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General Government Division

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June 2, 1998

The Honorable Larry E. Craig
United States Senate

Subject: State Supermajority Requirements

Dear Senator Craig:

In response to your request, this letter provides information on revenue actions taken in states with and without supermajority requirements for tax and other revenue increases from 1988 to 1997. Supermajority rules are typically constitutional requirements that tax increases be passed by a two-thirds, three-fifths, or three-fourths vote in both houses of a state legislature. While a few states have had such requirements for many years, several more have adopted rules of this type in the last 6 years. Recently, proposals have been made to amend the federal Constitution to require a supermajority for federal tax increases.[1] As agreed with your office, the objectives of our work were to identify states with supermajority rules and, using available data from the National Conference of State Legislatures (NCSL), compare tax and other revenue actions taken by these states with actions taken in states without these requirements.

RESULTS

Thirteen states now have some form of supermajority requirement. These requirements differ among the states. In about half of the 13 states, supermajorities in the state legislature must approve tax increases, and the rule applies broadly to all state taxes and other types of revenue. In the other states, either the supermajority rule applies only to some taxes or certain tax rates, or a simple majority in the state legislature can pass a tax increase with voter approval. Because of the differences in scope, any effects of supermajority rules could vary among supermajority states.

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[1]For a summary of tax limitation proposals in the 104th and 105th Congresses, see U.S. Library of Congress, Congressional Research Service, Tax Legislation: Procedural Considerations and Proposals for Constitutional Limitations Together with Data on Major Tax Acts, by James V. Saturno and Louis Alan Talley, CRS report 97-578 GOV (Washington, D.C.: Sept. 23, 1997).

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On average, between 1988 and 1997, about 50 percent of supermajority states acted to increase revenue per year, while about 57 percentage of nonsupermajority states did so. Tax and other revenue increases were, on average, larger in supermajority states than in other states. States with broadly applied supermajority rules raised revenue less frequently on average than other supermajority states or nonsupermajority states; but on average, the estimated first-year revenue effects of their changes were larger. Further analysis that controlled for other factors that might influence states' decisions about raising revenues would be needed before any conclusions could be reached on how supermajority limits have affected states' decisions about whether and how to raise revenues.

SCOPE AND METHODOLOGY

To identify which states have supermajority requirements, we reviewed available literature on state supermajority requirements and other types of state tax and expenditure limitations.[2] To understand how these rules work, we reviewed the constitutional provisions in states identified as having supermajority rules. We then used data, collected by NCSL on tax and other revenue actions taken by states from 1988 to 1997, to compare the frequency of revenue increases and the size of revenue actions taken in states with and without supermajority requirements.[3] We did not independently verify the NCSL data.

In its annual State Tax Actions publications, NCSL gathers data from state budget officials on the tax and revenue changes that have taken place in the legislative sessions during the year. The NCSL publications describe and present data on the tax and other revenue changes made by states during each year and include estimates of the resulting revenue increase or decrease for the current and following fiscal year. When a state made several tax changes, NCSL described the changes and reported a revenue estimate for each change. When several actions were taken, the reported revenue effects from the actions were added to determine a total change amount for the state for the year. If some actions were estimated to raise revenue while others were estimated to reduce revenue, the total for the state was a net figure of the revenue gains less reductions.

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[2]See Mandy Rafool, "State Tax and Expenditure Limits," National Conference of State Legislatures, Legislative Finance Paper 104, November 1996; and National Association of State Budget Officers, "Budget Processes in the States," Sept. 1997, Tax and Expenditure Limitations: Table M (at http://www.nasbo.org/pubs/budpro/tm.htm).

[3]NCSL data was published in "State Budget and Tax Actions," 1988-1991, and "State Tax Actions," 1992-1997. To compare the size of revenue changes, we calculated the percentage change in revenue due to state actions by dividing the estimated revenue change as reported by NCSL by the total revenue collected in the state in the previous year, as reported by the Bureau of the Census, "State Tax Collections," 1988-1996.

The advantage of using these data is that they focus on legislated changes in a particular year and the estimated effects on revenue of these changes alone. Actual changes in revenue from year to year in a state can result from changes in economic conditions, changes due to previously legislated tax changes, and changes due to legislated changes in the current year. The NCSL data isolate the anticipated changes in revenue from legislated changes made in a particular year.

