Ballot Proposal 5 of 2012

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

2/3 MAJORITY VOTE FOR STATE TAXES

Ballot Proposal 2012-5
November 2012 General Election
Placed on the ballot by Initiative Petition

Complete to 10-10-12

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

A PROPOSAL TO AMEND THE STATE CONSTITUTION TO LIMIT THE ENACTMENT OF NEW TAXES BY STATE GOVERNMENT

This proposal would:

Require a 2/3 majority vote of the State House and the State Senate, or a statewide vote of the people at a November election, in order for the State of Michigan to impose new or additional taxes on taxpayers or expand the base of taxation or increasing the rate of taxation.

This section shall in no way be construed to limit or modify tax limitations otherwise created in this Constitution.

Should this proposal be approved?

YES __
NO __

BRIEF SUMMARY: A "yes" vote would put the 2/3 majority vote requirement and statewide vote requirement in the State Constitution. A "no" vote would leave the constitution as it is. The question was put on the ballot by petitions submitted by the Michigan Alliance for Prosperity. Its website is http://miprosperity.com/. An opposition group has been formed, Defend Michigan Democracy. Its website, with a list of members, is: http://www.defendmichigandemocracy.com/.

FISCAL IMPACT: This supermajority/public referendum requirement would make it more difficult for the State to increase state taxes whether by imposing a new tax, or by expanding the tax base or increasing the rate of an existing tax. However, the Legislature could, by a simple majority, increase taxes by eliminating a tax credit (personal or corporate income tax) and increase revenue through user fees and charges. In addition, since expenditures are linked to revenue, to the extent that state taxes or revenue are reduced or not as easily increased, state expenditures will also be limited or contained. The largest categories of state expenditures from state revenue (not including federal revenue) are education, community health, transportation, and corrections. This proposal would not affect locally raised revenue; however, it could limit state payments to local units. This supermajority requirement applies to tax increases, but not to tax decreases.

A DESCRIPTION OF THE PROPOSAL:

Proposal 2012-05 would require a two-thirds vote of the members serving in each chamber of the Michigan Legislature (House of Representatives and Senate) or a vote of the Michigan electors at a November election to (1) impose new state taxes, (2) expand the base of an existing state tax, or (3) increase the rate of an existing state tax.

This supermajority/referendum requirement would apply to all state taxes, but not to state user fees or charges, such as driver's license fees, motor vehicle registration fees, recreation and hunting fees, and various business fees. In general, taxes are levied for the general operations of government for the public benefit and are compulsory, while user fees or charges reflect the cost of a given service or good, in some cases are for a regulatory purpose, and are viewed as voluntary. However, in some instances, it is difficult to discern whether a particular assessment should be considered a tax or a fee. For instance, the recently enacted health insurance claims assessment arguably has characteristics of both a tax and a fee. Thus, if the proposal is adopted, the courts may play a role in defining what is a "tax" for these purposes.

This constitutional amendment would not prevent an increase of taxes through the elimination of tax credits, such as the earned income tax credit or the homestead property tax credit under the personal income tax or the small business tax credit under the corporate income tax. Both the personal income tax and the corporate income tax are outlined in the Income Tax Act of 1967, which was recently modified by PA 38 of 2011. Although the tax base is not specifically defined in the act, the term "taxable income" is defined, and it is generally used interchangeably with tax base. The tax base is the amount of income subject to tax that is multiplied by the tax rate. Credits reduce tax liability and are included in the final tax calculation after the tax rate is applied to the tax base.

Tax exemptions and deductions do, however, presumably affect the tax base, and so the supermajority/public referendum requirement would apply to the reduction or elimination of exemptions and deductions.

This proposal does not apply to local taxes. Currently, there are constitutional provisions that require local units of government to obtain the approval of a majority of voters for any new tax or for increasing the rate of any existing tax (Article IX, Section 31).

BACKGROUND INFORMATION:

Supermajority Requirements in Other States

Seventeen states impose supermajority rules for enacting certain tax increases. Constitutional requirements exist in 12 states; these are more difficult to alter than statutory laws. States with statutory requirements can amend the requirement by a simple majority vote. The following table describes various state tax limitations.

