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INITIATIVE 1053: REQUIRING A TWO-THIRDS MAJORITY TO INCREASE TAXES

BRIEFLY

I-1053 would reinstate the requirement that tax increases be approved by a supermajority of the legislature. Washington voters have approved this requirement three times.

Initiative 1053, the “Save The 2/3’s Vote For Tax Increases Act of 2010” will look familiar to Washington voters. They’ve passed something like it three times before.

The initiative would essentially reinstate two parts of Initiative 960, which was approved by voters in 2007. I-1053 restores the requirement that any actions taken by the legislature to raise taxes must garner at least two-thirds legislative approval in both the House of Representatives and Senate or be approved by voters as a referendum. Additionally, it reiterates that majority legislative approval in both the House and Senate is required before fees may be imposed or increased by the government.

This is a re-affirmation with a purpose. In February, the legislature voted to suspend I-960 until July 1, 2011. That action allowed them to enact into law numerous new taxes (some of which are the target of another initiative on the ballot this year: I-1107).

The legislature was able to suspend I-960 by a simple majority vote because two years had passed since voters enacted it. The Washington constitution provides that no initiative may be amended or repealed within two years unless approved by a two-thirds vote of the legislature. Consequently, if I-1053 is approved by voters in November, the legislature would again be bound by the two-thirds vote requirement to raise taxes when they return to session at the beginning of 2011, and they would not be able to overturn or suspend this requirement by simple majority until late 2012.

Washington has a long history of giving the legislature a short leash with respect to tax increases. Prior to I-960, Washington voters also approved the two-thirds majority vote requirement for tax increases in 1993 (I-601) and 1998 (Referendum 49). The concept is not unique to Washington. According to Americans for Tax Reform’s Center for Fiscal Accountability, 15 other states also have supermajority requirements to raise some or all taxes. (These states are Arizona, Arkansas, California, Colorado, Delaware, Florida, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, Oklahoma, Oregon, and South Dakota.) The supermajority requirements in all the other states are constitutional, while Washington’s requirement is merely statutory.

The Washington legislature suspended the supermajority requirement during the 2001–03 biennium, the 2005–07 biennium, and now again in 2010. A review of revenue legislation shows major jumps in tax increases in years where the legislature suspends the two-thirds vote requirement (2003, 2005 and 2010).

Constitutionality

There are ongoing questions about the constitutionality of the supermajority requirement for tax increases. As we noted in 2007,

I-601 and I-960 Basics

In 1993 Washington voters approved Initiative 601, establishing a limit on the amount that state spending from the general fund can be increased each year.

Beginning with the 2007–09 biennium, the expenditure limit encompassed five “related funds” in addition to the general fund: the health services account; the violence reduction and drug enforcement account; the public safety and education account; the water quality account; and the student achievement fund.

For each year, the limit on spending is set equal to the previous year’s spending adjusted by the fiscal growth factor. The original language of I-601 defined the fiscal growth factor to be the sum of population and inflation growth averaged over the three prior fiscal years. The 2005 legislature changed the definition, however, so that beginning in the 2007–09 biennium the fiscal growth factor is equal to the average growth in state personal income for the prior ten fiscal years.

When actual expenditures fall below the allowed spending limit, future limits are based on the lower amount. This is known as “re-basing.” The spending limit is also adjusted when revenues or program costs are shifted between the general fund (or related accounts) and other funds.

