

## Key Findings

1. Voters have enacted or re-affirmed the two-thirds vote requirement for tax increases three times: 1993, 1998, and 2007.
2. The legislature has suspended the two-thirds vote threshold three times. This occurred most recently during the 2010 Legislative Session.
3. Despite numerous legislative amendments to the law, the legislature has never fully repealed the mandate from voters that tax increases require a two-thirds vote.
4. Sixteen states (counting Washington) have some form of supermajority vote requirement for tax increases.
5. If approved for the fourth time, the legislature should refer the two-thirds requirement policy to the voters as a constitutional amendment.

## Citizens' Guide to Initiative 1053

### *To Restore the Two-thirds Vote Requirement for Tax Increases*

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## Introduction

In November the people of Washington will vote on Initiative 1053. The measure would reinstate the state law requiring that tax increases be adopted with a two-thirds vote in the Legislature.

Earlier this year state lawmakers repealed the two-thirds vote requirement until July 1, 2011. Washington Policy Center has long recommended the two-thirds vote requirement to raise taxes as an important protection for taxpayers. Such a policy serves the public interest by limiting the financial burden state government places on the people.<sup>1</sup>

## Text of Initiative 1053

The text of Initiative 1053 is simple. It repeals the temporary suspension of the state's two-third vote requirement and restores the full force and effect of the tax limit law. Initiative 1053's official ballot summary reads:

"This measure would restate the existing statutory requirement that any action or combination of actions by the legislature that raises taxes must be approved by a two-thirds vote in both houses of the legislature or approved in a referendum to the people, and it would restate the existing statutory definition of 'raises taxes.' It would also restate that new or increased fees must be approved by a majority vote in both houses of the legislature."<sup>2</sup>

The intent section of Initiative 1053 says in part:

" . . . the people intend, by passage of this initiative, to require either two-thirds legislative approval or voter approval for tax increase and majority legislative approval for fee increases. These important policies ensure that taking more of the people's money will always be an absolute last resort."<sup>3</sup>

If Initiative 1053 is adopted by the voters, the legislature would be prevented for two years from suspending the two-thirds vote requirement with a simple majority vote, because of the constitutional limits on amending voter-

<sup>1</sup> *Policy Guide For Washington State* (Third Edition), Washington Policy Center, 2008, Page 42.

<sup>2</sup> "Proposed Initiatives to the People – 2010," Washington Secretary of State's Office, at <http://www.sos.wa.gov/elections/initiatives/people.aspx>

<sup>3</sup> "Initiative Measure No. 1053," Washington Secretary of State's Office, at <http://www.sos.wa.gov/elections/initiatives/text/i1053.pdf>

approved initiatives. Any legislative change to a voter-approved initiative during the first two years of enactment requires a two-thirds vote.

## History of Two-thirds Vote Requirement

Washington voters have either enacted or affirmed the two-thirds vote requirement for tax increases three times: 1993 (Initiative 601), 1998 (Referendum 49) and 2007 (Initiative 960).

Voters also approved Initiative 695 in 1999, which expanded the two-thirds vote requirement to include voter approval of increased state and local taxes, fees, and charges. The requirement that taxes could only be raised with voter approval, and never directly by the legislature, was later ruled unconstitutional by the State Supreme Court.

Ironically, using only a simple majority vote, the legislature has suspended the two-thirds vote threshold three times. This occurred most recently during the 2010 Legislative Session, when lawmakers passed SB 6130. The two previous times the legislature suspended the two-thirds requirement were in 2002 (SB 6819) and 2005 (SB 6078).

Despite numerous legislative amendments to the section of law (Revised Code of Washington 43.135) containing the two-thirds vote requirement, the legislature has never fully repealed the voter-passed mandate that tax increases require a two-thirds vote.

In fact, in 2006 the legislature shortened its own 2005 suspension and voted explicitly to reinstate the two-thirds vote requirement so its suspension ended a year sooner than it would have otherwise (SB 6896).

## 2010 Suspension and New Tax Increases

One of the most contentious acts of the 2010 Legislative Session was the decision to again suspend the two-thirds vote requirement after it had been re-enacted by the voters in 2007 with the passage of Initiative 960. A majority of the legislature voted to suspend the two-thirds vote requirement on February 22<sup>nd</sup>. Governor Gregoire signed the suspension two days later.

This decision proved very unpopular in Washington. A KING-TV News poll showed 68 percent of respondents called the repeal of Initiative 960 “the wrong thing to do.” When asked about the policy of having a two-thirds vote in the legislature to raise taxes, 74 percent of respondents said such a limit should be required.<sup>4</sup>

After repealing for two years the two-thirds vote requirement, lawmakers then passed nearly \$800 million (\$6.7 billion over ten years) in tax increases with a simple majority vote, and Governor Gregoire signed the tax increases into law shortly afterwards.<sup>5</sup> These tax increases included:

- Business & Occupation tax increases and modifications
- Taxing soda pop, bottled water, beer, candy, and gum

<sup>4</sup> “Poll: Suspending I-960 was the wrong choice,” King 5 News, February 24, 2010, at [www.king5.com/news/politics/Poll-Suspending-I-960-was-the-wrong-choice-85269127.html](http://www.king5.com/news/politics/Poll-Suspending-I-960-was-the-wrong-choice-85269127.html); and SurveyUSA News Poll #16309, February 24, 2010, at [www.surveyusa.com/client/PollReport.aspx?g=ad7e51a1-a6d4-415f-be78-ab0246a3a467&c=28](http://www.surveyusa.com/client/PollReport.aspx?g=ad7e51a1-a6d4-415f-be78-ab0246a3a467&c=28).

