

Citizens Guide to Initiative 960, The Taxpayer Protection Act

Part 3: Arguments and objections over major policy provisions

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Introduction

In November the people of Washington will vote on Initiative 960, co-sponsored by Tim Eyman. It would re-affirm current law requiring state tax increases be adopted with a two-thirds vote in the legislature, subject all fee increases to legislative approval, require non-binding public advisory votes on tax increases not sent to the voters for approval, and provide voters with a detailed cost analysis of all proposed tax and fee increases. The initiative would not cover local governments.

This paper is the final installment in our three-part series explaining what Initiative 960 says and would do if passed. The first paper presented an introduction to Initiative 960. The second paper compared Initiative 601 and Initiative 960 and looked at how these measures affect tax increases.

This paper reviews the main arguments being made about Initiative 960's major policy provisions. For the purposes of reviewing the competing positions we will compare the arguments being made by Initiative co-sponsor, Eyman, with a critical analysis published by the Washington State Budget and Policy Center.

At this time there are no detailed arguments on the No on Initiative 960 campaign's website (www.no960.com). Because the Budget Center's analysis of Initiative 960, "I-960: Inefficient and ambiguous," August 2007, raises important concerns and objections, those will be used for the purpose of comparison with Eyman's statements in support of Initiative 960. Eyman's comments are from an e-mail to the author dated August 28th. Copies of both documents are available on request.

Detailed 10-year cost analysis for fee and tax increases

Section 2 of Initiative 960 would require the Office of Financial Management to determine the 10-year cost to taxpayers of any proposed tax or fee increase and to make this information publicly available, along with the contact information of the legislator sponsoring the increase.

The intent section for section 2 says (in-part):

"The people want a thorough, independent analysis of any proposed increase in taxes and fees . . . [and] a user-friendly method to track the progress of bills increasing taxes and

fees, finding that transparency and openness leads to more public involvement and better understanding.”

In support of this provision, Eyman argues:

“When a bill is introduced, the state budget office will provide the 10-year cost of the tax increase and list the sponsors and co-sponsors of the bill along with their contact information . . . These email updates are a notice to the press and the public that a revenue-raising bill ‘moved’ [in the legislature].”

The Budget Center sees some merit in this idea, but has concerns about whether complete information would be provided to the public:

“I-960 contains an interesting idea that should be considered. It would require the Office of Financial Management to email regular updates on tax-related bills to interested members of the public . . . However, the emails mandated by I-960 would be sharply restricted—and unbalanced—in the information they provide.”

There is general agreement that increased legislative transparency for the public is a good thing. The disagreement arises over whether this particular tax and fee transparency mechanism is the best option to pursue at this time. Voters are also faced with a cost benefit analysis for implementing the proposed increased fiscal disclosure.

The Office of Financial Management (OFM) estimates that in the first year of enactment it will need up to \$205,000, plus \$154,000 in subsequent years, to modify its computer systems and for staff necessary to implement these new tax and fee transparency reporting requirements. The Department of Revenue estimates its added costs at up to \$280,000 per year.

Voters must weigh whether these increased administrative costs are worth an online, updated resource to track all tax and fee increase proposals in the legislature.

As for the concern expressed that these email updates will be restricted in information, nothing in the text of Initiative 960 prohibits additional information from being included. This means, for example, OFM could include a link to the full bill report when sending out the tax or fee increase e-mail notification. Also, existing legislative websites would provide the public with additional information.

Non-binding advisory votes for tax increases not sent to voters

Section 6 of Initiative 960 requires a non-binding public advisory vote if the legislature does not submit tax increases to the voters for approval through a legislative referendum.

The intent section for section 6 says (in-part):

“If the legislature blocks a citizen referendum through the use of an emergency clause or a citizen referendum on the tax increase is not certified for the next general election ballot, then an advisory vote on the tax increase is required.”

In support of this provision Eyman argues:

“Governor Gregoire and the legislature have promised that all of their increased spending will not require higher taxes to sustain them. If they’re right, then the ballot won’t be overwhelmed. The overuse/abuse/misuse of the emergency clause by the legislature necessitates increased public disclosure . . . Including the contact information for legislators is intended to prompt a dialogue between the people and their elected representatives.”

The Budget Center is skeptical that voters would have enough information to make a well-informed decision:

“The required advisory votes . . . would not provide voters with an opportunity to become more informed. In fact, I-960 seems to restrict the scope of the information provided to voters, thus likely skewing the advisory votes toward a negative result and undermining the state’s neutrality on ballot issues . . . It would only require the ballot question and a list of every legislator’s contact information, party affiliation, and how they voted. The ballot question would only allow 13 words to describe the policy decision that would be sandwiched between biased language such as ‘the legislature imposed, without a vote of the people’ and the generic ‘for government spending’ rather than a specific description of the policy’s purpose . . . In addition, the number of advisory votes placed on each year’s ballot could be overwhelming to both voters and state government.”

Voter frustration with the legislature’s use of emergency clauses to block citizen referendums on two 2005 tax increases (gas and death taxes) resulted in two initiatives being placed on the ballot to repeal the increases. While anger over the actual tax increases was a focal point to put the tax repeal initiatives on the ballot, another major factor was the perception that the legislature was denying the people their right of referendum.

The fact that both initiatives ultimately failed (the tax increases were retained) may illustrate that for some people, signing the petitions was more of a protest against the tactics used by the legislature to increase the taxes, rather than being against the actual tax increases.