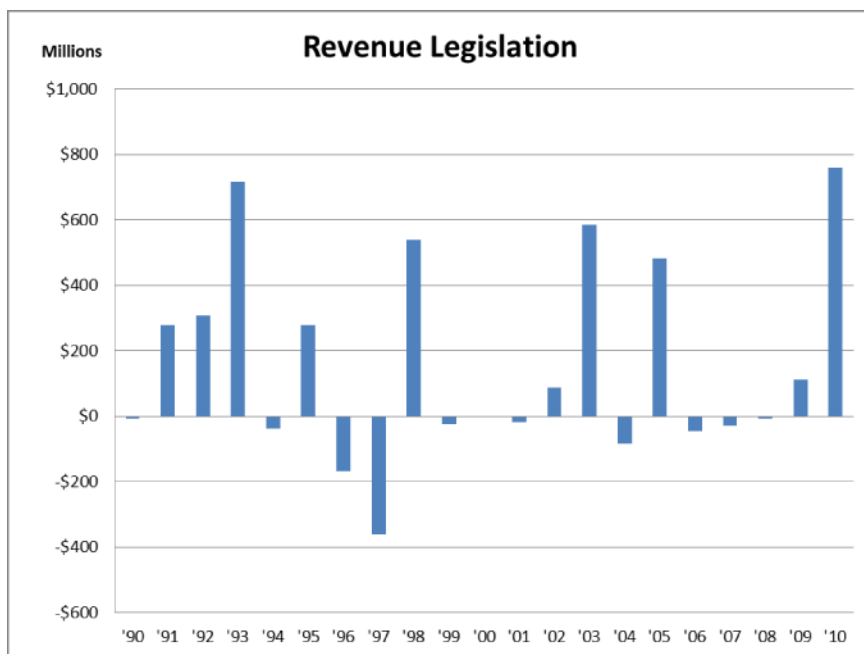
Initially, the bill required a decrease in the spending limit if program costs were shifted out of the general fund, but did not allow a corresponding increase when costs were shifted to the general fund. In 2000, I-601 was amended to allow the limit to be adjusted upward for program costs or ongoing revenue sources that are transferred into the state general fund.

This change, called the two-way street, created an apparent loophole through which the legislature could artificially raise the limit by moving funds back and forth between the general fund and other state accounts.

The 2005 legislature amended I-601 again to close this loophole, effective July 1, 2007. As of that date both program costs and the accompanying revenue source must be transferred to the general fund to qualify for the limit increase.

I-601 requires a two-thirds majority vote in both houses in order to pass tax increases. Additionally, tax increases require voter approval when the new revenue will exceed

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The state constitution sets a simple majority standard for passing laws: ‘No bill shall become a law unless on its final passage the vote be taken by yeas and nays, ... and a majority of the members elected to each house be recorded thereon as voting in its favor.’ The people cannot amend the constitution by initiative, and I-960 does not purport to amend the constitution.

The vote requirement might be construed to be a legislative rule. (The U.S. Senate’s filibuster rule is an example of a rule that effectively requires a 60 percent majority to pass a bill when a constitutional standard is simple majority.) The constitution gives each house the authority to determine its own procedural rules; however, it is unclear whether procedural rules may be imposed by initiative.

In 2008, state Senator Lisa Brown sought a writ of mandamus from the state Supreme Court ordering Lieutenant Governor Brad Owen to forward SB 6931 to the state House of Representatives. Owen had ruled that SB 6931 was subject to the law requiring supermajority approval for tax increases. The bill earned a majority, but not a supermajority, of votes. Brown also wanted the court to declare the supermajority requirement unconstitutional. The court did not reach the latter question, as it was inappropriate for mandamus. On the former, the court found that “a writ of mandamus ordering the president of the senate to forward SB 6931 would violate the separation of powers doctrine.” Further, they “will not referee disputes over parliamentary rulings between members of the same house.” Because the court found that “this original action is improperly before this court on application for a writ of mandamus and is a nonjusticiable political question”, it dismissed the action.

Consequently, to date, the state Supreme Court has not ruled on the constitutionality of the supermajority requirement itself. Meanwhile, Washington voters have consistently shown that they expect the two-thirds requirement to remain in place.

Basics Continued

the spending limit. In addition, fee increases in excess of the fiscal growth factor must have legislative approval before being implemented.

Similarly, I-960 was approved by voters in 2007. It required the Office of Financial Management to estimate the ten-year cost to taxpayers of any bill introduced in the legislature that would raise taxes or fees; extended the supermajority requirement for raising taxes to all state taxes (not just the general fund); required that any tax increase enacted without a voter referendum be subject to an advisory vote at the next general election; and required that all fee increases receive simple majority legislative approval.

Discussion

The measure's effect is simple and clear. Passing I-1053 would make it more difficult—next to impossible—for the legislature to raise taxes in order to make up some of the estimated roughly \$4.5 billion shortfall in the state budget for the 2011–13 biennium.

In this recession, tax increases impose an additional drag on the economy, adding to the burdens of struggling families and entrepreneurs. The Washington Research Council has repeatedly called on lawmakers to adopt a sustainable budget within existing revenues. Similarly, voters have repeatedly demanded that the legislature clear the higher bar of a supermajority vote before raising taxes. I-1053 imposes a reasonable restraint on the revenue-raising powers of the legislature, a restraint that has worked well in the past.

If adopted, it can work well for us in the future.

References

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