<sup>5</sup> Report on 2010 Tax Increases in Washington State, Washington Policy Center, July 2010, at <http://www.washingtonpolicy.org/Centers/government/policybrief/2010GuideToTaxIncreases.pdf>

- Increasing tobacco taxes
- Eliminating exemptions for the Real Estate Excise Tax
- Increasing taxes paid by Public Utility Districts
- Increasing the 911 excise tax
- Taxing nursing home beds

Based on roll call vote totals, none of these tax increases would have passed had the two-thirds vote requirement not been suspended by a majority of lawmakers.

### Supermajority Requirements in Other States

Requiring a supermajority vote for tax increases is not unique to Washington. Sixteen states (counting Washington) have some form of supermajority vote requirement for tax increases. The other states are:<sup>6</sup>

Arizona	Two-thirds vote
Arkansas	Three-fourths vote
California	Two-thirds vote
Colorado	Two-thirds vote
Delaware	Three-fifths vote
Florida	Three-fifths vote
Kentucky	Three-fifths vote
Louisiana	Two-thirds vote
Michigan	Three-fourths vote
Mississippi	Three-fifths vote
Missouri	Two-thirds vote
Nevada	Two-thirds vote
Oklahoma	Three-fourths vote
Oregon	Three-fifths vote
South Dakota	Two-thirds vote

Of these, only Washington’s supermajority vote requirement is part of ordinary law — all the others are part of that state’s constitution.

### The Two-thirds Vote Requirement in California

Opponents of Initiative 1053 say it is unsound policy and point to California as an example of why Washington should not have a two-thirds vote requirement for tax increases:<sup>7</sup>

“California’s experience has painfully illustrated just how destructive minority rule can be. The Golden State requires two-thirds votes not only to raise revenue, but also to approve budgets. This has caused unparalleled dysfunction and chaos in Sacramento, California’s capital. California’s common wealth and its quality of life have greatly deteriorated as a result, and the state is heavily in debt. It is now widely considered to be

<sup>6</sup> “State Tax and Expenditure Limits—2008,” National Conference of State Legislatures, 2008, at <http://www.ncsl.org/Default.aspx?TabId=12633#othertax>

<sup>7</sup> “NO on Initiative 1053,” Permanent Defense, July 2010, at <http://www.permanentdefense.org/no1053.html>

ungovernable. The bickering, squabbling, and chronic underfunding of public services has also seriously damaged the state's business climate.

Things have gotten so bad that there is a movement afoot in California to get rid of the onerous, unworkable minority veto power, and restore majority rule.”

It is true that a constitutional amendment has qualified for the ballot in California (Proposition 25) asking voters to remove the two-thirds vote requirement to pass the state budget. However, the proposal explicitly states that the two-thirds vote requirement to raise taxes would be retained.

The text of Proposition 25 says: “This measure will not change the two-thirds vote requirement for the Legislature to raise taxes.”<sup>8</sup>

This means California voters are being asked to affirm the same rule that existed in Washington before our legislature suspended the two-thirds vote requirement: a simple majority vote to pass the state budget, and a supermajority vote requirement to pass tax increases.

The tax limitation requirement remains popular in California. According to a recent poll:

“A greater than three-to-one majority of voters (65% to 20%) favors Prop. 25. This proposition calls for reducing the vote needed in the state legislature to pass a budget from a two-thirds majority to a simple (50% plus one) majority, while retaining a two-thirds vote to increase taxes.”<sup>9</sup>

As bad as things are in California, voters apparently still want lawmakers to secure a two-thirds vote before raising taxes.

## **Initiative 1053's Impact on State Budget Reform and the Coming 2011 Legislative Session**

Washington budget writers are faced with a projected \$3 billion budget shortfall for the 2011-13 biennium, which starts in July 2011.<sup>10</sup> Without a two-thirds vote restriction, the legislature is likely to pass additional tax increases, potentially increasing the state's long-term tax burden by billions of dollars.

Under the legislature's 2010 two-year repeal (SB 6130), the two-thirds vote restriction will not be in effect again until July 1, 2011. This means lawmakers will be able to raise taxes again with a simple majority vote when the legislature convenes in January.

Should the voters pass Initiative 1053 in November, however, lawmakers will once again be subject to the two-thirds vote requirement, making new tax increases in the 2011 session highly unlikely.

