CRC MEMORANDUM

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STATEWIDE BALLOT ISSUES: PROPOSAL 2012-05 TWO-THIRDS VOTE TO INCREASE STATE TAXES

CRC's Analysis of State Ballot Issues

This paper is one in a series of papers that analyze the six questions Michigan electors will be voting on at the November 6, 2012, general election. The papers, information about webinars, links to the actual proposed amendments, and ballot language can be accessed at http://election.crcmich.org. The Citizens Research Council of Michigan does not endorse candidates for office or take positions on ballot issues. In analyzing these ballot issues, CRC hopes to provide more information so that voters can make better informed decisions in formulating their vote.

On November 6, 2012, Michigan voters will be asked to amend the 1963 Constitution to require either an affirmative vote of two-thirds of the members serving in each chamber of the Michigan legislature (House of Representatives and Senate), or an affirmative vote of Michigan electors at a November election in order to; a) impose new state taxes, b) expand the base of a state tax, or c) increase the rate of a state tax. Proposal 2012-05, supported by the Michigan Alliance for Prosperity, was placed on the statewide ballot by citizen initiative.

The proposal would add a new Section 26a[1] to Article IX (Finance and Taxation) of the 1963 Michigan Constitution. Proposal 2012-05 provides two methods by which state tax increases may occur, either by a supermajority vote in both chambers of the legislature or by a statewide vote of Michigan electors. This report focuses on the issues and arguments surrounding the former method (legislative supermajority vote), including current supermajority vote requirements, the taxes covered, existing state tax and expenditure limitations, and similar requirements in other states.

What Taxes Are Covered?

It appears, from a straightforward reading, that the proposed amendment would affect only state taxes and not include local taxes within the scope of the two-thirds vote or voter referendum requirement. The placement of the provision suggests that it is intended to apply only to state taxes. Proposal 2012-05 would add a new section (Article IX, Section 26a) to appear immediately after the current state tax/revenue limitations contained in the Michigan Constitution (Article IX, Section 26), and would not modify the present constitutional provision that requires 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). The supermajority vote and voter referendum requirement would apply to all state taxes (e.g., personal and corporate income, sales/use, property, fuel and vehicle registration, and many others), but not state fees or charges (e.g., driver license, recreation, hunting, business, etc.) or the elimination of tax credits (e.g., earned income tax credits or homestead property tax credits). It would

[1] Historically, amendments to the Michigan Constitution that contemplate adding a new section have been numbered, by the author(s), so that they would appear at the end of an article. Proposal 2012-05 breaks with this tradition by wedging a new Section 26a between existing Sections 26 and 27 of Article IX. In terms of constitutional content, this is the appropriate location for the amendment because it is germane to the state revenue limit provisions contained in the surrounding sections; however, the unique numbering construction may create confusion for some people because of the existing Section 26.

Proposal 2012-05

The proposal would add a new section (Section 26a) to Article IX of the Michigan Constitution to provide:

No new or additional taxes shall be imposed by the state government, nor shall it expand the base of taxation, nor shall it increase the rate of taxation unless: (a) by the vote of two-thirds of all the elected members of each branch of the Legislature; or (b) by a statewide vote of Michigan electors at a November election.

This section should in no way be construed to limit or modify the tax limitations otherwise created in this constitution.

apply equally to tax rate increases, tax base expansions for any existing state tax, and enactment of any new state tax.

What is a little less clear from the text of the proposal is whether certain changes to state laws which authorize local governments to levy specific taxes would require a two-thirds vote in each chamber of the Michigan legislature or a voter referendum. All local taxing authority, including rate limitations, has its origins in state law. For example, the authority to levy a city income tax (up to a rate of 1.0 percent for residents and 0.5 percent for nonresident individuals for most cities) is contained in the City Income Tax Act (Public Act 284 of 1964). Currently, a majority vote in each chamber is required to increase the maximum resident income tax rate that a city can impose. (It is currently the case, and it would continue to be so if Proposal 2012-05 is adopted, that local voters must decide whether to levy a city income tax or to increase the rate of an existing tax, up to the state maximum.) However, it is unclear whether a supermajority vote would be required to amend the City Income Tax Act to increase the maximum rate(s) if Proposal 2012-05 is adopted. It is worth noting that the amendment refers to taxes "*imposed* (emphasis) by the state government", rather than those taxes "authorized" by the state. This use of the word "imposed" suggests that only state tax increases would be subject to the higher vote requirement.

