

SUPER MAJORITY VOTE REQUIREMENT
FOR NEW OR INCREASED TAXES
Report and Commentary

The draft of a proposed constitutional amendment accompanying this Report and Commentary seeks to establish a procedural limit on the power to tax in the form of a super majority requirement for new taxes or tax increases. The Commission, on recommendation of its Committee on a Super Majority Vote Requirement (hereinafter "Committee"), concluded that a super majority requirement is an appropriate safeguard for the people against unlimited increases in taxes.

This conclusion is based on the assumption that fundamental tax reform will occur before or at approximately the same time as the constitutional changes that include the super majority requirement. It is further assumed that fundamental reform will eliminate the completely inflexible limits on taxation in the present constitution.

The super majority requirement is viewed as a means of assuring Alabama's voters of procedural restraints on taxation in exchange for removing the completely inflexible caps on taxes in the present constitution. Fundamental tax reform is not possible with the current constitutional provisions.

The Commission understands that Alabama's voters are averse to increases in taxation and hopes to assure them that eliminating the caps on taxation in our current constitution will not leave them vulnerable to ill-considered and unlimited tax increases in the future. The super majority requirement for passage of tax increases will assure serious consideration and a broad consensus of the need.

The draft limits new taxes and increases in taxes. It does not directly limit expenditures, which would be difficult to execute in light of the many different forms expenditures can take: pass-through of federal grants, mandates on local governments, expenditures of user fee income. In effect, however, the draft limits expenditures as well as taxes because it assumes that the balanced budget provisions (Amendment 36) will remain in effect.

The draft limits taxes, but not fees and licenses. The Committee concluded that user fees should be left to the discretion of the Legislature and State agencies. The Committee believed that it is unnecessary to limit license fees and other fees because the political process will prevent the Legislature and State agencies from imposing excessive fees. At least one member of the Committee strongly supported the concept of making fees, as well as taxes, subject to the three-fifths requirement.

The Committee concluded that the super majority requirement should be measured with reference to all the members of each House. Serious consideration was given to requiring 3/5 of a quorum, but this was rejected because it had only a negligible effect on the number of votes required to pass legislation. In the Senate, a majority of a quorum is 10, 3/5 of a quorum would be 11. Three-fifths of the whole Senate would be 21. The Committee concluded that if a change is to be made it should be a meaningful change and therefore recommended three-fifths of the whole membership of each House, and that is the recommendation of the Commission. Some members of the Committee also recommended that if the Legislature rejects the proposal for a three-fifths super majority, the Legislature should at a minimum require that tax increases be approved by a majority of all the members of each house, which would be 18 in the Senate and 53 in the House.

Under present law, many tax increases require constitutional amendments. Constitutional amendments require a three-fifths vote of all the members of each house. Requiring approval by three-fifths of all the members is consistent with the level of supermajority required when constitutional amendments are required to authorize tax increases.

The Commission believes that the three-fifths supermajority must apply to each stage of the passage of a tax bill if it is to be effective. The draft therefore specifies that the supermajority requirement applies to the concurrence with executive amendments, reports of a committee on conference, and to amendments from the other house, which result in the imposition of a new tax or increase in an existing tax. It is not intended to require a supermajority for any legislative actions except final passage. Committee votes and floor amendments would not be subject to the supermajority rule.

The draft reflects a belief that the supermajority requirement should apply to all rate increases. Thus a change in the income tax increasing rates for high income taxpayers and decreasing rates for low income taxpayers would require a supermajority even if the effects were offsetting and the net effect was revenue neutral.

The draft also reflects a belief that the supermajority requirement must apply to all net increases in any tax. This is because there are many ways to increase taxes without increasing rates, e.g., reduce deductions, eliminate exemptions, reduce credits, change the classification of items. The rule will apply tax by tax; an increase in one tax that is offset by a decrease in a different tax will require a supermajority for the tax increase. On the other hand, offsetting changes within a tax, e.g.,

eliminating one exemption from sales tax and adding another, will not require a super majority unless the net revenue from the tax is increased.