There are also limitations to the NCSL data. Both the tax changes and the estimates of the resulting revenue changes are self-reported and thus may be inconsistently reported across states. The short period (consisting of the current fiscal year and the next fiscal year) over which the estimates are reported could lead to inaccurate characterizations of the sizes of tax changes in certain circumstances. The revenue effects of tax increases or decreases that are scheduled to take effect in the future would be understated.[4] Temporary tax changes would be valued the same as permanent changes as long as they had the same effects in the current and following fiscal years. Moreover, the revenue effects of a temporary change that is repeated each year over a multiyear period would be fully captured in the NCSL data; however, if the change had been made permanently at the beginning of the period, only the first-year revenue effect would be captured.[5] The direction of a tax change could also be inaccurately characterized; for example, tax changes that raise revenue in the short term but lose larger amounts of revenue in future years would be reported as tax increases. If there are differences between supermajority and nonsupermajority states in these areas, the comparisons we make could be affected.

There are also important limitations to the conclusions that can be reliably drawn from the simple comparisons we present here. In the first few years covered in our comparisons, only seven states had some type of supermajority rule, and only four states had a broad supermajority rule. As a result, the comparisons are sensitive to tax actions taken by a small number of states. In addition, we did not control for the many other factors that might have an effect on states' decisions to increase or

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[4]For example, in 1997, Maryland began a 5-year, phased-in personal income tax reduction that was estimated to reduce revenue over 5 years by over $1.1 billion. However, because its studies have focused on the effects of tax actions on state revenue in the next fiscal year, NCSL reported only that Maryland estimated a revenue decrease for fiscal year 1998 of $38.5 million. NCSL has reported that, in recent years, states have adopted multiyear tax reductions with large "out year" revenue impacts more frequently.

[5]For example, Louisiana temporarily suspended sales tax exemptions for food and utilities in 1988, 1989, 1990, 1991, 1992, 1994, and 1996. The revenue effects of each of these changes are reflected in table I.6. If the exemption had been repealed in 1988, only the first-year effect would be included in the table. While the Attorney General of Louisiana has issued opinions stating that suspending an existing tax exemption, unlike repealing an exemption, would require only a majority vote in the state legislature, all the suspensions were passed by a two-thirds majority vote.

decrease taxes or other revenues--factors that may vary across supermajority and nonsupermajority states. To control for these factors to test whether supermajority requirements led states to raise taxes or other revenues more or less than they otherwise would have, other factors being held constant, a comprehensive statistical analysis would be needed. Because such an analysis was beyond the scope of our work, our results should not be viewed as conclusive evidence that supermajority rules either had or did not have such effects.

SCOPE OF SUPERMAJORITY RULES VARIES

Our review of studies and state constitutions indicated that 13 states have some type of supermajority rule. Arkansas, in 1934, was the first state to adopt a supermajority rule. Seven states had supermajority rules by 1980, and six states have adopted supermajority rules since 1992.

The comprehensiveness of the supermajority rules varies. In Florida, the supermajority requirement applies only to the corporate income tax. In Arkansas and South Dakota, supermajorities are required to increase tax rates on some taxes, but changes in the tax base that would increase tax liability do not require a supermajority. In other states, the rules are more comprehensive; for example, in Arizona, existing taxes, certain fees, and potential new taxes are covered by the supermajority requirement.

In addition, some of the more recently adopted supermajority rules are linked to requirements for voter approval of tax increases. In Nevada and Oklahoma, tax increases passed by a majority in the state legislatures are put before the voters for approval; tax increases passed by a supermajority do not need voter approval. In Colorado, all tax increases ultimately require voter approval. To enact a tax increase that goes into effect before voter approval, the Colorado legislature must declare an emergency and pass a tax increase by a two-thirds supermajority vote.

States with supermajority rules (as well as states without supermajority rules) frequently have other revenue or expenditure limitations as well. Based on NCSL information, 11 of the 13 states with supermajority rules also have some other type of tax or expenditure limit; 16 states without supermajority rules have some type of limitation on revenue or expenditure. Table I.1 in the enclosure details state supermajority requirements and summarizes the other revenue and expenditure limits in states with supermajority requirements.[6] To fully understand the effects of supermajority rules alone, it would be necessary to take into account the presence of revenue and expenditure limits and voter approval rules in order to separate the effects of the different rules.

