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Recommended Citation

City Club of Portland (Portland, Or.), "Oregon Ballot Measure 25: 60 Percent Legislative Vote Required to Pass Revenue Bills" (1996). *City Club of Portland*. 478.

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Oregon Ballot Measure 25: 60 Percent Legislative Vote Required to Pass Revenue Bills

Published in *City Club of Portland Bulletin*
Vol. 77, No. 48
May 10, 1996



MEASURE 25 RECOMMENDATION
ADOPTED

Your Committee Found:

For the past two decades, reducing the size of government has been a popular battle cry in the political arena. Measure 25 is seen by its proponents as another tool for achieving that goal. Your committee believes that the appropriateness of any program or activity of government should be decided on its own merits, and that what may be good policy in one decade may be outmoded in the next. In our representative democracy, legislators are responsible for determining whether and how government should address particular problems or issues, and they should be able to make those decisions on the basis of majority rule. Measure 25 violates that principle, by preventing majority rule in future legislative sessions. Your committee recommends a "No" vote on Measure 25.

The City Club membership will vote on this report on Friday, May 10, 1996. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the *City Club Bulletin* dated May 24, 1996.

I. INTRODUCTION

Ballot Measure 25 will appear on the ballot as follows:

Caption:	Amends Constitution: Requires 3/5 Majority in Legislature to Pass Revenue-Raising Bills.
Result of "Yes" Vote:	"Yes" vote requires 3/5 majority of the legislature to pass bills for raising revenue.
Result of "No" Vote:	"No" vote retains current majority requirement to pass all bills, including bills for raising revenue.
Summary:	This measure would amend the Oregon Constitution. The constitution currently requires a majority of the members of each chamber of the legislature to pass any bill. This measure would require approval of 3/5 of all members elected to each chamber to pass bills for raising revenues.

(The language of the caption, question, and summary was prepared by the Attorney General of Oregon.)

Your committee met several times over the course of three weeks to study this measure. Committee members were screened prior to their appointment to the committee to ensure that no member had an economic interest in the outcome of the study or had taken a public position on the subject of the measure. The committee interviewed proponents and opponents of the measure and other interested individuals, and reviewed relevant articles, reports, and other materials.

II. BACKGROUND

Article IV, section 25 of the Oregon Constitution provides that "a majority of all the members elected to each House shall be necessary to pass every bill." That clause has been a part of the constitution since Oregon became a state. In 1994, it was modified, for the first time in Oregon history, when Oregon voters approved Ballot Measure 10. That measure added a new section 33 to Article IV of the constitution, to require that a two-thirds vote of the members of each House shall be necessary to pass a bill that reduces a criminal sentence that has been approved by the voters.¹

Measure 25 would add another modification to that constitutional requirement of majority rule, by creating an exception for "bills for raising revenue." The change would mean that in the House of Representatives, 36 votes would be needed to pass a tax increase (or to continue an existing tax that is scheduled to be "sunsetted"), instead of the current 31 votes, while in the Senate, 18 votes would be needed instead of the current 16.

Bills for raising revenue are subject to two other constitutional requirements that do not apply to other kinds of bills. Under Article IV, section 18, bills for raising revenue must originate in the House of Representatives, and under Article IX, section 1a, an emergency clause may not be added to "any act regulating taxation." The latter clause has the effect of giving voters enough time, before any

tax measure takes effect, to file referendum petitions to require a vote of the electorate on the measure. That constitutional power of the electorate to require a popular vote on tax measures has not been used since 1978, when a bill approved by the legislature to increase motor vehicle registration fees was placed on the ballot by voter petition, and disapproved by the voters. Since that time, the legislature has increased income tax rates (in the 1982 special session), gasoline taxes (in every regular session from 1983 through 1991), and cigarette taxes (several times since 1980), and in none of those instances was the measure referred to the people, either by the legislature or by voter petition. (The legislature had previously referred gasoline tax increases to the voters in both 1978 and 1980, and in both instances the increase was rejected.)

On the other hand, the legislature in recent years has routinely referred all major structural changes in the tax system to the voters, sometimes calling special elections for that purpose. Most recently, the legislature called a special election for November 1993, for the purpose of voting on a proposal to enact a five-percent sales tax for public schools. In the preceding two decades, the legislature had placed proposals on the ballot:

- (1) to allow gasoline taxes to be used for public parks (November 1992);
- (2) to allow vehicle taxes to be used for mass transit (May 1990);
- (3) to impose a five-percent sales tax for education (September 1985); and
- (4) to increase income and property taxes for school support (May 1974).