The determination whether a tax will be increased by a change will be a crucial part of implementing this draft amendment. This determination will necessarily be based on an estimate of the revenue effect. The Committee felt that it was inappropriate to specify in detail which agency will make the estimate or how the estimate will be made. This constitutional provision may be in effect for many years and the present institutional arrangements of estimating revenues may change during that period. The Committee did not wish to bind future generations with overly detailed procedures.

The draft provides for the determination of a baseline for measuring whether revenues have increased. If the super majority rule does not specify general principles for arriving at the baseline, the process could be manipulated and the super majority rule circumvented. The baseline specified is the average revenue for three years preceding the tax increase. It is important that the baseline use revenue for more than one year to even out fluctuations in revenue arising from different economic conditions or changes in the administration of a tax. The draft specifies three years, which is long enough to smooth out unusual events but is not so long that it becomes burdensome to work with. The revenues for each of the three years must be adjusted for inflation in order to provide an accurate baseline.

The following example illustrates the problem:

Year	Revenue	Inflation
1	\$100	5%
2	\$105	2%
3.	\$107.1	3%
4.	\$110.313	

Average of years 1-3: \$104.03, which is obviously wrong as the baseline for determining whether the tax has been increased. The proper baseline for determining whether a change proposed in year 4 will increase taxes is \$110.313, which is the revenue that would be expected if no change were made. If each of the three years in the base period is adjusted to year four by the known inflation rates during the base period, the average of the

inflation adjusted results will yield the correct answer: \$110.313. The draft specifies this result.

The Legislature has the inherent authority to enact legislation carrying out this and other constitutional amendments; therefore the proposal does not include any direction to the Legislature with respect to implementing this proposal.

PROPOSED CONSTITUTIONAL AMENDMENT
REGARDING SUPER MAJORITY VOTE REQUIREMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SYNOPSIS: This bill proposes an amendment to the Constitution of Alabama of 1901 to adopt a new section of the Constitution of Alabama of 1901 to establish a procedural limit on the power to tax in the form of a supermajority requirement for new taxes or tax increases.

A B I L L
T O B E E N T I T L E D
A N A C T

Proposing an amendment to the Constitution of Alabama of 1901 adding a new section to establish a procedural limit on the power to tax in the form of a supermajority requirement of three-fifths (3/5) of the members of each house of the legislature for new taxes and for tax increases.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The following amendment to the
2 Constitution of Alabama of 1901 is hereby proposed, and
3 shall become valid as a part thereof when approved by a
4 majority of the qualified electors of the State voting
5 thereon and in accordance with Sections 284, 285 and 287 of
6 the Constitution of Alabama of 1901, as amended.

7 Proposed Amendment

8 "No general bill imposing a new tax or increasing
9 the rate of or revenue from an existing tax shall
10 become law unless it receives an affirmative vote of
11 3/5 of the elected members of each house of the
12 Legislature. No concurrence in an executive amendment,
13 a report of a committee on conference, or to an
14 amendment from the other house that results in the
15 imposition of a new tax, or an increase in the rate of
16 or revenue from an existing tax shall be given any
17 effect unless it receives an affirmative vote of 3/5
18 of the elected members of each house of the
19 Legislature. For purposes of this section, changes in
20 deductions, exemptions, classifications, credits,
21 allowances, and other items entering into the
22 determination of the amount of a tax shall be treated
23 as increasing tax revenue if the estimated revenue
24 from the tax after the change exceeds the average

1 revenue from the tax for the preceding three years,
2 each year being adjusted for inflation."

3 Section 2. Unless otherwise provided by the
4 Legislature, an election upon the proposed amendment is
5 ordered to be held on the date of the first statewide
6 general or special election held in the State after the
7 expiration of three months from final adjournment of the
8 session of the Legislature at which the act proposing the
9 amendment hereinabove proposed is adopted. The election
10 shall be held in accordance with the provisions of Section
11 284 and 285 of the Constitution of Alabama of 1901, as
12 amended, and the general election laws of the State.

13 Section 3. Notice of the election and of the
14 proposed amendment shall be given by proclamation of the
15 Governor, which proclamation shall be published once a week
16 for four successive weeks next preceding the day appointed
17 for the election in a newspaper in each county of the
18 State. In every county in which no newspaper is published,
19 a copy of the notice shall be posted at each courthouse and
20 post office in such county.