STATE REVENUE AND TAX POLICY

Not So Super: Supermajority Proposal Endangers Montanans

January 2021

This legislative session could bring a dangerous proposal to require a supermajority of the Legislature to consider increases to taxes or fees, shifting significant power to just a handful of legislators.[1] Most legislative bills, including tax cuts, require only a simple majority, or just more than half of each house, to pass. Supermajority rules require two-thirds or even three-fourths of each house of the Legislature to support any measures that raise revenue.

Supermajority proposals severely limit the ability of the state to pay for public education, long-term care for our elderly to live with dignity, and infrastructure in our communities. They have an undemocratic history, stemming from racist Jim Crow era policies that sought to keep wealthy white landowners from funding public education for recently freed Black Americans. Montana would do well to stop any supermajority proposals in their tracks.

Supermajority vote rules, designed to protect tax breaks for special interests, could decimate critical investments in education and infrastructure.

Supermajority Rules Protect Loopholes That Benefit Special Interests

Montana's tax code is riddled with tax loopholes that special interests have put in place over several decades. All told, these deductions and tax credits cost our state tens of millions in lost revenue every year.[2] A supermajority rule would make it more difficult for policymakers to remove these tax breaks. Instead, a handful of out-of-state corporations and super-wealthy individuals would be able to use these tax loopholes to avoid contributing equally to the Montana we love.

Supermajority Rules Shift Costs to Average Montana Families

When the wealthiest fail to pay their fair share, local communities, residential property taxpayers, and average families are asked to pay more when demand for public services increase.[3] For example, in part due to increasing property tax exemptions, in the last few decades, the share of property taxes falling on the backs of homeowners has risen, from less than one-third in 1994 to almost half today.[4] Under a supermajority rule, revenue shortfalls could force local school districts and municipalities to ask residents to pay an even greater share.[5]

States that have supermajority requirements for raising revenue do not have these same requirements for cutting taxes and budgets. The result often is that over time, the state's tax base and revenue shrink, and lawmakers struggle to pass even modest proposals to increase revenue and ensure the state can provide adequate services for our communities.

States with Supermajority Rules Face Serious Budget and Economic Problems

States such as Oklahoma and Nevada have struggled to adequately fund state budget needs as a result of their supermajority rules. Since Oklahoma's supermajority was put in place in 1992, disinvestment has been widespread. The state made the largest cuts to school funding in the nation and decimated mental health funding.[6] These deep tax cuts resulted in far greater revenue losses than originally projected for Oklahoma. In 2018, Oklahoma lawmakers within the majority leadership called for reconsideration of the supermajority rule, acknowledging that it has been "impossible to pass necessary revenue measures to provide for adequate core services in Oklahoma."[7] Nevada's state and local school districts have cut support for K-12 education by nearly 20 percent over the past decade.[8]

Supermajority requirements have been particularly devastating for infrastructure, such as highway construction. Federal highway dollars require matching state funds often funded through state gas tax revenue. Of the seven strict supermajority states, five of them have not raised their gas taxes in more than 25 years, resulting in deteriorating infrastructure.[9]

A supermajority rule can also have a significant impact on a state's bond rating. Rating agencies have explicitly stated that supermajority rules can reduce a state's creditworthiness. For example, one rating agency, Moody's Investors Services, cited the broad supermajority vote rules in Nevada and Arizona as reasons for downgrading their credit rating.[10] In 2018, credit rating agencies raised concerns about the ballot initiative passed in Florida to impose a supermajority rule, putting at risk the state's AAA bond rating.[11] Montana has a very strong "Aa1" credit rating due to its responsible fiscal management, an above average debt and pension obligation, and a stable, diversified, growing economy.[12] Montana's credit rating has a direct impact on local schools and governments that often rely on the state's credit rating for their own borrowing costs for new schools and infrastructure.