This possibility provides the voters with a clear opportunity to determine the outcome of the 2011 legislative session, and whether the projected \$3 billion budget shortfall is addressed through tax increases or fundamental spending reforms.

<sup>8</sup> “Passing the Budget on Time Act of 2010,” California Attorney General's Office, at [http://ag.ca.gov/cms\\_attachments/initiatives/pdfs/i854\\_initiative\\_09-0057.pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i854_initiative_09-0057.pdf)

<sup>9</sup> “The Field Poll – State Ballot Propositions,” Field Research Corporation, July 9, 2010, at <http://www.field.com/fieldpollonline/subscribers/RIs2342.pdf>

<sup>10</sup> “Six-year Outlook,” Washington Office of Financial Management, June 2010, at <http://www.ofm.wa.gov/budget/info/June2010Six-YearOutlook.pdf>

Passage of Initiative 1053 would clearly communicate the intent of voters that state spending should be reduced and tax increases taken off the table. Failure of Initiative 1053, however, would indicate that voters support allowing lawmakers to adopt significant tax increases next year.

### **Policy Recommendation: Constitutional Protections Needed if Voters Pass Initiative 1053**

As shown by the relative ease with which the legislature has repeatedly suspended the two-thirds vote requirement, constitutional protections are ultimately needed. These protections, however, should not be limited to state taxpayers but should extend to local taxpayers as well. A policy Washington Policy Center has previously recommended is for the legislature to send voters a constitutional amendment requiring either a two-thirds vote or voter approval to raise taxes.<sup>11</sup>

To help government officials build a strong consensus on the need for a tax increase a two-tiered approach should be taken. Government officials could raise the tax burden:

- With a two-thirds vote of the legislative body; or
- With a simple majority vote pending ratification by the voters in a referendum.

Either option would assure a broad consensus is reached and that taxpayers are included on any decisions to increase their tax burden.

As previously mentioned, of those states with supermajority vote requirements to raise taxes, Washington is the only one whose taxpayer protection requirement is not written into the state constitution.

Since state officials refuse to honor voter-approved statutory protections, the constitution should be amended to require a two-thirds vote of a legislative body or voter approval in a referendum before any state or local tax increase takes effect.

This approach is similar to the constitutional supermajority or voter-approval requirements used in Oklahoma and South Dakota (see Appendix).

### **Conclusion**

Initiative 1053 provides voters with an opportunity to frame the state's coming budget debate. If Initiative 1053 passes, lawmakers' attention will shift away from ways to impose new taxes and will focus on fundamental budget reform and restructuring state spending. If Initiative 1053 fails, voters will have indicated their support for additional tax increases and continuing the current trend of increasing government spending.

Rarely does the vote on one ballot initiative provide policymakers with such clarity on what path voters want them to take.

Aside from the impact on the state budget, if the two-thirds vote requirement is adopted again, constitutional reform is ultimately needed. The voters have already voiced their support for a two-thirds vote restriction on three

<sup>11</sup> *Policy Guide For Washington State* (Third Edition), Washington Policy Center, 2008, Page 42.

occasions, only to see lawmakers suspend the requirement each time. Should Initiative 1053 pass, this will be the fourth time voters will have expressed clear support for this policy.

Rather than continue the current practice of “suspending” the law every time lawmakers want to raise taxes, while at the same time saying they are honoring the will of the voters and technically leaving the law on the books, they should refer the question to voters in the form of a constitutional amendment. An example of how such an amendment could be drafted is shown in the Appendix. This would allow the debate about a two-thirds requirement for tax increases to be put to rest once and for all, while providing the public with predictability about whether this protection will exist from year to year.

## Appendix

Examples of state constitutional provisions requiring a supermajority vote in the Legislature to raise taxes:

### South Dakota Constitution Article 11, Section 14

Vote required to impose or increase taxes. The rate of taxation imposed by the State of South Dakota in regard to any tax may not be increased and no new tax may be imposed by the State of South Dakota unless by consent of the people by exercise of their right of initiative or by two-thirds vote of all the members elect of each branch of the Legislature.<sup>12</sup>

### Oklahoma Constitution Article 5, Section 33

All bills for raising revenue shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.

No revenue bill shall be passed during the five last days of the session.

Any revenue bill originating in the House of Representatives shall not become effective until it has been referred to the people of the state at the next general election held throughout the state and shall become effective and be in force when it has been approved by a majority of the votes cast on the measure at such election and not otherwise, except as otherwise provided in subsection D of this section.

Any revenue bill originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. Any such revenue bill shall not be subject to the emergency measure provision authorized in Section 58 of this Article and shall not become effective and be in force until ninety days after it has been approved by the Legislature, and acted on by the Governor.<sup>13</sup>

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<sup>12</sup> “South Dakota State Constitution,” South Dakota Legislature, at <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=0N-11-14>

<sup>13</sup> “Oklahoma State Constitution,” University of Oklahoma College of Law, at <http://oklegal.onenet.net/okcon/V-33.html>