Because of the differences in scope of the supermajority rules, any effects of supermajority rules could vary among supermajority states. In addition to developing

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[6]Rafool (1996), appendix B, discusses state tax and expenditure limits in more detail.

information on all supermajority and nonsupermajority states, we classified supermajority rules into two categories. In what we refer to as a broad rule, tax and other revenue increases are comprehensively covered by a supermajority rule, and the state legislature can raise taxes or revenues only by a greater-than-majority vote. About half of the supermajority states have this type of rule. In the other supermajority states, not all tax increases are covered by the rule, or a simple majority in the state legislature can act to increase taxes or revenues with voter approval.[7] Table I.2 shows the number of states that had each type of supermajority rule in effect in each year.

REVENUE ACTIONS IN SUPERMAJORITY AND NONSUPERMAJORITY STATES

Table 1 shows the percentage of supermajority and nonsupermajority states that took actions to raise revenue in each of the years from 1988 to 1997. On average, 50 percent of all the supermajority states took actions to increase revenues per year, while an average of 57 percent of the nonsupermajority states increased revenues per year. In 6 of the 10 years, the percentage of supermajority states reporting actions raising net revenue was lower than the percentage of nonsupermajority states raising revenue.

Table 1 also shows separate calculations for states with broad supermajority rules and for the other supermajority states. The states with broad rules acted to increase revenue less frequently, on average, than either the other supermajority states or nonsupermajority states.

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[7]We classified Arizona, California, Delaware, Louisiana, Mississippi, Oregon, and Washington in the "broad" category; Arkansas, Colorado, Florida, Nevada, Oklahoma, and South Dakota in the "other" category. While there are generally clear differences between the rules in these states, because there are a small number of states in each category, especially from 1988 to 1992, the results can be sensitive to the actions taken by a few states and to the classification chosen.

Table 1: Percentage of States Acting to Raise Revenue, 1988-1997

Year	Supermajority states			Nonsupermajority states	All states
	Broad	Other	All		
1988	25%	0%	14%	35%	32%
1989	25	67	43	65	62
1990	75	67	71	58	60
1991	75	100	86	83	78
1992	67	75	71	69	68
1993	60	80	70	78	76
1994	20	60	40	55	52
1995	17	80	45	38	40
1996	33	20	27	33	32
1997	29	33	31	54	48
Average	43%	58%	50%	57%	55%

Source: GAO calculations based on NCSL data. The calculations do not include three nonsupermajority states in 1991 and one supermajority state (California) in 1992 because data were not available.

Table 2 shows the average net reported revenue change, as a percentage of the previous year's total tax collected, for supermajority and nonsupermajority states. The table shows that revenue increases were relatively large in the early 1990s in both supermajority and nonsupermajority states and that revenue increases have been smaller since then. Over the 10 years, on average, the revenue actions of supermajority states resulted in larger first-year revenue increases, relative to prior-year tax collections, than the actions of nonsupermajority states (1.81 percent per year, on average, for supermajority states; 1.63 percent per year, on average, for nonsupermajority states). First-year revenue changes in broad supermajority states were larger on average than those in either nonsupermajority states or the other supermajority states.

Table 2: Average First Year Net Revenue Effects of State Revenue Actions (Including Temporary Changes) as a Percentage of Prior Year Tax Collections, 1988-1997

Year	Supermajority states			Nonsupermajority states	All states
	Broad	Other	All		
1988	2.02%	-3.00%	-0.13%	0.22%	0.17%
1989	2.13	0.24	1.32	3.10	2.85
1990	4.17	5.02	4.54	3.05	3.26
1991	8.26	5.05	6.88	4.67	5.00
1992	5.87	1.47	3.36	1.94	2.14
1993	0.68	1.24	0.96	2.11	1.88
1994	1.40	0.20	0.80	1.01	0.97
1995	-0.62	1.01	0.12	-0.39	-0.28
1996	0.89	-0.14	0.42	0.00	0.09
1997	0.03	-0.33	-0.14	0.56	0.38
Average	2.48%	1.08%	1.81%	1.63%	1.65%

Source: GAO calculations based on NCSL and Bureau of the Census data. The calculations do not include three nonsupermajority states in 1991 and one supermajority state in 1992 because data were not available.

Tables I.3 and I.4 show the NCSL data in more detail. Table I.3 shows the number of supermajority and nonsupermajority states that raised revenue, made no changes, or decreased revenue in each year from 1988 to 1997. Table I.4 shows the percentage of each category of states that raised revenue, made no change, or decreased revenue in each year. Both tables show data separately for broad supermajority states and the other supermajority states.

In a few cases, states reported either not making a tax change or actually cutting taxes, but they reported taking other actions to raise net revenue. NCSL separately identified tax changes and other types of changes that have an anticipated effect on revenues, such as changes in fees, accelerations of tax collections, or changes in administrative procedures such as withholding requirements. In table I.5, we show the tax changes made by states that reported actions estimated to increase net revenue.

