

Constitutional Protections Needed For Taxpayers

Statutory tax and spending limits no longer working

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Findings

Washington's voters have consistently voiced a desire to restrict the ability of government officials to unduly raise their tax burden. Initiative 601, passed by voters in 1993, required not only a strict spending limit, a two-thirds vote of the legislature to raise taxes, but also voter approval of any tax increase in excess of the state spending limit.

Despite this clear directive by the voters, lawmakers have suspended the two-thirds vote requirement twice (in 2002 and 2005) and the Senate Majority Leader, Senator Lisa Brown, has recently filed a lawsuit asking the State Supreme Court to declare the two-thirds vote requirement unconstitutional and make it easier for state officials to raise taxes.

The State Supreme Court has scheduled oral arguments to consider Senator Brown's lawsuit on September 9, 2008. A ruling could come sometime before or after next year's legislative session where lawmakers will be tasked with closing a projected \$2.7 billion budget deficit.

Regardless of what the Court rules, the long term solution is for state officials to enact meaningful constitutional restrictions on tax and spending increases to help provide a restraint on excessive government spending and future tax increases.

Constitutional restrictions will help prioritize government spending and provide a legislative climate in which further increases in the government's financial burden are difficult to pass. Under such a restriction, if lawmakers felt they really needed to collect more money from people, tax increase

proposals could be submitted directly to voters for approval.

The Senate Majority Leader's lawsuit

Senator Lisa Brown believes a supermajority requirement for tax increases is unconstitutional, a claim opponents of I-601 have made since the law was adopted in 1993. On March 3, 2008, she filed a lawsuit seeking to have the State Supreme Court declare the 2/3 vote requirement invalid. According to Senator Brown:

"Our constitution cannot be amended by passing an initiative or by passing a bill in the Legislature. Initiatives and bills create statutes, not constitutional amendments. But many constitutional scholars believe – and I agree – that one part of Initiative 601, passed by the voters in 1993, violates our constitution. That initiative required the Legislature to pass any tax increase by a two-thirds majority rather than a simple majority. Our state constitution clearly states that bills pass the Legislature by a simple majority. A handful of exceptions are written into the constitution, but raising taxes is not one of them."

Since I-601 was originally adopted in 1993, to gain legal standing before the State Supreme Court, Senator Brown had to demonstrate she had suffered some injury as a result of the law. To accomplish this she arranged for a Senate vote on a liquor tax (SB 6931) increase that she knew would trigger the 2/3 vote requirement. When the proposed tax increase failed to receive the required 2/3 vote, she asked the Senate President, Lt. Governor Brad Owen (D), for a ruling on whether the 2/3 vote requirement was

unconstitutional.

The Lt. Governor ruled:

“Senator Brown’s arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling, and he explicitly rejects making any determination as to the Constitutionality of I-601 and instead is compelled to give its provisions the full force and effect he would give any other law.”

The Attorney General is defending the law. According to the state’s June 9, 2008 brief in support of the 2/3 vote requirement:

“In the 14 years since RCW 43.135.035(1) was enacted, the Legislature has not chosen to repeal the statute or permanently amend its two-thirds vote provision, although it could have. Notably, the Legislature has amended the two-thirds vote requirement of RCW 43.135.035(1) on two occasions to substitute a majority vote requirement for designated periods . . .

Article II, section 22 provides, ‘[n]o bill shall become a law unless . . . a majority of the members elected to each house be recorded thereon as voting in its favor.’ Article II, section 22 establishes a constitutional minimum number of votes for a bill to become law. It only describes the circumstances under which a bill does not pass. In other words, article II, section 22 does not prohibit statutes by which the legislature (or the people) express their legislative policy judgment that certain types of bills warrant greater than simple majority consensus for passage. RCW 43.135.035(1) expresses such a legislative policy judgment—that a two-thirds majority vote of each house should be required for passage of bills raising taxes. The statute hardly conflicts with the constitutional floor set by article II, section 22, as any bill receiving its supermajority support has met the requirement of article II, section 22 . . .

Both the framers of the constitution and subsequent legislatures and voters have recognized that certain specified actions should

command the support of more than a simple majority. Petitioners, to the contrary, urge that the same constitutional convention that embraced supermajorities for some purposes intended to prohibit statutes requiring supermajorities for any other purposes. The Constitution contains no language supporting this notion, however. The framers may not reasonably be presumed to have implied the prohibition of a political mechanism that they themselves adopted through language that does not say so. Given the plenary legislative authority of the people and the legislature, and the absence of a clear constitutional prohibition, the Court should not conclude otherwise.”

Ironically, while objecting to the supermajority requirement for tax increases, Senator Brown sponsored Senate rules that require a supermajority vote to amend the budget on the floor.

Senate rule 53 states, “No amendment to the budget, capital budget or supplemental budget, not incorporated in the bill as reported by the ways and means committee, shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed.”

This rule was used during the 2008 supplemental budget deliberations to block an attempt to remove \$250,000 from the Senate budget to buy tickets for girls to attend Seattle Storm basketball games. The vote on the amendment to remove the funding secured a majority, 24-23, but it failed to pass since it did not receive the required 60 percent vote.

What the law says

Adopted by the voters in 1993 and reaffirmed by the Legislature on several occasions, Initiative 601:

- Limited the growth of state spending to a calculation based on inflation and population growth (called the fiscal growth factor);
- Required a two-thirds vote for tax increases by the legislature;
- Required legislative approval of any fee increases in excess of the fiscal growth factor; and

- Required voter approval of any tax increase that would exceed the established spending limit.

In 2007, voters re-affirmed the supermajority vote requirement for tax increases with the passage of Initiative 960. I-960 also:

- Requires legislative approval of all fee increases;
- Requires a non-binding public advisory vote on any tax increase not sent to the voters by the legislature; and
- Provides voters with a detailed cost analysis of all proposed tax and fee increases.