Supermajority Rules Are Undemocratic

One need only look to our founding fathers for insight into how supermajority vote requirements stymie our democratic process. As James Madison noted, requirements for a supermajority to pass laws go against the "fundamental principle of free government."[13] After the Civil War, state efforts to enact supermajority rules were closely linked to the Jim Crow era and efforts to defund schools and other services for Black Americans. States such as Mississippi, Louisiana, and Arkansas put in place these types of rules to protect a small group of wealthy white landowners from potential tax increases.[14] Supermajority rules have since spread across the country. Today, 17 states have some form of supermajority requirement related to taxation.[15]

In Montana, a two-thirds supermajority requirement would only require 34 representatives to block a revenue proposal, obstructing the representation of more than 650,000 Montanans. Legislators in the state's House of Representatives each serve about 9,800 Montanans, so a supermajority vote would allow just 330,000 Montanans' representation to supersede the voices of twice that many – more than 650,000 Montanans.[16]

Conclusion

Montana can learn from the cautionary tales of other states, where supermajority rules have benefited a few at a great cost to their budgets, economies, and communities. In Montana, a supermajority rule would further hamstring our Legislature's efforts to close costly and unfair tax loopholes for special interests. This lack of control over the state budget could prove especially harmful amid the COVID-19 pandemic and recession, when the need for government services and other interventions are high. To protect against senseless cuts to education and social services now and in the future, Montana policymakers should vote against this unfair and dangerous policy proposal.

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[1] Dennison, M., "Document Outlines GOP's Potential Legislative Agenda Under GOP Governor," KTVH, Oct. 30, 2020.

[2] Tax expenditures include individual income tax breaks, like the state deduction for federal taxes paid and the tax credit on capital gains income; corporate income tax breaks, like the water's edge election and charitable endowment credit; and natural resource tax breaks, like the oil and gas tax holiday. For the list of tax expenditures, see Montana Department of Revenue, "Biennial Report: July 1, 2016 – June 30, 2018," Dec. 2018.

[3] Center on Budget & Policy Priorities, "Policy Basics: State Supermajority Rules to Raise Revenue," Feb. 5, 2018.

[4] Dale, E, Montana Department of Revenue, "RE: updated property taxes by class," email to Rose Bender, MBPC, Nov. 9, 2020, on file with author.

[5] While some proposals include a supermajority vote for fees, it is unclear the extent to which this requirement would cover some fees at a local level, such as tuition and other service fees.

[6] Perry, G., "SQ 640 has made Oklahoma ungovernable," Oklahoma Policy Institute, Dec. 14, 2017.

[7] Denwalt, D., "Oklahoma House leader wants public vote on whether to make raising taxes easier," NewsOK, Jan. 10, 2018.

[8] Leachman, M., Masterson, K., and Figuero, E., "A Punishing Decade for School Funding," Center on Budget & Policy Priorities, Nov. 29, 2017.

[9] Institute on Taxation and Economic Policy, "How Long Has it Been Since Your State Raised its Gas Tax?" Feb. 26, 2020. "Leachman, M., Johnson, N., and Grundman, D., "Six Reasons Why Supermajority Requirements to Raise Taxes Are a Bad Idea," Center on Budget & Policy Priorities, Feb. 14, 2012.

[10] "Leachman, M., Johnson, N., and Grundman, D., "Six Reasons Why Supermajority Requirements to Raise Taxes Are a Bad Idea," Center on Budget & Policy Priorities, Feb. 14, 2012.

[11] Sigo, S., "Initiative to impose voting limits on tax hikes may be 'disastrous' for Florida," The Bond Buyer, Oct. 3, 2018.

[12] Moody's Investors Service, "Rating Action: Moody's Assigns Aa1 to Montana's Series 2020G,H,I&J GO bonds; outlook stable," Sept. 9, 2020.

[13] Carlos Ordonez, J., "The Founding Fathers would lead the fight against Measure 104," Oregon Center for Public Policy, Oct. 26, 2018.

[14] Leachman, M., et al., "Advancing Racial Equity with State Tax Policy," Center on Budget & Policy Priorities, Nov. 15, 2018.

[15] Florida voters passed a supermajority rule on the November 2018 ballot, bringing the total to 17 states. See Center on Budget & Policy Priorities, "Policy Basics: State Supermajority Rules to Raise Revenues."

[16] MBPC calculations using National Conference of State Legislatures, "2010 Constituents Per State Legislative District Table," Dec. 2020.