Current Supermajority Requirements

In general, nearly all legislative actions require a simple majority vote (affirmative vote of more than one-half of the members elected to a legislative body). However, the Michigan Constitution currently imposes a supermajority requirement (either three-fourths or two-thirds of the members serving in the Senate and in the House of Representatives) in certain instances. For example, a three-fourths vote is required by the legislature to raise school operating ad valorem property tax rates (state and local taxes) above the limits in effect on February 1, 1994 (Article IX, Section 3). This requirement was added as part of the school finance reforms enacted with the adoption of statewide ballot Proposal A in 1994. Also, a three-fourths supermajority vote threshold is required to amend or repeal an initiated law adopted by the voters (Article II, Section 9). The Constitution also requires a two-thirds majority vote in each chamber of the legislature for a number of other specific actions:

- to expel a member of either chamber of the legislature (Article IV, Section 16)
- to give a law immediate effect (Article IV, Section 27)
- to enact local or special acts (Article IV, Section 29)
- to appropriate public money or property for local or private purposes (Article IV, Section 30)

- to override a gubernatorial veto (Article IV, Section 33)
- to amend or repeal a banking law (Article IV, Section 43)
- to remove the auditor general for cause (Article IV, Section 53)
- to establish or alter district courts (Article VI, Section 1)
- to adopt a concurrent resolution asking the governor to remove a judge for reasonable cause (Article VI, Section 25)
- to submit for voter approval a question of long-term borrowing (Article IX, Section 15)
- to declare an emergency in accordance with a request by the governor to allow the state to exceed the revenue limit established in Article IX, Section 26 (Article IX, Section 27)
- to designate any part of state lands as a state land reserve (Article X, Section 5)
- to reject or reduce increases in rates of compensation for state classified civil servants that are authorized by the state Civil Service Commission (Article XI, Section 5)
- to convict civil officers of impeachment for corrupt conduct in office or for crimes or misdemeanors (2/3 in Senate only) (Article XI, Section 7)
- to propose an amendment to the Constitution (Article XII, Section 1)

Other than the possible interaction with Article IX, Section 3, these existing supermajority provisions would not be affected by the new voting requirement included in Proposal 2012-05.

If Proposal 2012-05 is adopted, the Constitution would contain two provisions to require supermajority votes involving taxation, one narrowly focused and one much broader in its scope. Article IX, Section 3 is limited to state and local school operating property tax rates. The new requirement would be much broader and apply to adopting *any* new state tax, raising the rates of *all* existing state taxes, and expanding the base of *all* existing state taxes. Proposal 2012-05 is silent on whether the intended two-thirds vote requirement for "new or additional taxes" is meant to supersede the three-fourths vote requirement for school operating taxes. The two-thirds vote requirement in Proposal 2012-05 would **not** apply when the legislature desires to eliminate a tax, to reduce tax rates, or reduce the tax base. In these instances, a majority vote would be required.

State Tax and Expenditure Limitations

Proposal 2012-05 would add a fifth tax and expenditure limitation (TEL) to the Michigan Constitution. Generally, TELs restrict legislative power in order to constrain the growth of state budgets either on the revenue or expenditure side of the ledger. The proposal represents a different type of TEL from the more traditional methods in that it is designed to make it more difficult for the legislative branch to adopt a new tax, increase the rate of an existing tax, or expand the base of an existing tax. Traditional TELs cap the amount of revenue that state government may collect, in the aggregate, each year or the total amount of spending it may authorize, as opposed to establishing a specific voting threshold. As noted earlier, Michigan currently has a supermajority vote requirement to raise ad valorem property taxes used for school operating purposes.

Michigan currently has constitutional limits on the amount of annual state spending and an annual state revenue limit. As a result of the 1978 comprehensive tax and expenditure limitation amendment, commonly referred to as the Headlee Amendment, the 1963 Constitution contains an overall limitation on total state revenues, excluding federal aid and tax credits. The basic purpose of the limitation is to provide an overall ceiling on total state revenues in relation to total state personal income. Specifically, for a given state fiscal year, Article IX , Section 26 provides a revenue limit equal to 9.49 percent of state personal income in the prior calendar year. For Fiscal Year 2011 (FY2011), total state revenue was $5.6 billion below the constitutional revenue limit

Table 1

State Revenue Limit (Article IX, Section 26) FY2000 to FY2011 (Dollars in Millions)