The law being challenged by Senator Brown is RCW 43.135.035(1):

“After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. Pursuant to the referendum power

set forth in Article II, section 1(b) of the state Constitution, tax increases may be referred to the voters for their approval or rejection at an election.”

Initiative 601’s impact on state spending increases

Reviewing state spending increases before and after Initiative 601 took effect, it is clear the measure was successful in limiting the size of state spending increases. This is true at least until the law was amended by the legislature in recent years, changing the calculation of the spending limit established by the voters in 1993. The table below shows a 30-year trend in state spending increases.

Legislative amendments of Initiative 601

The legislature has amended Initiative 601 twelve times since the measure became law. While most of these amendments were minor, the legislature has suspended the two-thirds vote requirement twice (2002 and 2005), and enacted major changes to the way the spending limit is calculated on four occasions (1998, 2000, 2005 and 2006). These changes resulted in the limit being calculated to allow a higher level of public spending.

The major legislative amendments to

State Spending Increases 1979-81 to 2007-09
General Fund State (GFS) and Near General Fund State (NGFS)
(Source: Based on data from the Legislative Evaluation and Accountability Program)

Biennium	GFS Expenditures	% Increase	NGFS Expenditures	% Increase
1979-81	\$5,775,901,000	N/A	\$5,775,901,000	N/A
1981-83	\$6,539,951,000	13.2%	\$6,539,951,000	13.2%
1983-85	\$7,957,920,000	21.7%	\$7,957,920,000	21.7%
1985-87	\$9,184,246,000	15.4%	\$9,230,046,000	16.0%
1987-89	\$10,404,193,000	13.3%	\$10,484,133,000	13.6%
1989-91	\$12,844,273,000	23.5%	\$13,056,989,000	24.5%
1991-93	\$14,982,598,000	16.6%	\$15,294,588,000	17.1%
1993-95*	\$16,314,035,000	8.9%	\$16,722,260,000	9.3%
1995-97	\$17,732,644,000	8.7%	\$18,527,285,000	10.8%
1997-99	\$19,158,884,000	8.0%	\$20,082,207,000	8.4%
1999-01**	\$21,046,741,000	9.9%	\$22,352,753,000	11.3%
2001-03	\$22,548,787,000	7.1%	\$24,545,518,000	9.8%
2003-05	\$23,671,703,000	5.0%	\$25,607,496,000	4.3%
2005-07**	\$27,766,066,000	17.3 %	\$30,171,238,000	17.8 %
2007-09	\$29,838,204,000	7.5 %	\$33,655,219,000	11.5 %

*Initiative 601 takes effect
**Major legislative changes to Initiative 601 spending limit calculation

Initiative 601 are:

1998 – While reenacting and reaffirming Initiative 601, Referendum 49 allowed diversion of Motor Vehicle Excise Tax revenues (car tabs) without lowering the spending limit.

2000 – Creation of “two-way street” loophole. This allowed the spending limit to be increased for program costs or money that is transferred into the state general fund.

2002 – Two-thirds vote requirement for tax increases and expenditures from emergency reserve suspended for 2001-03 biennium.

2005 – Two-thirds vote requirement for tax increases and expenditures from emergency reserve suspended for 2005-07 biennium. Effective with the 2007-09 biennium, the fiscal growth factor is changed from the three-year rolling average of population increase and inflation to the ten-year average growth in personal income. “Two-way street” loophole is narrowed by discounting the impact of transfers between the state general fund and related funds.

2006 – The spending limit assumed for the adoption of 2005-07 budget in 2005 is re-affirmed by the legislature. This action was an attempt by the legislature to end a lawsuit filed against lawmakers for violating Initiative 601 in 2005.

Constitutional protections needed

Regardless of what the Court rules in Senator Brown’s lawsuit, constitutional tax and spending protections are needed for taxpayers. The statutory limits offered by I-601 have proven too easy for lawmakers to circumvent and ignore.

What the people intended to be a firm but reasonable check on the growth of state spending and tax increases has been reduced almost to zero by the legislature, as lawmakers seek to accommodate their desire for excessive spending. Today it is a meaningless safeguard that is bypassed regularly by lawmakers intent on boosting spending and taxes.

Since the legislature has repeatedly suspended the voter-approved requirement that tax increases require a two-thirds vote for approval, constitutional protections are needed. These protections, however,

should not be limited to state taxpayers, but should extend to local taxpayers as well.

To encourage government officials to build a strong public consensus on the need for any proposed tax increase, a two tiered approach should be adopted. Government officials should utilize two different options to raise the tax burden:

1. with a two-thirds vote of the legislative body or;
2. with a simple majority vote pending ratification by the voters via a referendum.

Either option would help assure that a broad consensus is reached and the taxpayers are included on any policy decisions that would result in an increase in their tax burden.

A model for the constitutional reforms that are needed was adopted by the voters last year with the passage of SJR 8206. The constitutional budget stabilization account (“rainy day” fund) created by voters replaced the oft-raided statutory Emergency Reserve Fund that was part of the 1993 voter-approved Initiative 601 Taxpayer Protection Act.

Recommendations

1) Adopt a constitutional amendment requiring a two-thirds legislative vote to raise state or local taxes. Since public officials often refuse to honor voter-approved taxpayer protections, the constitution should be amended to require a two-thirds vote of a state or local legislative body, or voter approval through a referendum, before any state or local tax increase takes effect.

2) Adopt a constitutional amendment to limit the growth of spending to inflation and population growth. Reasonable budget limits similar to those of Initiative 601, but as part of the state constitution, would protect taxpayers and bring greater discipline to public finances.

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