States with Legislative Supermajority Requirements to Raise Taxes

State	Year Adopted	Vote Required	Relevant Taxes	Legal Basis
Arizona	1992	2/3	All	Constitutional
Arkansas	1934	3/4	All except sales & alcohol	Statutory
California	1979	2/3	All	Constitutional
Colorado	1992	2/3	All	Constitutional
Delaware	1980	3/5	All	Constitutional
Florida	1971	3/5	Corporate income tax	Statutory[1]
Kentucky	2000	3/5	All	Statutory[2]
Louisiana	1966	2/3	All	Constitutional
Michigan	1994	3/4	State property tax	Constitutional
Mississippi	1970	3/5	All	Constitutional
Missouri	1996	2/3	All	Statutory[3]
Nevada	1992	2/3	All	Constitutional
Oklahoma	1992	3/4	All	Constitutional
Oregon	1996	3/5	All	Constitutional
South Dakota	1996	2/3	All	Constitutional
Washington	1993	2/3	All	Constitutional[4]
Wisconsin	2011	2/3	Sales, income, & franchise tax	Statutory

[1] Constitution limits corporate income tax rate to 5%. A 3/5 vote in the Legislature is needed to surpass 5%. If voters are asked to approve a tax increase, it must be approved by 60% of those voting to pass.

[2] Tax and fee increases can be voted on by the Legislature in odd-numbered years.

[3] If the governor declares an emergency, the Legislature can raise taxes by a 2/3 legislative vote; otherwise, tax increases over approximately $70 million must be approved by a vote of the people.

[4] Tax increases producing revenue that do not exceed the spending limit must be approved by 2/3 legislative vote; tax increases that produce revenue over the limit must receive 2/3 approval by the Legislature and voters. The 2/3 tax increase supermajority was suspended for two years and reduced to a simple majority through June 30, 2007, by legislation enacted in April 2005.

(Source: National Conference of State Legislatures; Center on Budget and Policy Priorities)

Constitutional Revenue and Spending Limitations under the Headlee Amendment
In 1978, voters approved the Headlee Amendment to the State Constitution, which limits state revenue and expenditures, and imposes other limits related to local units of government.

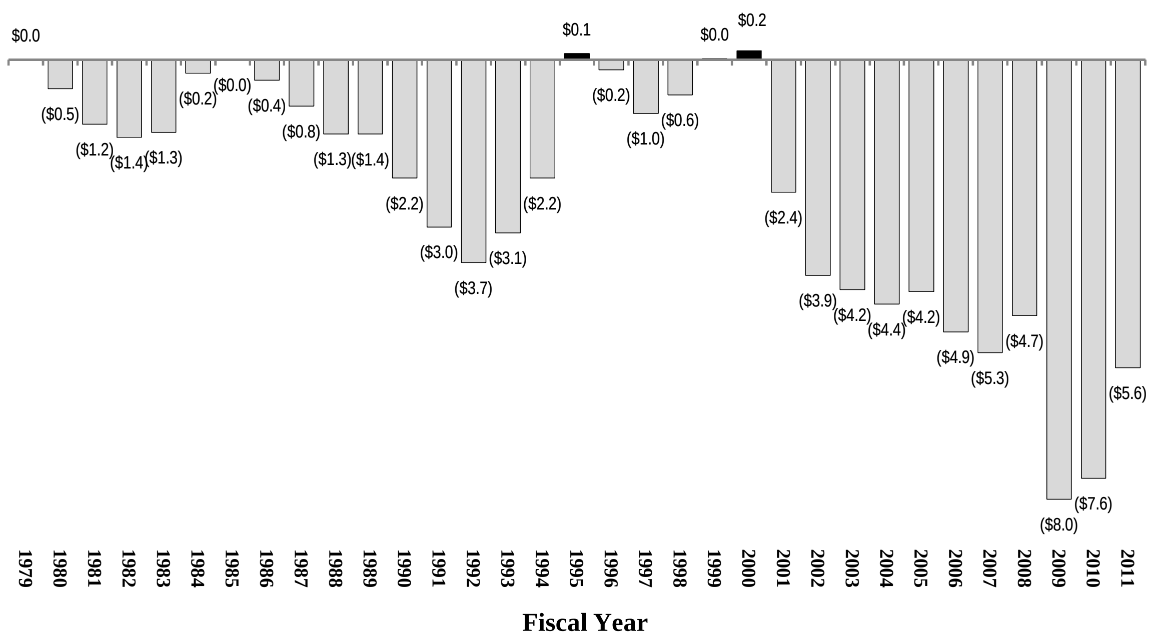
Article IX, Section 26 limits revenue, except federal aid, collected by the State and describes what must be done if the State exceeds this revenue limit. The revenue limitation is, generally, 9.49% of state personal income for the previous calendar year (or the average of the three previous calendar years, whichever is greater). Thus, the revenue limit changes from year to year and increases or decreases as personal income increases or decreases.

