HOUSE RESEARCH | Short Subjects
The Constitution and the Legislature

Joel Michael **Updated: September 2018**

Origination Clause: Bills to Raise Revenues Must Originate in the House

The Minnesota Constitution requires that:

> All bills for raising revenues shall originate in the house of representatives, but the senate may propose and concur with amendments as on other bills. Minn. Const. art. IV § 18.

This provision, commonly referred to as the Origination Clause, is identical to the language of a parallel provision of the United States Constitution. U.S. Const. art. I, § 7, cl. 1. This short subject briefly discusses the types of bills that the Origination Clause requires to begin in the Minnesota House of Representatives.

Two Minnesota appellate court decisions have applied the Origination Clause.

The Minnesota Supreme Court has twice rejected challenges to acts (laws) based on the origination clause. In these two cases, the court held that:

- A bill containing an appropriation was not a bill to raise revenues, even though it may have necessitated imposition of a tax to pay the appropriation. *Curryer v. Merrill*, 25 Minn. 1 (1878).

- A bill imposing civil penalties to abate a nuisance, was not a bill to raise revenues, even though the law specified the penalties were to be collected as taxes. *State ex rel. Robertson v. Wheeler*, 155 N.W. 90 (1913).

In *dicta*, the Minnesota Supreme Court has also said that the clause applies to a bill "whose main purpose is to raise money by taxation." *Curryer v. Merrill*, 25 Minn. 1, 8 (1878). The Minnesota Court of Appeals has also concluded that a regulatory bill that raises more revenue than necessary to pay for the cost of the regulation does not become a bill for raising revenue that must originate in the House. *Investment Company Institute v. Hatch*, 477 N.W.2d 747 (Minn. App. 1991) (statutory construction issue, not a challenge to the constitutionality of the act).

Numerous cases have construed the federal Origination Clause; Minnesota courts likely would follow these cases.

Federal courts have generally read the Origination Clause narrowly. In fact, no act of Congress has been invalidated for a violation of the Origination Clause. The Supreme Court has explicitly reserved the issue of whether it would invalidate acts for violations of the clause in *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991). For example, federal courts have rejected challenges to the Affordable Care Act, which the Supreme Court upheld as an exercise of the congressional power to tax, as violating the Origination Clause. *Sissel v. U.S. Dept. of Health and Human Services*, 2014 WL 3714701 (D.C. Cir. 2014).

The remainder of this short subject describes rules under the Origination Clause derived from federal cases, as well as cases from other states. In construing the state constitution, Minnesota courts are not bound by these federal court decisions applying the federal constitution. However, the decisions are persuasive authority; the Minnesota courts would likely follow them. Some state courts have taken a narrower view of their state origination clauses. Cases from other states are likely to have less persuasive power than federal decisions.

The Origination Clause applies to bills whose principal purpose is to raise "taxes."

As noted above, the Minnesota Supreme Court expressed this principle in *dicta*. *Curryer v. Merrill*, 25 Minn. 1, 8 (1878). Various federal cases have reached similar holdings in rejecting challenges to congressional acts. The decisions have held that the following are *not* bills to raise revenues:

- **Bills that raise revenues (including taxes) but that have another principal purpose** such as establishing a program, *Twin Cities National Bank of New Brighton v. Nebeker*, 167 U.S. 196 (1897); *Investment Co. Institute v. Hatch*, 477 N.W.2d 747, 751 (Minn. App. 1991) (stating similar principle)

- **Bills that impose user fees or raise other nontax revenues**, *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991) (did not matter that bill raised more than necessary to fund the program and the excess went to the general treasury)

The Senate may amend a tax bill that originates in the House. The federal courts have permitted this, even when the Senate amendments converted a House bill that reduced taxes into a bill that raised taxes. *Wardell v. U.S.*, 757 F.2d 203 (8th Cir. 1985).

Courts in other states have addressed other Origination Clause issues.

State courts are split on whether bills that authorize borrowing (e.g., issuing bonds) are bills to raise revenues. *Compare Fent v. Oklahoma Capitol Improvement Authority*, 984 P.2d 200 (Okla. 1999) (not revenue raising bill) *and Kervick v. Bontempo*, 150 A.2d 34 (N.J. 1959) (same) *with Morgan v. Murray*, 328 P.2d 644 (Mont. 1958) (bill to raise revenues). The federal courts clearly would not consider bonding authorizations to be bills to raise revenues. The Minnesota courts likely would follow this rule. However, the legislative tradition in Minnesota is to originate state bonding bills in the House. The state's bond counsel generally have insisted on it as a condition for issuing a "clean" bond opinion, since there is no clear Minnesota judicial authority that it is unnecessary.

State courts have generally held that bills authorizing *local governments* to impose taxes are also not bills to raise revenues, on the theory that the limitation applies only to state taxes. *See Yancey & Yancey Construction Co., Inc. v. DeKalb County Commission*, 361 So.2d 4 (Ala. 1978); *Opinion of the Justices*, 233 A.2d 59 (Dela. 1967). Thus, a bill that increases levy limits or grants a local government authority to impose a local sales tax would likely not need to originate in the House. Again, the Minnesota legislative practice has been to originate these bills in the House.

In conclusion, only bills that have a primary purpose of raising state revenues from taxes clearly need to originate in the House. Minnesota practices have been more conservative, however, and have traditionally provided for state bonding bills, bills authorizing local taxes, and bills imposing fees in excess of program costs to originate in the House of Representatives. This technique avoids the possibility of constitutional challenges.

Under its independent authority to interpret and enforce the Origination Clause, the House of Representatives may take a broader view of the clause to protect its constitutional prerogatives. The U.S. House of Representatives rejects bills or amendments made by the U.S. Senate as violating the clause that likely do not violate the judicial interpretations of the clause's requirements. It does so typically by passing a "blue slip" resolution and returning the bill to the Senate with a statement that bill violates the Origination Clause. James V. Saturno, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives* (Congressional Research Service, Jan. 23, 2017) (practice is to "construe the House's prerogatives broadly to include any 'meaningful revenue proposal' ").