



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: Rep. Kornheiser, Chair, Committee on Ways and Means
From: Abby Shepard, Legislative Counsel
Date: January 10, 2023
Subject: Legal provisions governing Committee on Ways and Means

Constitution of the State of Vermont

The Vermont Constitution requires the General Assembly to observe certain procedures and standards when it enacts taxation and revenue laws. These procedures and standards are not required for other, non-revenue legislation.

Under the Constitution, “[...] all revenue bills shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as on other bills.”¹ The Supreme Court of Vermont has held that revenue bills are bills “whose primary purpose is to raise revenue to be applied in meeting the general expenses and obligations of the government, and not bills which create revenue incident to other purposes.”²

To ensure that revenue bills pass with a sufficiently broad basis of support in the House, the Constitution requires a super-quorum:

“The Representatives so chosen (a majority of whom shall constitute a quorum for transacting any other business than raising a tax, for which two-thirds of the members elected shall be present) shall meet as required [...]”³

Unlike any other type of legislation, the Constitution directs the entire Legislature to deliberate on the cost-benefit to the community of raising a tax:

“[...] previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.”⁴

¹ Vt. Const., Ch II, § 6.

² *Andrews v. Lathrop* (1974) 132 Vt. 256, 265. A bill that has as its primary purpose providing tax relief to certain taxpayers, and for which the primary purpose of the taxing provision is to raise revenue specifically to fund a tax relief program, is not considered a revenue bill within the meaning of the Vermont Constitution. *Id.*, 266.

³ Vt. Const., Ch II, § 14.

⁴ Vt. Const., Ch I, Art 9.

Rules of the House

Taxes and revenue are the primary areas of jurisdiction of the House Committee on Ways and Means. House Rule 25, as amended in 2023 by H.R. 4, gives the Ways and Means Committee jurisdiction over matters relating to:

The revenue of the State, and which shall report the amount of taxes necessary to be raised for the support of the government and inquire what measures, if any, ought to be adopted, the better to equalize the public burdens, and otherwise improve the financial concerns of the State, including all matters relating to taxation, local or otherwise, and all matters relating to the grand list, and other similar policies.⁵

Typically, bills referred to the Ways and Means Committee include:

- measures affecting the revenue of the state, either raising or reducing taxes;
- measures affecting revenue by other means, such as fees; and
- measures affecting local and municipal taxes, notably the property tax grand list.

In order to fully implement its jurisdiction, under the House Rules, the Ways and Means Committee is an automatic committee of reference for a bill on any subject if the bill also affects State revenues. House Rule 35(a) provides:

35. (a) When or a bill or resolution treated as a bill affecting the revenue of the state or materially affecting the revenues of one or more municipalities is reported by a committee other than the Committee on Appropriations or the Committee on Ways and Means, respectively, the Speaker shall refer it, before second reading, to the Committee on Appropriations or the Committee on Ways and Means, as the case may be, if the bill or resolution had not previously been referred, committed or recommitted to said committee, except, in the case of a House bill or House resolution treated as a bill, when the first committee by a two-thirds vote reports that the bill ought not to pass or the resolution ought not to be adopted. In that case, if the House votes that the bill or resolution be read the third time, the bill or resolution shall be referred before third reading to the Committee on Appropriations or the Committee on Ways and Means, as the case may be, which shall consider the bill or resolution and make such report as it considers advisable at which time the bill or resolution shall proceed in the regular course as other bills or resolutions.

Finally, under House Rule 40(c), in the first year of a biennium, any committee may request a standard form bill at any time “and may introduce such a bill at any time.” In the second year of a biennium, the Ways and Means Committee is exempt from the bill introduction deadlines imposed on members and other committees. “[...] the Committees on Appropriations and Ways and Means [...] may [...] introduce a bill drafted in standard form at any time and may approve the bill for public release at any time.”

⁵ See, H.R. 4 of 2023, House resolution relating to standing committees.

CONSTITUTIONAL PROVISIONS AFFECTING THE HOUSE COMMITTEE ON WAYS AND MEANS

Constitution of the United States of America

1. U.S. Constitution, Supremacy Clause, Art. VI, Cl. 2

The United States Constitution, federal laws, and treaties by the United States government are the “supreme law of the land.”

Relevant point of law:

A state may not directly tax the federal government.

2. U.S. Constitution, Commerce Clause, Art. I, Sec. 8, Cl. 3

The United States Congress shall have the power to “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

Relevant point of law:

A state may not tax an activity until it has substantial nexus (i.e., a substantial connection) with the taxing state and the tax is fairly apportioned to the state.

3. U.S. Constitution, Privileges and Immunities Clause, Art. IV, Sec. 2

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

Relevant point of law:

A state may not discriminate unfairly in favor of its citizens or against the citizens of another state through its state tax laws.

4. U.S. Constitution, Exports/Imports Clause, Art. I, Sec. 10

“No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports [...]”

Relevant point of law:

States cannot tax imports or exports, nor in a way that discriminates against imports or exports.

Constitution of the State of Vermont

1. Vermont Constitution, Chapter I, Article 9

Article 9. Citizens' rights and duties in the state; bearing arms; taxation

That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute the member's proportion towards the expence of that protection, and yield personal service, when necessary, or an equivalent thereto, but no part of any person's property can be justly taken, or applied to public uses, without the person's own consent, or that of the Representative Body, nor can any person who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if such person will pay such equivalent; nor are the people bound by any law but such as they have in like manner assented to, for their common good: and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.

Relevant points of law:

- A. Vermont's Proportional Contribution Clause requires same analysis as the Equal Protection Clause of the U.S. Constitution, Fourteenth Amendment.
- B. Some discrimination in taxing is inevitable and, unless it is based on a suspect class, any distinction only requires a rational basis.
- C. A rational basis means the tax classification must bear a reasonable relationship to the purpose of the tax, and the tax must be equally and fairly applied among like classes of taxpayers.

2. Vermont Constitution, Chapter II, Article 6

§ 6. [Legislative powers]

The Senate and the House of Representatives shall be styled, The General Assembly of the State of Vermont . Each shall have and exercise the like powers in all acts of legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other. Provided, That all Revenue bills shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as on other bills. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting; and in case of disagreement between the two Houses with respect to adjournment, the Governor may adjourn them to such time as the Governor shall think proper. They may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, subject to the provisions of section 69, constitute towns, boroughs, cities and counties; and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

Relevant points of law:

- A. The General Assembly may not delegate its power of taxation.
- B. The General Assembly has the power to enact retroactive tax legislation.
- C. While revenue bills must originate in the House, the term “revenue bill” will be construed as narrowly as possible, so that if revenue is incidental to the primary purpose of the bill, the bill is not a revenue bill.

3. Vermont Constitution, Chapter II, Section 14

§ 14. [Powers of House]

The Representatives so chosen (a majority of whom shall constitute a quorum for transacting any other business than raising a State tax, for which two-thirds of the members elected shall be present) shall meet as required by section 7, and shall be styled the House of Representatives: they shall have power to choose their Speaker, their Clerk and other necessary officers, sit on their own adjournment subject to the limitations of section 6, judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their constituents antecedent to their election, administer oaths and affirmations in matters depending before them, and impeach state criminals.

Relevant point of law:

The Vermont Constitution imposes a super-quorum requirement of 2/3 of its members whenever a bill raising taxes is considered.