Even before that, the legislature had twice placed proposals for major overhaul of the property tax system on special election ballots in May 1973 and June 1969. All of these proposals were rejected by the voters.

In November 1994, Oregon voters rejected an initiative measure that would have amended the constitution to require voter approval for any tax increase at the state or local level. The City Club recommended a "no" vote on the measure, and it was defeated by a margin of 55 percent to 45 percent.

The adoption of proposals to require supermajorities to enact tax measures is, with one exception, a relatively recent phenomenon in the United States. In 1934, the Arkansas Constitution was amended to require a three-fourths majority in both houses of the legislature to increase any tax other than sales and alcohol taxes. In 1966, Louisiana adopted a requirement that no taxes can be increased without approval of two-thirds of the members of both houses of the legislature. Since 1970, ten other states have adopted supermajority requirements of one kind or another, including California in 1979 and Washington in 1993 (both states now requiring a two-thirds majority of the legislature for all tax increases).

III. ARGUMENTS PRO AND CON

A. Arguments Advanced in Favor of the Measure

- Tax issues are controversial, and should have a broader base of support than a bare majority. A three-fifths majority requirement will ensure that tax increases have bipartisan support.
- If a tax measure is approved by three-fifths of the members of both Houses, voters will see that it has a broad base of support and will therefore be less likely to challenge it by way of voter referendum.

- Implementation of a three-fifths majority requirement will stave off more extreme measures, such as a two-thirds requirement, or a requirement that all tax increases be approved by the voters.
- Government is too large, and requiring a three-fifths majority to raise taxes will make it more difficult to increase the size of government.
- Adoption of this constitutional amendment will send a signal to Congress that Oregonians want lower taxes and smaller government.

B. Arguments Advanced Against the Measure

- The desirability of any governmental program should be decided on its merits. Imposing restrictions on taxing authority as a way of reducing the size of government or of eliminating particular programs is a poor way to make public policy decisions.
- A three-fifths majority requirement is anti-democratic, because it gives a veto power to a minority of legislators.
- Supermajorities should be reserved for constitutional amendments, and should not be required to carry out the day-to-day business of government.
- Under current law, the legislature cannot put an emergency clause on any measure to raise taxes, and therefore the voters now have the opportunity to circulate petitions to refer any tax increase to the voters. The availability of the referendum is an adequate safeguard against tax increases that do not have substantial popular support.
- A legislature controlled by one political philosophy should not be permitted to tie the hands of future legislatures that may be controlled by different political philosophies.
- The burden of state taxation as a percentage of personal income has declined in Oregon in recent years, and further tax limitation is unnecessary.

IV. DISCUSSION

Both proponents and opponents of Measure 25 agreed that this measure is an expression of the anti-government, anti-tax attitude that has become a significant part of the political landscape in recent years. One proponent of the measure told your committee that measures like this are necessary to keep the United States from heading toward socialism, and that its real value was not so much in restricting the size of government in Oregon, but in sending a message to Congress that Oregonians want smaller government at all levels. Several witnesses told your committee that the measure is not aimed at any current problem, real or imagined, but is rather an attempt by the current majority in the legislature to tie the hands of future legislators who might not share the current majority's dedication to lowering taxes and reducing the size of government.

If Measure 25 is enacted, it will be possible for the legislature to reduce taxes—always a popular choice—by a simple majority, but it will be possible to restore those tax cuts—never a popular choice—only by a supermajority.² (It is worth noting that if Measure 25 itself had been subject to the 60 percent rule that it proposes for tax measures, it would not have emerged from the legislature, for it was approved in the House by a vote of 34 to 23, and in the Senate by a vote of 16 to 14.) The measure strikes at the heart of the democratic process, by making it

possible for a minority of 25 members of the 60-member House of Representatives, or a minority of 13 members of the 30-member Senate, to block tax legislation supported by a majority of members of both Houses.

If Measure 25 is approved, there will undoubtedly be litigation over the question of whether a particular bill is a "bill for raising revenue," within the meaning of the measure. Proponents of Measure 25 told your committee that they intended the measure to cover license and user fees as well as taxes imposed on the general public. However, the Office of Legislative Counsel has issued an opinion that a user fee would not be covered by Measure 25, relying on a Supreme Court interpretation of the identical phrase ("bill for raising revenue") that appears in existing Article IV, section 18 of the constitution. In that context, the Court has construed the phrase not to apply to bills "which serve other primary purposes and only incidentally produce revenue." (*Barnum v. Department of Revenue*, 270 Or 867 (1974).)

