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**SFA****BILL ANALYSIS**

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Senate Joint Resolution A (Substitute S-3 as reported)  
Sponsor: Senator Michael J. Bouchard  
Committee: Finance

Date Completed: 5-5-98

### **RATIONALE**

Of the hundreds of votes cast by the Legislature each year, nearly all require a majority vote (50% plus one) in both houses to send legislation to the Governor for his or her signature and enactment. There are some votes, however, that require more than a simple majority for approval. (That is, a so-called supermajority is required.) For instance, a two-thirds vote is required to amend the Banking Code, pass a local act, or submit a constitutional amendment to the voters, and a three-fourths vote is required for the Legislature to amend a law that has been placed in statute by the initiative (the power of the people to propose and enact laws through petition). In addition, Article 9, Section 3 of the State Constitution requires the approval of three-fourths of the members of both houses of the Legislature to increase school operating millage rates.

Many people around the country have for some time argued that the power to establish or increase a tax should require a supermajority vote of Congress for Federal taxes, or the states' legislative bodies for state taxes. Proposals in Congress to require a supermajority vote have thus far failed regarding Federal taxes; however, 13 states besides Michigan have some form of supermajority requirement regarding tax increases. (As stated above, the State Constitution requires a three-fourths vote to increase school operating millage rates.) As the Governor proposed in his 1998 State of the State Address, some people believe that Michigan should place in the State Constitution a further requirement for a supermajority vote to raise certain taxes or establish new taxes.

### **CONTENT**

The joint resolution proposes an amendment to Article IV, Section 26 of the State Constitution to provide that no bill to expand the base of, increase

the rate of, or repeal or reduce an exemption or a credit from, the State income tax, State sales tax, State use tax, or the single business tax, or successor to those taxes could become law without the concurrence of three-fifths of the members elected to and serving in each house of the Legislature.

Further, no bill to impose a tax could become law without the concurrence of three-fifths of the members elected to and serving in each house. This provision would not apply to a bill that amended a tax act that was in effect on the effective date of the joint resolution, and that was not one of the taxes described above. (This would mean, then, that any taxes in effect on the effective date of the joint resolution could be amended by a majority vote of the members of each house, except the income tax, sales tax, use tax, or single business tax.) As used in this manner, "tax" would mean "a public burden imposed generally upon the inhabitants of this state for governmental purposes, without reference to peculiar benefits to particular individuals or property".

The joint resolution would have to be submitted to the voters at the next general election, if two-thirds of the members elected to and serving in each house approved the resolution.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Famous U.S. Supreme Court Chief Justice John Marshall, in an 1819 decision, said that the power to tax involves the power to destroy. Many would agree with that sentiment. Excessive taxation can have a damaging effect on the taxed, stifling people's initiative and fueling resentment toward

the government. Excessive taxes also can lead to excessive government spending, leaving many to conclude that the taxes were not levied for a legitimate purpose, but instead, as a method to redistribute wealth. As such, for the protection of the taxpayers, as well as the institutions and people who depend upon them, taxes should not be established or increased with a simple majority vote; taxation is of such importance that a supermajority vote should be required.

The joint resolution would have several positive benefits. It would help to avoid unnecessary and/or excessive tax increases in the future, simply by the fact that a greater proportion of votes would be needed than are currently required regarding tax measures. The supermajority requirement would require the Legislature to engage in more deliberation when considering a new tax or a tax increase, and likely would require a substantial amount of bipartisan support. For instance, at those times when both houses of the Legislature were dominated by one party, it would require votes from both parties to pass a tax increase. This would, in turn, require the State to work harder to solve its problems, rather than simply increasing revenues and throwing money at those problems.

**Response:** The joint resolution would have limited effect if approved. First, rather than requiring a three-fifths vote, the joint resolution should require a two-thirds vote to increase or establish a new tax. Further, the joint resolution only addresses four existing taxes; those taxes make up approximately 78% of State tax revenues. The joint resolution should include all taxes, new taxes, and tax increases, so that the supermajority requirement could not someday be circumvented.

#### **Supporting Argument**

Even though the State has been successful in cutting taxes recently, many taxpayers feel that they still are taxed too much. If approved, the joint resolution would ensure that it would be harder to achieve agreement on proposals to raise taxes further, thus requiring restraint and consideration regarding both taxation and spending policies. If in the future a tax or tax increase were proposed, the joint resolution would require a broad consensus, and a higher level of accountability than is needed for a simple majority vote. The voters have a great sense of fairness, and deserve to be trusted. If a future tax increase were needed for a legitimate purpose, the public could be expected to accept and react reasonably to a vote increasing the tax, particularly if the people understood that the tax was increased after deliberation, extraordinary effort, and widespread support. The joint resolution

would give the voters the chance to express their feelings on taxes, and protect recent tax cuts from repeal or revision.

#### **Supporting Argument**

Many agree that when term limits are fully implemented the institutional memory of the Legislature will be diminished. Some people feel that with fewer experienced legislators, and with many legislators not concerned about reelection, it will be easier in the future for special interests to advocate tax increases. By requiring a supermajority to increase taxes, the joint resolution would make it more difficult for special interests to succeed.

**Response:** When term limits were first proposed, supporters often said that term limits would work against tax increases, because recently elected officials would be more informed by their constituents compared with long-time legislators who had lost touch with the people.

#### **Opposing Argument**

The joint resolution would give a minority the ability to dictate tax policy. For instance, in the 38-member Senate, 23 affirmative votes would be required to pass a proposed tax increase, meaning that only 16 negative votes would be needed to defeat the proposal. This would promote minority rule and place great power in the hands of the few. While there currently are some votes that require the Legislature to achieve an extraordinary consensus, taxes and tax policies have a long history of requiring a majority vote only. It is questionable why this should be changed after all this time. The voters have the power to elect legislators to represent their wishes, and they authorize their legislators to make decisions regarding tax policy. The requirement of a supermajority would diminish that authority.

#### **Opposing Argument**

The joint resolution would establish a bad public policy, in effect limiting the power of future legislatures to address problems that may arise. Requiring a supermajority likely would lock in inequities that may now exist or surface in the future, and thus make it harder to amend various tax codes and move toward more equitable tax policy. Further, the national, and thus the State, economy could take a severe downturn. Because the State must balance its budget, important services, perhaps vital services, would have to be slashed if the State could not raise taxes. Perhaps before the voters were given the opportunity to establish a supermajority requirement and radically change tax policy in the State, the experiences of

other states with supermajority requirements should be closely examined.

Legislative Analyst: G. Towne

### **FISCAL IMPACT**

The State fiscal impact cannot be determined; however, the resolution would make increasing State taxes more difficult.

Fourteen states impose supermajority requirements to increase state taxes. Seven states have enacted supermajority votes to pass tax increases in the 1990s. The supermajorities vary - seven states impose a two-thirds majority (Arizona, California, Colorado, Louisiana, Nevada, South Dakota, and Washington), four states impose a three-fifths majority (Delaware, Florida, Mississippi, and Oregon), and the remaining two states (Arkansas and Oklahoma) impose a three-fourths majority. In most states, all taxes are included in the supermajority restrictions. In Michigan, a three-fourths majority is required to increase local school operating mills and the State education property tax.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.