If the revenue is over the limit by one percent or more, the excess is returned to taxpayers. However, if the revenue exceeds the limit by less than one percent, then the extra revenue may be transferred to the Budget Stabilization Fund (BSF). The BSF or the "rainy day fund" is intended to be a fund in which revenues are deposited when the state's economy and revenues are expanding and from which revenues are withdrawn when the economy and revenues are declining.

Article IX, Section 27 establishes emergency procedures for the raising of revenue over the 9.49% limit. The Governor must request the Legislature to declare a state of emergency, specifying what the emergency is, the dollar amount of the emergency, and the method by which it will be funded. The Legislature may then pass the emergency increase with a 2/3 vote of the members in each house.

Since FY 2000-01, state revenues have consistently been under the constitutional revenue limit by amounts ranging from $2.4 to $8.0 billion. In FY 2010-11, revenue was under the limit by $5.6 billion. See the chart below for the history of the revenue limit.

Figure 1
State Revenue Collections Below Constitutional Revenue Limit
Billions of Dollars



ARGUMENTS MADE BY PROPONENTS:

** Proponents favor a lower level of government spending and say that the putting a supermajority requirement for tax increases into the State Constitution will, obviously, make it more difficult to raise state taxes. It prevents the Legislature from dealing with difficult fiscal problems with the simplest of answers. Instead, the 2/3 requirement makes the Legislature look first to cost savings and budget reductions.

** Proponents also argue that making it harder for the Legislature to raise taxes will put greater emphasis on government reform, prioritizing of spending, and fiscal responsibility.

** Supporters say the supermajority requirement will encourage consensus across party lines because one party with a narrow majority in both the House and Senate could not alone raise taxes.

** Supporters note that supermajorities are required elsewhere in the State Constitution and so this will not be a unique provision. Moreover, a simple majority vote of the people at a general election will also allow for new and expanded taxes where there is strong public pressure that elected representatives ignore.

ARGUMENTS MADE BY OPPONENTS:

** Opponents say that the constitutional amendment would tie the Legislature's hands in unintended ways. For example, say that legislation is proposed that would eliminate or greatly reduce one tax and raise rates in an existing tax or institute a new tax. This could be for the purpose of promoting an improved business climate or to increase tax fairness or to make the tax system simpler and easier to comply with and enforce. Yet under the supermajority requirement, while an onerous tax could be eliminated by a simple majority any legislation to replace the revenue would require a supermajority. This explains, in part, why certain business groups that typically advocate for lower taxes, such as the Michigan Chamber of Commerce and Business Leaders of Michigan, are opposing the proposed constitutional amendment. By closing off policy options, the constitutional requirement may well leave certain harmful and/or unpopular taxes in place by default. Some argue a lack of flexibility could also negatively affect the state's bond rating by making the state appear a less reliable borrower.

** Some fear that by limiting only state taxes, the constitutional amendment would lead to a reliance at the <u>state level</u> on fee increases, whether user fees, license fees, or other kinds of assessments that would not be subject to a supermajority vote. Also, <u>local units</u> could be affected negatively in two ways: from a reduction in the distribution of state revenues to local governments and from increases in local taxes required for the continued support of essential operations and programs with popular support.

** Critics ask, What problem does this proposal address? In recent years the Legislature has been sensitive to public opinion on the issue of taxes. Currently, the State Constitution limits the amount of revenue the state can raise as a percentage of personal income. While two decades ago taxes had to be rolled back so that revenue remained under the cap, today revenue is far below the cap—by more than $5 billion. (See the chart on Page 4.)

** Opponents say that a supermajority requirement gives enormous power in the Legislature to a minority of legislators, who may represent a relatively small fraction of the population. Remember, legislation must pass both houses of the Legislature, and so a small minority in just one house can block tax legislation under this proposal; as few as 13 state senators could impose their will on the rest of the state. Plus, it gives a privileged position to one point of view, since while a supermajority (or vote of the people) would be required to raise revenue, a reduction in taxes or the elimination of a tax would need only a simple majority vote.

Fiscal Analyst: Rebecca Ross
Legislative Analyst: Chris Couch

■ This analysis was prepared by nonpartisan House staff for use by House members and the general public in their deliberations, and does not constitute an official statement of the intent of the proposal.