Witnesses stated that adoption of this measure could have a dramatic effect on the ability of future legislatures to respond to the State's needs and problems. Your committee was told that over the last 20 years, virtually no significant tax measure has passed the House with more than a minimal 31 or 32 votes, including the sales tax and the gasoline tax measures. The constraints of a constitutionally-mandated property tax limitation and the absence of a sales tax already make it difficult to achieve coherent and balanced fiscal policies in Oregon, and the adoption of Measure 25 would only add to those difficulties. At a time when there is increasing pressure on the legislature to find ways of funding public education and the increased prison space required by recent voter-approved initiatives, a requirement that all tax increases be approved by a three-fifths majority could lead to a crisis of governance. One political scientist has written, "The most extreme of the new fiscal reforms [such as supermajority requirements] are not simply modifications to relieve tax burdens but are designed to cripple government, which cannot long endure without tax revenue....One wonders how the federal plans for reduced support for welfare and Medicaid by block grants will fare in the states if the reforms of this type become as common as legislative term limits."³

The experience of other states in this regard may or may not be instructive. Arkansas and Louisiana are the two states where supermajority requirements for tax increases have been in existence for the longest periods of time. Both states were one-party states until relatively recently, and there may be less danger of minority rule where one party has supermajority control of the legislature. Even so, tax increases have failed in Arkansas in recent years because of that state's supermajority requirement. Moreover, both Arkansas and Louisiana have traditionally ranked at or near the bottom of all the states in terms of spending on public education, road construction, family assistance, and protection of the environment, so the pattern of those states may not be one that Oregonians would like to emulate.

The experience in California is of shorter duration, but it shows that a supermajority can be mustered to pass a tax increase if there is a great enough crisis facing the state. In 1991, California faced a budget deficit of major proportions, and the legislature adopted a tax increase by the required supermajority. One objective observer, Scott Mackey of the National Conference of State Legislatures, told your committee that the California experience illustrated that supermajority requirements do not necessarily lead to government paralysis.

Other observers take a different view. The City Club's own recent study on *The Initiative and Referendum in Oregon* cited the supermajority requirement for tax increases in California as one factor that had led to enormous budget deficits, a decline in the state's bond rating from one of the highest in the nation to one of the lowest, and a dramatic reduction in funding for the public school system. A widely-read article in *Harper's Magazine* stated:

At every level, California is hamstringed by supermajority requirements. In this cycle of self-mutilation, in which we shoot ourselves in the foot again and again, every reform puts more restraints on state and local governments, thereby making it still harder for elected officials to solve problems or agree on budgets, which in turn leads to yet another 'reform.'⁴

The process of reaching agreement on budgets might be even more difficult in Oregon than in California, since Oregon has no sales tax to produce higher revenues in times of economic expansion. Moreover, Mr. Mackey acknowledged that supermajority requirements make comprehensive tax reform more difficult, for any tax reform measure will inevitably involve increases in some taxes, thereby triggering the supermajority requirement. Some witnesses noted that, in Oregon, that would mean that adoption of a balanced tax system that includes a sales tax as well as property and income taxes would be even more difficult to achieve than it has been in the past.

A supermajority requirement might be more palatable if it came with the kind of "safety net" that Arizona has adopted. In Arizona, tax increases must be approved by a two-thirds majority in the legislature, but that state has also established a formula for a "rainy-day" fund, which is intended to avoid a crisis in the funding of essential governmental services in future years when tax revenues may decline and a two-thirds majority cannot be mustered to increase taxes. Under Arizona's formula, a certain percentage of state tax revenues must be set aside during periods of economic growth (and growing tax revenues), to be drawn upon only during times of economic slow-down (and declining tax revenues). Arizona now has \$230 million in its reserve fund, which will make it possible for the state to survive downturns in its economic cycle without having to raise taxes. Measure 25, however, contains no such "rainy day" provision.