Table I.6 shows the net reported revenue changes made by states with supermajority requirements over the 1988-1997 period. Seven of the states had a supermajority requirement in effect for the entire period. Two states, Nevada and Oregon, were classified as nonsupermajority states until 1997 because their supermajority requirements did not become effective until mid-to-late 1996, in the second year of their biennial budget cycles.

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Because the information in this report did not involve any federal agency and does not evaluate any federally funded state program, we did not obtain comments from any federal agency on a draft of this report. We did our work between January and April 1998 in accordance with generally accepted government auditing standards.

This letter was prepared under the direction of James A. Wozny, Assistant Director. Other major contributors were Edward J. Nannenhorn, Senior Economist, and Audrey L. Ruge, Information Research Specialist. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this letter until 30 days after its issue date. At that time, we will make copies available to others on request.

If you or your staff have any questions about the information contained in the letter, please contact me or James Wozny at (202) 512-9110.

Sincerely yours,

James R. White

James R. White
Associate Director, Tax Policy
and Administration Issues

STATE SUPERMAJORITY REQUIREMENTS AND REVENUE ACTIONS

Table I.1: State Supermajority Requirements and Other Revenue Limitations

State	Year adopted (effective)	Legislative majority	Applies to	Other revenue and expenditure limits
Arizona	1992 (11/23/92)	2/3	All taxes; fees set by statute	Appropriations
Arkansas	1934	3/4	Tax rates on state taxes except for sales tax and alcohol tax	None
California	1978	2/3	All taxes	Appropriations
Colorado	1992 (12/31/92)	2/3	All taxes passed under emergency declaration; other tax increases subject to voter approval	Appropriations; expenditures and revenues
Delaware	1980	3/5	All taxes; license fees	Appropriations
Florida	1971	3/5	Corporate income tax	Revenue
Louisiana	1966	2/3	New taxes; increases in taxes, repeal of existing tax exemptions, new fees or increases in certain fees	Revenue; appropriations
Mississippi	1970	3/5	Revenue bills	Appropriations
Nevada	1996 (11/27/96)	2/3	Revenue increases (increases passed by simple majority are subject to voter approval)	Proposed general fund expenditures (non-binding)
Oklahoma	1992 (3/10/92)	3/4	Revenue bills (increases passed by simple majority are subject to voter approval)	Appropriations
Oregon	1996 (6/20/96)	3/5	Revenue increases	Appropriations (can be overridden by legislative majority)
South Dakota	1978	2/3	Income and sales tax rates; property tax rates after 1996	None
Washington	1993 (7/1/95)	2/3	Revenue increases	Expenditures

Note: In Missouri, under an emergency declaration agreed to by two-thirds of the legislature, taxes can be increased for 1 year without voter approval. Otherwise, voter approval is needed for all tax increases over $50 million or 1 percent of state revenue.

Source: NCSL, "State Tax and Expenditure Limits" and supermajority states' constitutions.

Table I.2: Number of States With and Without Supermajority Requirements in Effect, by Year

Year	Supermajority states			Nonsupermajority states
	Broad	Other	Total	
1988	4	3	7	43
1989	4	3	7	43
1990	4	3	7	43
1991	4	3	7	43
1992	4	4	8	42
1993	5	5	10	40
1994	5	5	10	40
1995	6	5	11	39
1996	6	5	11	39
1997	7	6	13	37

Note: If a supermajority rule became effective in the later half of a year, we classified that state as a nonsupermajority state in that year.

Source: NCSL, "State Tax and Expenditure Limits" and supermajority states' constitutions.

Table I.3: Number of States by Type of Revenue Action, 1988-1997

	Supermajority states									Nonsupermajority states		
	Broad			Other			All					
Year	Increase	No change	Decrease	Increase	No change	Decrease	Increase	No change	Decrease	Increase	No change	Decrease
1988	1	2	1	0	1	2	1	3	3	15	17	11
1989	1	2	1	2	0	1	3	2	2	28	6	9
1990	3	1	0	2	1	0	5	2	0	25	13	5
1991	3	1	0	3	0	0	6	1	0	33	4	3
1992	2	0	1	3	1	0	5	1	1	29	7	6
1993	3	0	2	4	0	1	7	0	3	31	5	4
1994	1	1	3	3	2	0	4	3	3	22	7	11
1995	1	2	3	4	1	0	5	3	3	15	6	18
1996	2	1	3	1	2	2	3	3	5	13	9	17
1997	2	0	5	2	1	3	4	1	8	20	4	13

Note: Data were not available for three nonsupermajority states in 1991 and for one supermajority state in 1992.