	Constitutional Revenue Limit	State Revenue Subject to Limit	Amount Under (Over) Limit
FY2000	$24,203	$24,363	($160)
FY2001	26,315	23,908	2,408
FY2002	27,463	23,546	3,917
FY2003	28,243	24,062	4,182
FY2004	28,825	24,385	4,441
FY2005	29,842	25,627	4,216
FY2006	30,760	25,814	4,946
FY2007	31,441	26,118	5,322
FY2008	32,368	27,716	4,652
FY2009	32,825	24,839	7,986
FY2010	33,178	25,573	7,606
FY2011	32,829	27,248	5,581

Amounts under (over) limit may not add because of rounding.

Source: Michigan Department of Technology, Management and Budget, "State of Revenue Subject to Constitutional Limitation – Legal Basis"

(See **Table 1**). In addition to the fixed ratio limit, Section 26 includes separate provisions for the disposition of any revenue in excess of the limit and for adjusting the revenue limit. Section 27 lays out the conditions (e.g., emergency related) under which the revenue limitation can be exceeded.

In addition to subjecting state revenue to an overall limitation, the Headlee Amendment also subjects total state spending to an overall limitation. Section 28 caps state spending in any fiscal year at the amount of the state revenue limitation, plus federal aid and any surplus from a prior year. This provision, in tandem with the revenue limit in Section 26, is a key component of Michigan's balanced budget requirement, which prevents state government from engaging in deficit spending.

The Michigan Constitution has tax limits that address specific taxes. Article IX, Section 7 prohibits income taxes that are graduated in either their rate or base. Article IX, Section 8 limits the rate of sales tax imposed by the state to 6 percent.

Article IX of the Michigan Constitution also contains tax limitations on the imposition of local taxes and the growth of the property tax base. Section 3 limits growth in the taxable value of each parcel of property to the rate of inflation or five percent, whichever is less until ownership of the parcel of property is transferred. Section 31 limits the rate of growth in tax revenues for local units of government as a whole to the rate of inflation unless the limitation is overridden by the electors of that governmental unit.

[2] Bert Waisanen, "State Tax and Expenditure Limits – 2008," National Conference of State Legislatures. www.ncsl.org

Requirements in Other States

Many states have traditional TELs and about one-third of the states have some type of supermajority vote requirement to increase taxes (state and/or local taxes). According to the National Conference of State Legislatures (NCSL), 30 states have TELs on the books, either in their constitutions or contained within statutory law.[2] Each state's TEL differs and there is considerable diversity in the architecture, scope and restrictiveness of the various mechanisms employed.

The Center on Budget and Policy Priorities reports that 17 states require some sort of legislative supermajority to pass tax increases.[3] In 2011 Wisconsin adopted a supermajority requirement for raising taxes. Similar to TELs, each state's supermajority vote requirement differs in terms of what taxes are covered, the vote threshold, and the legal basis for the requirement (constitutional or statutory). Nine states have constitutional requirements for supermajority votes to enact tax increases of any type.[4] These are the most restrictive because they apply to all taxes and the requirement resides in the state constitution, as opposed to a state law where the legislature can amend the requirement by a majority vote. If Proposal 2012-05 is adopted, Michigan would join this group of states. Two states, Washington and Wisconsin, also require a two-thirds vote in each legislative chamber to increase major taxes; however, their requirements are contained in statutory law as opposed to the state constitution. In these states, the requirement can be changed by a majority vote of the legislature.

The remaining six states require a supermajority vote in limited circumstances, such as for certain taxes or when the tax increase exceeds a specified revenue threshold.[5] Michigan is currently in this grouping of states because of the three-fourths vote requirement related to school operating tax rate increases. The actual voting threshold varies by state and the most common requirement (nine states) is a two-thirds vote in each chamber of the legislature, followed by a three-fifths vote (five states), and then a three-fourths vote (three states).

Arguments For and Against Proposal 5

The rationale for the adoption of a supermajority requirement is to restrict legislative powers to make it more difficult to enact tax increases or adopt new taxes. These requirements aim to keep taxes low. Academic research to support the ability to achieve this aim is mixed. One study shows that a supermajority vote requirement results in lower taxes (controlling for other factors) compared to tax levels without the requirement present.[6] Other academic research, however, suggests that the vote requirement may affect state tax revenue, but does not affect *total* state revenue.[7] In other words, states often increase other taxes, fees, and charges to make up for reduced tax collections arising from supermajority vote requirements.