V. CONCLUSIONS

At bottom, a voter's attitude toward Measure 25 may depend largely on the voter's attitude toward government: is government an evil to be limited and constrained as much as possible, or is it a neutral instrument for carrying out the people's will with respect to how they want their society to evolve? Your committee believes that even voters who are distrustful of government should view this measure with skepticism, because it could be destructive of what they view as an appropriate legislative process. Imposing a supermajority requirement on the legislature could change the process from one of debate over the merits of a bill to one in which a minority is able to use its power to block legislation favored by a majority as a lever for obtaining the passage of other measures that would otherwise fail for lack of majority support. That result should not be welcomed by those who distrust government any more than it should be by those who trust government.

Legislatures are often faced with difficult policy decisions, about which reasonable people can differ. However, the system of majority rule in the

legislature served the State of Oregon well throughout most of its history, and supermajority requirements, whether they relate to taxation or to any other topic, are contrary to the principle of representative democracy. Imposition of a supermajority requirement for one kind of legislation could lead to efforts to impose such requirements for other kinds of legislation: environmental laws, for example, or other areas of concern to particular groups of voters or legislators. Matters relating to tax policy and the appropriate level of government spending, like other public policy decisions, are best left to the give and take of the legislative process, and to decision by majority rule.

The legislature has shown its sensitivity to popular opinion concerning taxes over the last quarter century by referring many significant tax proposals to the voters for their approval or disapproval. That pattern has been consistent under both Democratic and Republican majorities in the legislature, and there is no reason to expect that pattern to change. Moreover, the opportunity for the voters to circulate petitions to refer tax increases for a popular vote, which is guaranteed by the constitution, is a sufficient safeguard to prevent any legislature from enacting tax measures that do not have a broad base of support. Your committee concludes that Measure 25 is unnecessary and potentially harmful to the legislative process.

VI. RECOMMENDATION

Your Committee recommends a No vote on Measure 25.

Respectfully submitted,

Peter E. Heuser

Frank Hudson

James A. Larpenteur, Jr.

Charles F. Hinkle, chair

Wayne Lei, Research Advisor

Paul Leistner, Research Director

VII. ACKNOWLEDGMENTS

The Committee wishes to thank its research advisor, Wayne Lei, for his guidance in preparing this report, and to thank City Club Research Director Paul Leistner for his assistance in gathering a great deal of information in a short amount of time.

VIII. APPENDICES

A. ENDNOTES

1. The ballot title issued by the Attorney General and approved by the Supreme Court for Measure 25 is thus inaccurate. Contrary to the "Result of 'No' Vote" statement and the second sentence of the Summary, there is already one exception to the constitutional requirement of majority rule in the legislature.
2. It should be noted, however, that the argument has been made that even a bill to reduce taxes would be subject to Measure 25, on the theory that a bill that sets taxes at any level—even a reduced level—is a "bill for raising revenue." This is a question that the courts will have to answer, if the measure is approved.

3. Janice C. May, "State Constitutional Reforms: Recent Experiences," Internet (<http://www.auburn.edu/~1cgsan/alacon/sym/proceed/may.html>).
4. Peter Schrag, "California's Elected Anarchy," *Harper's Magazine* 50, November 1994, at p. 53.

B. WITNESS LIST

David Anstaett, legislative counsel, League of Women Voters of the United States

Ray Baum, Oregon state representative

Gary Carlson, executive vice president, Associated Oregon Industries

Don Dryden, controller general, State of Delaware

Ted Ferris, director, Joint Legislative Budget Committee, State of Arizona

Rod Johnson, Oregon state senator

Tom Kynerd, revenue officer, State of Mississippi

Scott Mackey, program principal, National Conference of State Legislatures

Mike McCallum, Oregon Restaurant Association

James Scherzinger, legislative revenue officer, Oregon Legislative Assembly

Bill Sizemore, Oregon Taxpayers United

Ken Strobeck, Oregon state representative

Clifford Trow, Oregon state senator

Fred Van Natta, director, Oregon Small Business Coalition

Courtney Wilton, director, Multnomah County Tax Supervising Commission

C. RESOURCE MATERIALS

Mackey, Scott. "Which States Require a Supermajority Vote to Raise Taxes?" *The Fiscal Letter*. National Conference of State Legislatures, March/April 1995, p. 4.

Schrag, Peter. "California's Elected Anarchy: A government destroyed by popular referendum." *Harper's Magazine*. November 1994, pp. 50-58.

"When Rules Replace Reason: Why Tax and Spending Limits Aren't Getting Us Good Government." AFSCME Public Policy Department. June 1994.

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"What Constitutes a Bill That Raises Revenue?" Office of Legislative Counsel. Salem, Oregon, March 23, 1993.