Source: GAO calculations based on NCSL data.

Table I.4: Percentage of States by Types of Revenue Action, 1988-1997

	Supermajority states									Nonsupermajority states		
	Broad			Other			All					
Year	Increase	No change	Decrease	Increase	No change	Decrease	Increase	No change	Decrease	Increase	No change	Decrease
1988	25	50	25	0	33	67	14	43	43	35	40	26
1989	25	50	25	67	0	33	43	29	29	65	14	21
1990	75	25	0	67	33	0	71	29	0	58	30	12
1991	75	25	0	100	0	0	86	14	0	83	10	8
1992	67	0	33	75	25	0	71	14	14	69	17	14
1993	60	0	40	80	0	20	70	0	30	78	13	10
1994	20	20	60	60	40	0	40	30	30	55	18	28
1995	17	33	50	80	20	0	45	27	27	38	15	46
1996	33	17	50	20	40	40	27	27	45	33	23	44
1997	29	0	71	33	17	50	31	8	62	54	11	35

Note: Data were not available for three nonsupermajority states in 1991 and for one supermajority state in 1992. Yearly categories may not add to 100 percent due to rounding.

Source: GAO calculations based on NCSL data.

Table I.5: Tax Changes for States That Increased Taxes and Other Revenues, by Supermajority and Nonsupermajority States, 1988-1997

	Supermajority states			Nonsupermajority states		
Year	Tax increase	No tax change	Tax decrease	Tax increase	No tax change	Tax decrease
1988	1	0	0	15	0	0
1989	3	0	0	27	1	0
1990	4	1	0	23	1	1
1991	5	1	0	30	0	3
1992	4	1	0	22	4	3
1993	7	0	0	29	1	1
1994	3	0	1	18	3	1
1995	4	0	1	12	1	2
1996	2	0	1	10	2	1
1997	3	0	1	19	0	1

Note: Fees, accelerations of taxes, and administrative changes that are estimated to increase revenue are not characterized as tax changes by NCSL.

Source: GAO calculations based on NCSL data.

Table I.6: First Year Revenue Effects of Revenue Actions Taken by States With Supermajority Rules

State	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Sum
Arkansas	N/C	0.5%	N/C	13.4%	N/C	4.3%	N/C	0.8%	N/C	0.8%	19.8%
Louisiana	9.2	-1.7	10.6	7.7	11.3	1.0	10.1	N/C	9.4	0.2	57.8
Mississippi	N/C	N/C	N/C	N/C	6.7	-0.8	-0.6	0.2	N/C	-0.1	5.4
Florida	-0.3	0.6	10.8	1.4	3.8	0.1	0.1	0.1	-0.1	-0.5	16.0
South Dakota	-8.7	-0.4	4.2	0.4	0.5	1.1	0.3	4.1	N/C	2.6	4.1
California	N/C	10.3	2.1	16.8	NA	2.0	N/C	0	0.8	-0.3	31.7
Delaware	-1.2	N/C	3.9	8.5	-0.3	1.6	-0.4	-1.3	-0.8	-0.1	9.9
Oklahoma	-0.2	0.1	7.0	N/C	1.6	1.2	0.6	0.1	0.1	NC	10.5
Colorado	N/C	2.6	0.3	N/A	3.4	-0.4	0	0	-0.6	-3.2	2.1
Arizona	5.5	-1.6	6.3	0.2	-0.1	-0.4	-2.2	-1.6	-2.4	-1.8	1.9
Washington	0.5	0.8	2.4	0.5	0.1	4.9	-0.0	-1.1	-1.6	-0.4	6.1
Nevada	N/C	4.4	N/C	13.1	N/C	2.6	1.5	-2.1	N/C	-1.7	17.8
Oregon	N/C	1.5	N/C	3.5	N/C	0.7	NC	-6.6	N/C	2.6	1.7

Legend

N/C = No change.
N/A = Data not available.

Note: Shaded areas show changes made in states with supermajority rules in effect.
A zero entry indicates that changes were made but had no anticipated revenue effect.
Entries in the final column are the simple sums of the entries for the states for the 10 years; they do not represent the total or average percentage revenue change for the states over the period.

Source: GAO calculations based on NCSL and Census data.

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