[3] Michael Leachman, Nicholas Johnson, and Dylan Grundman, "Six Reasons Why Supermajority Requirements to Raise Taxes are a Bad Idea," Center on Budget and Policy Priorities, February 13, 2012 . www.cbpp.org

[4] Arizona, California, Delaware, Louisiana, Mississippi, Nevada, Oklahoma, Oregon, and South Dakota.

[5] Arkansas, Colorado, Florida, Kentucky, Michigan, and Missouri.

[6] Brian G. Knight, "Supermajority Voting Requirements for Tax Increases: Evidence from the States," Journal of Public Economics, 76 (2000), pp. 41-67.

[7] Meagan M. Jordan and Kim U. Hoffman, "The Revenue Impact of States Legislative Supermajority Voting Requirements," Midsouth Political Science Review, 2009, Vol. 10

CRC has reviewed total state tax revenue trends for several states with two-thirds vote requirements in comparison to Michigan and the U.S. average. The trend data do not suggest that these policies have affected these states differently than the U.S. average. Tax collections are affected by changes in the tax policy, but the major changes appear to be more closely tied to economic fluctuations.

It should be noted, however, that state tax revenue trends to not tell a complete story. Supermajority requirements can be less than effective because policymakers often look to alternative revenue sources, not subject to the provision, when additional revenues are needed. Lawmakers are likely to raise fees and other levies (that would not require supermajority vote requirements) to make up for the inability to raise general state taxes. Similarly, when faced with deteriorating financial circumstances, state policymakers may become more likely to cut state appropriations to sub-state entities (counties, cities, villages, townships, school districts, community colleges, universities, etc.) when they are faced with the inability to raise revenue at the state level. This can result in local property tax rate increases or tuition increases at the state universities to keep whole the budgets of sub-state entities.

Arguments against supermajority requirements focus on the negative consequences. These vote thresholds can make it easier to create special tax breaks (commonly referred to as “loopholes”) than to close them because closing a loophole would represent a tax base expansion. Also, it becomes more difficult to make adjustments in the overall state tax climate when a host of tax changes are proposed (increases in the rate of one or more taxes in exchange for decreases in the rate of one or more other taxes). A majority vote is all that would be required to reduce or eliminate taxes, but a supermajority would be needed to replace some or all of the revenue. Most recently, Michigan significantly reduced business taxes (e.g., eliminated Michigan Business Tax) and replaced some of the lost revenue with a newly enacted Corporate Income Tax and increased personal income taxes (e.g., rate increase and tax base expansions). All of the related tax changes were the result of majority votes in each legislative chamber.

Supermajority vote requirements make it more difficult to respond to financial challenges that might call for additional tax revenues. Nearly all state governments, unlike the federal government, are prohibited from engaging in deficit spending and must maintain balanced budgets, regardless of the presence of an economic downturn. Temporary tax increases occasionally are needed to avoid program cutbacks and eliminations when state economies (and tax revenues) are adversely affected by recession. For these reasons, adoption of a two-thirds vote requirement for tax increases could affect Michigan’s bond rating, which in turn could affect the state’s cost of borrowing. Actions that limit the state’s flexibility to levy taxes could reduce the confidence of the rating agencies that the state will have the ability to apply timely responses to deteriorating financial circumstances.

A requirement for a voter referendum in November will also make it more difficult to respond to financial challenges that might call for additional tax revenues. Michigan election law permits elections to be held in February, May, August, and November. Although general elections (November of even numbered years) have the largest voter participation, economic cycles and the need for financial adjustments do not adhere to elecition date schedules.

Some consider supermajority vote requirements to be undemocratic and anathema to the concept of majority rule that is basic to government policymaking and the legislative process. It is argued that these vote requirements can transfer power from the majority to the minority. While a majority vote is the threshold most often needed in legislative deliberations, a number of the founding fathers did see value in requiring a supermajority vote in certain circumstances. James Madison, writing in Federalist No. 58, noted that the higher threshold would serve as “a shield to some particular interests, and another obstacle generally to hasty and partial measures.” The sentiments of Madison and Alexander Hamilton (Federalist No. 73) in support of a supermajority vote were later reflected in certain, limited instances in the United States Constitution (e.g., amending the Constitution, treaty ratification, presidential veto override, impeaching federal officials, etc.).