

**Constitution Revision Commission
Finance and Taxation Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 72

Relating to: FINANCE AND TAXATION

Introducer(s): Commissioner Karlinsky and others

Article/Section affected: Article VII; creates a new section

Date: December 6, 2017

| REFERENCE | ACTION |
|-----------|--------------------|
| 1. FT | Pre-meeting |

I. SUMMARY:

The proposal provides that a law may not impose a new state tax or fee or raise a state tax or fee unless passed by two-thirds vote of the membership of each house of the legislature.

The proposal does not apply to any tax or fee imposed by a county, municipality, school board, or special district.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Passage of Legislation

Article III of the Florida Constitution provides the framework for how the legislature enacts laws by passing legislation, including legislation that impacts the state's tax policy. In order for legislation to become law in Florida, the legislation must:

1. Receive a majority vote in each house of the legislature;¹ and
2. Be presented to the Governor,² who may approve the legislation, veto it, or if the Governor fails to act within the proscribed time frame, the legislation becomes law.³

¹ Fla. Const. Art III, s. 7.

² Fla Const. Art III, s. 8(a).

³ *Id.* The Governor has seven days after presentation to act on a bill if the seven day period occurs during a legislative session, or fifteen days otherwise.

If the Governor vetoes the legislation, the legislature may override the veto by a two-thirds vote of each house of the legislature.⁴

Supermajority Vote Requirements

There are many examples of supermajority vote requirements for the legislature in the Florida constitution including:

- An increase in the corporate income tax above 5% requires a three-fifths vote of the membership of each house of the legislature;⁵
- Legislation that authorizes the conveyance of property taken by eminent domain to a natural person or private entity requires a three-fifths vote of each house of the legislature;⁶
- Legislation that appropriates nonrecurring general revenue funds for recurring purposes cannot exceed three percent of the total general revenue funds estimated to be available unless approved by a three-fifths vote of the membership of each house of the legislature;⁷
- Legislation that repeals court rules of practice or procedure requires a two-thirds vote of the membership of each house of the legislature;⁸
- Legislation that increases or decreases judicial offices by a number different than that certified by the Supreme Court to the legislature requires a two-thirds of the membership of both houses of the legislature;⁹
- Legislation that creates special laws or general laws of local application that are prohibited by general law, or legislation that amends or repeals such a prohibition requires a three-fifths vote of the membership of each house of the legislature;¹⁰
- Legislation that creates certain local mandates that require counties or municipalities to expend funds, reduce their authority to raise revenues, or reduce the percentage of a state shared tax, requires a two-thirds vote of the membership of each house of the legislature;¹¹
- Legislation that creates or recreates a trust fund requires a vote of three-fifths of the membership of each house of the legislature;¹²
- Legislation that raises revenue above certain constitutionally prescribed caps requires a two-thirds vote of the membership of each house of the legislature;¹³
- Legislation that exempts public access from certain public records or meetings requires a two-thirds vote of the membership of each house of the legislature;¹⁴

⁴ Fla. Const. Art III, s. 8(c).

⁵ Fla. Const. Art VII, s. 5(b). The state corporate income tax was raised to 5.5% in 1984. *See* s. 220.11, F.S., as amended by ch. 84-549, L.O.F.

⁶ Fla. Const. Art. X, 6(c).

⁷ Fla. Const. Art. III, s. 19(a)(2).

⁸ Fla. Const. Art. V, s. 2(a).

⁹ Fla. Const. Art. V, s. 9.

¹⁰ Fla. Const. Art. III, s. 11(a)(21).

¹¹ Fla. Const. Art. VII, ss. 18(a)-(c).

¹² Fla. Const. Art. III, s. 19(f)(1).

¹³ Fla. Const. Art. VII, s. 1(e).

¹⁴ Fla. Const. Art. I, s. 24(c).

- Joint resolutions proposing an amendment to the Florida Constitution require a three-fifths vote of the membership of each house of the legislature;¹⁵
- Legislation creating a special election for voter approval of a constitutional amendment proposed by joint resolution, a report of a revision commission, a constitutional convention or the taxation and budget reform commission, requires a three-fourths vote of the membership of each house of the legislature.¹⁶

Supermajority Vote for Amendment to the Florida Constitution

No new state tax or fee may be imposed on or after November 8, 1994, by any amendments to the Florida Constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this constitutional provision, the phrase “new state tax or fee” means any tax or fee which may produce revenue subject to lump sum or other appropriation by the legislature, either for the state general revenue or any trust fund, which tax is not in effect on November 7, 1994, including without limitation such taxes and fees as are subject of proposed constitutional amendments appearing on the ballot on November 8, 1994.¹⁷

All other amendments to the Florida constitution require only a sixty percent approval of the electors voting on the amendment.¹⁸

Supermajority Vote in Other States

According to 2015 National Conference of State Legislators (NCSL) report, fifteen states have a supermajority vote requirement for all or some types of tax increases.¹⁹ These states include:

- Arizona (2/3) for all taxes;²⁰
- Arkansas (3/4) for all taxes except sales and alcohol;²¹
- California (2/3) for all taxes;²²
- Delaware (3/5) for all taxes;²³
- Florida (3/5) for corporate income tax;
- Kentucky (3/5) for all taxes;²⁴

¹⁵ Fla. Const. Art. XI, s. 1.

