related fee increases. The Senate voted unanimously for all three bills. There were dissenting votes in the house, but all of these would have passed with a three-fifths requirement. One bill—the motor vehicle tax increases—would have fallen just short of a two-thirds requirement.

An older analysis by Florida TaxWatch showed that even back when significant state tax increases were more common, most of them would have passed with a supermajority vote requirement.⁷

While significant tax increases have been rare in the Legislature's recent history, in virtually every session a few bills pass that create a minor new fee or result in a relatively small increase in taxes or fees. There have been 10 of these over the last three sessions and all would have passed with a supermajority vote requirements. Half of the bills received unanimous votes in both chambers.

CONCLUSION

A call for a supermajority vote for tax increases is not an accusation of an out-of-control Legislature. The Florida Legislature has now cut taxes in eight consecutive sessions. So, in the current state-level tax and spend environment, some may think this proposal is a solution in search of a problem. But placing a supermajority requirement in the Constitution is about the long-term protection of Florida's taxpayers as fiscal conditions and attitudes can change. It can also provide protection for the state. A non-draconian supermajority requirement, while being a sound tax reform initiative, is also a meaningful substitute for a more serious and possibly irresponsible initiative (voter approval of all taxes) that could severely limit revenue

⁷ Florida TaxWatch, "A Supermajority on All Taxes Can Stop the Trend of Governing by Referendum," March 1995.

options in times of true need, and promote hyper democracy (i.e. "mob rule") in violation of the representative form of democracy (a democratic republic) we are blessed to have.

Sometimes increased taxes are necessary and a three-fifths requirement would not make that overly difficult to achieve. It could help avoid unnecessary tax hikes or hastily and poorly designed ones. Florida has experienced such mistakes—such as the sales tax on services, the unitary tax and the "by the drink" alcoholic beverage surcharge—that all caused real problems and public backlash which necessitated their repeal.

A supermajority requirement would also increase the likelihood that unnecessary spending is addressed before taxpayers are asked to pay more. And when more revenue is needed, taxpayers will have more confidence that there is a broad support consensus that it is the right thing to do.

RECOMMENDATIONS

- The supermajority requirement should be three-fifths (60 percent), as opposed to two-thirds (66.67 percent). Three-fifths creates a sufficient requirement for broad consensus while keeping the minority needed to defeat a tax proposal from being too small. At three-fifths, the threshold should be relative to the full membership of each chamber (therefore, 24 votes in the Senate and 72 votes in the House), not just those lawmakers voting on a particular bill.
- The supermajority requirement should only apply to floor votes, not committee votes. A majority vote in committee (some which have as little as five members) should be enough to move any bill forward.
- The supermajority requirement should apply to taxes and fees. The distinction between the two has become more

blurred and taxpayers do not always see the difference. Certainly, any fee that contributes to the General Revenue (beyond the GR service charge) or non-regulatory trust funds should be included. There could be an exception for minor fees that are totally regulatory in nature or true charges for services, but there should be a threshold—perhaps \$500,000—over which the supermajority requirement would apply. Even during the recent tax cutting legislative environment, most sessions produce a number of increased or new fees, usually relatively very small. Often, the substantive legislative change in the bill is more controversial than the increased fee.

- The supermajority required should apply to new taxes or fees, increases in the tax rate or dollar amount of a levy, expansions in a tax base, eliminating exemptions, repealing tax credits, and substantial modifications to which taxpayers are required to pay a tax or qualify for an exemption.
- The requirement should also apply to the amount the Legislature sets in the General Appropriations Act (GAA) for Required Local Effort (RLE).⁸ RLE is the required

⁸ RLE was set a \$7.6 billion for FY2017-18.

amount of property taxes school districts must levy to participate in the school funding formula. If the amount set by the Legislature requires a millage rate that is in excess of the rolled-back rate,⁹ the three-fifths voting requirement should apply. This is similar to the requirement the Legislature places on local governments and would require the Legislature to acknowledge that any millage rate above the rolled-back rate is a conscious property tax increase (even though the rate itself might not increase). This is something which the Legislature has historically been reluctant to do, although a growing number of lawmakers have voiced this concern during recent legislative sessions. The RLE would have to be established in a separate bill so the GAA would not be subject the supermajority vote. The Legislature could always add more existing state dollars to school funding, but passing the burden on to local property owners should require a broader consensus.

⁹ The millage rate which, when levied on the current tax roll, provides the same property tax revenue for a taxing authority as in the previous year. New construction, additions, annexations and deletions are excluded from the calculation to provide growth revenues. Any proposed millage rate in excess of the rolled-back rate is considered a tax increase and requires a Notice of Proposed Tax Increase from the local government.

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