Washington Research Council

Policy Brief

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Initiative 1185: Reaffirming a Supermajority Requirement for Tax Increases

Briefly

I-1185 would again require a two-thirds legislative supermajority vote for tax increases. Washington voters have approved the requirement four times previously.

Initiative 1185 plows familiar ground. If adopted in November, it would be the fifth time Washington voters have passed a ballot measure requiring a two-thirds legislative supermajority vote for tax increases. Voters last adopted such a measure in 2010, when they endorsed Initiative 1053 with 64 percent approval.

Approval of I-1185 would retain the higher vote requirement for tax increases in the next biennium.

This year, the vote takes place under the shadow of a constitutional challenge to I-1053. Curiously, this is also the fourth time the state Supreme Court has been invited to consider the constitutionality of the supermajority requirement; the three previous invitations were declined, with the Court addressing the suits without ever reaching the central constitutional question.

The Washington state constitution cannot be amended by voter initiative. After two years, the initiative can be amended, repealed or suspended with a simple majority vote, like any other statute. Since I-1053 was adopted two years ago, the extraordinary supermajority constraint will not be in effect in 2013. Approval of I-1185 would retain the higher vote requirement for tax increases in the next biennium.

Supermajority History

The two-thirds supermajority requirement was first adopted in 1993, when voters approved the Initiative 601 tax and expenditure limitation. The requirement was reinstated in 1998, as part of Referendum 49, a measure that primarily addressed motor vehicle excise taxes and transportation funding. Voters re-imposed the supermajority requirement with passage of Initiative 960 in 2007 and I-1053 in 2010.

Over the years, lawmakers availed themselves of the opportunity to revise the statute. They suspended the requirement in 2002 and 2005. They reinstated it in 2006 and suspended it again in 2010.

In 2008, state Senator Lisa Brown (D-Spokane) challenged the constitutionality of the limit. The state Supreme Court ruled that the issue, which involved a bill containing tax increases that passed the Senate by a simple majority, was "improperly before this court . . . and is a nonjusticiable political question." The case was then dismissed without reaching the substantive issue of constitutionality.

The case currently before the Court—oral arguments were heard September 25—has been brought by a group of legislators and education advocates. They contend that the I-1053 supermajority requirement unconstitutionally restricts the state's ability to fund public services. And again, the state attorney general's office, whose duty it is to defend the measure, argues that the case is not properly before the court. The Association of Washington Business filed a supporting brief that calls the supermajority requirement "fundamentally a political mechanism" and urges the court not to "intervene into the legislative domain."

The Supermajority in Other States

Seventeen states have supermajority requirements for tax increases. The liberal Center on Budget and Policy Priorities (CBPP), which opposes such restrictions, groups them into four categories:

States with Limited Requirements: Arkansas, Florida, Kentucky and Michigan. In these states, the supermajority provision is tied to very specific circumstances (e.g., Michigan requires a legislative supermajority to raise the state property tax).

Limited Requirements to Avoid a Popular Vote: Colorado and Missouri allow a supermajority of the Legislature to increase taxes in emergencies, without referring the increase to the people.

Broad Statutory Requirements: Washington and Wisconsin.

Constitutional Restrictions: Nine states have placed the supermajority requirement in their constitution. The details vary. Some impose a three-fifths requirement, some require two-thirds; some do not apply the restriction to the elimination of a tax preference. The nine are: Oklahoma, South Dakota, Delaware, Mississippi, Oregon, Arizona, California, Nevada and Louisiana. (Leachman et al.)

Pros and Cons

Like many critics here, CBPP argues that the most restrictive limitations unduly limit legislative fiscal flexibility, reduce accountability, and give special interests and legislative minorities too much power.

In testimony before the Maryland legislature, Joseph Henchman, tax counsel and director of state projects for the Tax Foundation, gave the proponents' argument for a supermajority requirement:

> Requiring additional consideration and empowering a minority when considering tax issues means a greater likelihood that the resulting bill will be the product of consensus and thoughtful consideration. The additional consideration also sends the signal that tax increases will not happen suddenly, and the additional legislative give-and-take reduces the chance that a minority will alone bear the burden of higher taxes. This increased stability in turn furthers the certainty required for investment, capital formation, and job creation (Henchman).

In its editorial supporting I-1185, the *Seattle Times* tackles the contention that the supermajority requirement is undemocratic:

> Initiative 1185 allows a tax increase by simple majority vote of the people, and what is more democratic than that? The initiative itself also requires a simple majority vote of the people to take effect.
>
> This is not undemocratic. . . . It binds representatives of the people, their legislators (Seattle).

Taking the opposite position, *The News Tribune* editorializes:

> Washington has a representative system of government. Lawmakers are supposed to make policy decisions on a democratic basis; if voters don't like the decisions, they are free to remove the lawmakers come election day.
>
> A two-thirds majority requirement is inherently undemocratic (TNT).

Proponents of the initiative contend that the higher bar is appropriate for tax decisions. Opponents say that successive years of recession without tax increases have eroded the quality of public services, especially education. Proponents say lawmakers have the choice of mustering bipartisan support for a supermajority vote or referring a tax hike to the voters. Opponents say that flies in the face of political reality.

Discussion

While the state Supreme Court wrestles, again, with the constitutional question, for voters in November the question continues to be fundamentally a political question: Should lawmakers in Olympia have to go beyond a simple majority vote in order to raise taxes?

Lawmakers will again return to Olympia facing a budget shortfall conservatively estimated as being in excess of $1.2 billion. The economy continues to struggle. Higher taxes threaten to pose a significant drag on the recovery. Additionally, lawmakers have been directed by the state Supreme Court to increase education funding, which is also a priority for many business organizations.

After nearly two decades of debate, few of the arguments advanced are unfamiliar. Over time, the supermajority requirement has effectively reined in the ability of the Legislature to raise taxes. The restraint has led to bipartisan decision-making and a more thoughtful approach to priority-based budgeting. In recent years, we've seen fiscal improvements, including pension reform, steps to control health care costs, and a four-year balanced budget requirement. Arguably, these measures were adopted because tax increases were the more difficult option.

Initiative 1185 allows voters another chance to let lawmakers know whether they want to retain the restraint they imposed four times previously.

References

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