¹⁶ Fla. Const. Art. XI, s. 5(a).

¹⁷ Fla. Const. Art. XI, s. 7.

¹⁸ Fla. Const. Art. S. 5(e).

¹⁹ National Conference of State Legislatures, *Supermajority Vote Requirements to Pass Budgets*.

<http://www.ncsl.org/research/fiscal-policy/supermajority-vote-requirements-to-pass-the-budget635542510.aspx> (last visited 12/07/17).

²⁰ Ariz. Const. Art. IX, s. 22.

²¹ Ark. Const. Art. V, s. 38.

²² Cal. Const. Art. XIII, s. 3.

²³ Del. Const. Art. VIII, s. 10.

²⁴ Ky. Const. s. 36(1).

- Louisiana (2/3) for all taxes;²⁵
- Michigan (3/4) state property tax;²⁶
- Mississippi (3/5) for all taxes;²⁷
- Missouri (2/3) for all taxes;²⁸
- Nevada (2/3) for all taxes;²⁹
- Oklahoma (3/4) for all taxes;³⁰
- Oregon (3/5) for all taxes;³¹
- South Dakota (2/3) for all taxes;³²
- Wisconsin (2/3) sales, income, and franchise taxes.³³

Three states require a supermajority vote for approval of the state budget.³⁴

B. EFFECT OF PROPOSED CHANGES:

The proposal requires that any law that imposes a new state tax or fee or raises a state tax or fee be passed by a two-thirds vote of the membership of each house of the legislature.

A “fee” is defined as “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.” “Raise” is defined as an increase in the rate of a state tax or fee imposed on a percentage or per-mill basis; an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or to decrease or eliminate a state tax or fee exemption or credit.

The proposal provides that this new provision “does not apply to any tax or fee imposed by a county, municipality, school board, or special district.”

C. FISCAL IMPACT:

A Florida House of Representative staff analysis from the Ways and Means Committee of Proposed Committee Bill WMC 18-01 (2018), a similar proposal to CRC Proposal 72, provided the following:

“The Revenue Estimating Conference (REC) has not adopted an official estimate of the joint resolution’s impact. However, based on past REC decisions, staff concludes that the

²⁵ La. Const. Art. VII, s. 2.

²⁶ Mich. Const. Art. IX, s. 3.

²⁷ Miss. Const. Art. IV, s. 70.

²⁸ Mo. Const. Art. X, ss.16-20.

²⁹ Nev. Const. Art. IV, s. 18(2).

³⁰ Okla. Const. Art. V, s. 33(D). The Oklahoma Supreme Court recently ruled that repealing a sales tax exemption on automobile sales did not trigger the three-fourths requirement. *See Okla. Automobile Dealers Assoc. v. State*, 401 P.3d 1152 (Okla. 2017).

³¹ Or. Const. Art. IV, s. 25(2).

³² S.D. Const. Art. XI, ss. 13-14.

³³ National Conference of State Legislatures, *Supermajority Vote Requirements to Pass Budgets*.

<http://www.ncsl.org/research/fiscal-policy/supermajority-vote-requirements-to-pass-the-budget635542510.aspx> (last visited 12/07/17).

³⁴ *Id.*

state revenue impact will be either zero, if voters disapprove, or negative indeterminate if approved. The proposed amendment creates a new constraint on the Legislature's ability to impose or raise state taxes or fees. The timing and magnitude of the negative revenue impact cannot be determined."³⁵

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

³⁵ See *Florida House of Representative Staff Analysis of Proposed Committee Bill PCB WMC 18-01 (2018)*, prepared by the Ways and Means Committee of the Florida House of Representatives. [http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2924&Session=2018&DocumentType=proposed committee bill analyses&FileName=pcb01b.WMC.pdf](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2924&Session=2018&DocumentType=proposed%20committee%20bill%20analyses&FileName=pcb01b.WMC.pdf) (last visited 12/7/17). PCB WMC 18-01 is now listed as HJR 7001 by Ways and Means Committee and Rep. Leek. <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=60576> (last visited 12/7/17).