

Proposed Constitutional Amendments Would Require Supermajority Vote for Tax Increases

by Jason Mercier
Director, Center for Government Reform

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Introduction

Last November, voters in Washington enacted Initiative 1185, a measure that requires a direct vote of the people or a two-thirds vote of the legislature to raise taxes. It was the fifth time in past 20 years they had enacted or affirmed this form of tax limitation. Washington Policy Center has long recommended a two-thirds vote requirement protection for taxpayers.¹

Enacting this tax limitation policy five times was necessary because majorities in the legislature have repeatedly suspended the two-third vote requirement. There is a possibility that, once the two-year restriction on changing voter-approved initiatives has passed in late 2014, a majority of lawmakers will again suspend the requirement.

In response, some lawmakers have proposed a constitutional amendment in order to end the cycle of legislators removing, then the people re-imposing, the two-third tax increase requirement. This Legislative Memo describes the proposed amendments, summarizes the results of past tax limitation efforts, and reviews pending court action on the state's current tax limitation.

Past Tax Limitation

Voters in Washington have enacted or affirmed the two-thirds vote requirement for tax increases five times during the past 20 years.

- 2012: Initiative 1185 required a two-thirds vote in the legislature or voter approval for tax increases (it passed statewide with 64% support and approval in 44 of the 49 legislative districts).²
- 2010: Initiative 1053 required a two-thirds vote in the legislature or voter approval for tax increases (it passed with a 64% yes vote).
- 2007: Initiative 960 required a two-thirds vote in the legislature or voter approval for tax increases (it passed with a 51% yes vote).
- 1998: Referendum 49 affirmed the tax limitation provisions of 1993's Initiative 601 (it passed with a 57% yes vote).
- 1993: Initiative 601 required a two-thirds vote in the legislature or voter approval for tax increases (it passed with a 51% yes vote)

¹ "Policy Guide for Washington State, Fourth Edition," Washington Policy Center, 2012.

² "2012 Yes Percentage by Legislative District," Washington Policy Center, December 2012 at www.washingtonpolicy.org/sites/default/files/1185%20legislative%20district.pdf.

Tax Limitation in Other States

Requiring a supermajority vote in the legislature to increase taxes is not unique to Washington; 18 states (counting Washington) have some form of supermajority vote requirement for tax increases. These 18 include several other western states: California, Arizona and neighboring Oregon, to name a few. Of the states with supermajority tax limitations, only the requirements in Washington and Wisconsin are ordinary law; the requirements in all the other states are part of their state's constitutions.³

Existing Supermajority Requirements in the State Constitution

There are nearly two dozen supermajority requirements currently in Washington's constitution. These provisions have been placed there to require a high vote threshold for certain government actions. These restrictions appear to be policy choices. One could argue that requiring a supermajority vote to increase the financial burden the state places on its citizens is no more undemocratic than the many similar restrictions that are already part of the state constitution.

Several of these provisions have been part of Washington's constitution since its ratification in 1889. The most recent supermajority restriction was added by lawmakers and voters in 2007 with the requirement for a three-fifths legislative vote to access funds in the budget stabilization account.⁴ It is clear that supermajority vote requirements are not undemocratic or in most cases even controversial.

Based on the numerous supermajority vote restrictions currently in Washington's constitution, providing voters the opportunity to consider a constitutional supermajority restriction to raise tax would not be embracing undemocratic principles. Instead it would be following the existing constitutional precedents for requiring higher vote thresholds for certain government actions.

Proposed Constitutional Amendments

Five constitutional amendments to require a supermajority vote to raise taxes have been introduced during the 2013 Legislative Session. They are:

1. HJR 4201, requiring a two-thirds vote to raise taxes except for those used for highway purposes (gas taxes, etc.) pursuant to Article 2, Section 40 of the state constitution. It provides an exception for taxes passed to address an emergency declared in a separate law by a two-thirds vote.
2. HJR 4206, requiring a two-thirds vote to raise taxes unless the tax is submitted to voters for approval. It also provides an exception for taxes passed to address an emergency declared in a separate law by a two-thirds vote.
3. SJR 8200, requiring a two-thirds vote to raise taxes unless the tax is submitted to voters for approval. It also provides an exception for taxes passed to address an emergency declared in a separate law by a two-thirds vote.
4. SJR 8204, requiring a two-thirds vote to raise taxes unless the tax is submitted to voters for approval. It also provides an exception for taxes passed to address an emergency declared in a separate law by a two-thirds vote.

³ "Citizens' Guide to Initiative 1185: To Affirm the Two-thirds Vote Requirement for Tax Increases," Washington Policy Center, September 2012 at www.washingtonpolicy.org/publications/notes/citizens-guide-initiative-1185-affirm-two-thirds-vote-requirement-tax-increases.

⁴ "Citizens Guide to SJR 8206, Budget Stabilization Account," Washington Policy Center, September 2007 at www.washingtonpolicy.org/publications/notes/citizens-guide-sjr-8206-budget-stabilization-account.

5. SJR 8205, requiring a two-thirds vote to raise taxes unless the tax is submitted to voters for approval. It requires fee increases to be approved by the legislature with a simple majority vote except for certain agriculture and forestry fees.

At the time of this publication, HJR 4201 and HJR 4206 have not received public hearings but SJR 8200, 8204 and 8205 were heard by the Senate Government Operations Committee on February 7.⁵ SJR 8204 and 8205 were then passed to the Senate Ways and Means Committee for consideration on February 18.

Pending State Supreme Court Ruling

The state's Supreme Court heard arguments last year challenging the constitutionality of the 20-year-old law requiring a supermajority vote for tax increases.⁶ A ruling could be issued at any time. When the court does rule, there are three possible outcomes:

- Outcome 1: The court upholds its previous precedents and dismisses the case for lack of standing. Under this scenario the status quo will remain unchanged and we likely will see this issue on the ballot every two years.
- Outcome 2: The court upholds the supermajority vote requirement. As with outcome one, though the legal question will be resolved, we likely will see this issue on the ballot every two years.
- Outcome 3: The court strikes down the supermajority vote requirement. While this outcome would take the policy off the books, it will not negate the fact the 20-year-old requirement has been approved by voters on five separate occasions. In the past, when the court has invalidated a law passed by the people the legislature has sought to implement what the people want (I-695 concerning car tabs and I-747 concerning property tax limitation are recent examples).

The recommended legislative response to each of these court outcomes is the same and is based on our long-standing policy recommendation: Pass a constitutional amendment and bring finality and certainty to this issue.

Conclusion

A constitutional amendment would provide the public and businesses with predictability about whether this tax protection will exist from year to year. A proposed amendment would decide whether the five-time approval of this policy by voters was a fluke or whether it actually reflects their consistent and ongoing desire that lawmakers build a strong public consensus before enacting any proposed tax increase.

Voters and lawmakers have repeatedly enacted the supermajority vote for tax increases requirement over the past 20 years. Allowing the people to vote on a constitutional amendment would be representative of the public will and would help end this debate once and for all.

Jason Mercier is director of the Center for Government Reform at Washington Policy Center, a non-partisan independent policy research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

⁵ "Senate considers supermajority for taxes constitutional amendments," Washington Policy Center, February 2013 at www.washingtonpolicy.org/blog/post/senate-considers-supermajority-taxes-constitutional-amendments.

⁶ "League of Education Voters, et al v. State of Washington, et al," September 25, 2012, Washington State Supreme Court.