In an attempt to address this sentiment, Initiative 960 provides the legislature with two options when it comes to tax increases:

- 1) Voluntarily send the proposed tax increase to the voters as a referendum for approval, or;
- 2) The voters will still have an opportunity to comment on the tax increase through a non-binding advisory vote.

Although the Office of Financial Management estimates that advisory votes may cost about \$1.3 million per year (depending on the number of tax increases on the ballot), any costs incurred are totally in the control of the legislature. If a tax increase is sent to voters as a referendum, no Initiative 960 advisory vote would be required.

If Initiative 960 had been the law since 2003, voters would have had the opportunity to vote on approximately 20 advisory votes ranging from gas tax increases to excise taxes on sea urchins. The majority of these votes would have occurred in 2005.

Objections have also been raised about what information would be provided to voters for the advisory votes. While Initiative 960 has very detailed requirements for what is to be included in the voter's pamphlet, inclusion of additional information is not prohibited.

The Secretary of State has the discretion to include any of the information currently required for other ballot measures, including a pro and con statement. Based on the OFM's analysis, however, information included beyond what is required by Initiative 960 would increase the size of the voter's pamphlet and the election's cost.

As for the objection that the advisory votes would describe the tax increases generically by saying "the legislature imposed, without a vote of the people . . . for government spending," it is important to remember that there is no such thing as a dedicated tax unless it is restricted by the Constitution (such as the gas tax).

At any time the legislature can redirect the revenue of a statutorily "dedicated" tax to another source or transfer the funds from the "dedicated" account. Therefore it is accurate to describe a tax increase as being for "government spending," since it is impossible to know whether the legislature will take the funds from the promised accounts and uses and redirect it to other purposes.

Legislative approval of fee increases

Section 14 of Initiative 960 requires the legislature to approve all fee increases. Currently, agencies adopt fee increases without legislative approval if the increase is within the state spending limit's fiscal growth factor.

The intent section for section 14 says:

"The people want to return the authority to impose or increase fees from unelected officials at state agencies to the duly elected representatives of the legislature or to the people. The people find that fee increases should be debated openly and transparently and up-or-down votes taken by our elected representatives so the people are given the opportunity to hold them accountable at the next election."

In support of this provision Eyman argues:

"This is exactly what county councils and city councils do all the time—it's called representative democracy. Introduce a bill, hold hearings, subject it to scrutiny, debate, and amendment, take recorded votes in committee and on the floor, and receive either a signature or veto of the Governor. These decisions are too important and too impactful to have anyone other than our elected representatives making these decisions. Legislators debate and pass bills that are far, far goofier and time-consuming that are completely frivolous compared to increasing the burden on taxpayers."

The Budget Center is concerned that requiring legislative approval of all fee increases would detract from higher legislative priorities:

"Under I-960, even the most minor of fee increases would have to be passed by legislative action, a practice that could limit the time available for the legislature to act on

higher priorities. Even a proposal to raise the cost of parking at state recreational facilities by 25 cents would require time consuming and expensive analysis and legislative action.”

The potential effect of this requirement is hard to measure. Currently the Office of Financial Management does not track the number of fee increases imposed each year. This makes it difficult to estimate how many fee-increase votes the legislature might face.

While requiring legislative approval of all fee increases would increase legislative oversight and workload, one possible remedy would be to streamline the process by using omnibus bills that include many fee increases at once.

By doing this, legislative approval would still occur for all fee increases, but rather than considering a separate bill and taking a separate vote on each proposed increase, the legislature could combine them into one bill and one vote per agency. This is how lawmakers handled the wide range of tax increases they imposed in 2005, using one bill. The amendment process could be used to add or remove fee increases or to adjust the dollar amount of an increase.

Since agency managers already consider the revenue uses of fee increases when they make their budget requests to OFM, they should be able easily to gather all their proposed fee increases into one agency request bill for the legislature to consider.

Would fee increases require a two-thirds vote?

There has been some concern expressed that under Initiative 960, a fee increase would be subject to the same two-thirds vote requirement as tax increases and also be subject to advisory votes. Nothing in the text of the measure supports this interpretation, however.

Initiative 960 does not change the relationship between fee and tax increases in current law, other than to require that all fee increases receive legislative approval, instead of only those in excess of the fiscal growth factor established by the 1993 voter-approved Initiative 601. Initiative 960 makes a clear distinction between tax increases and fees.

Also, the legislative practice under Initiative 601, dating back to 1994, is that only a simple majority vote is needed to increase fees above the fiscal growth factor. Passage of Initiative 960 would do nothing to change that simple majority vote requirement for fee increases.

Under current law, instead of voting on individual fee increases, the legislature has inserted provisos in the budget giving agencies blanket authority to exceed the fiscal growth factor. Initiative 960 would change this blanket authority by requiring legislative votes on all proposed fee increases.

Conclusion

As discussed in part 2 of our Initiative 960 series, the measure would close the loopholes in Initiative 601 that the legislature has opened over the past decade. These loopholes include double counting of spending and taking tax increases off budget to avoid adhering to the state’s spending limit. In doing so Initiative 960 would not require a two-thirds vote increase to pass the budget or transfer funds among accounts, as opponents claim.

Nowhere in the ballot title, summary, intent section or text of Initiative 960 does it say that a two-thirds vote threshold for adopting the budget or transferring funds is being created. Instead the Initiative focuses on the legislative act of raising taxes, which is specifically defined as raising new revenue, not vote requirements for adopting the budget.

Under no interpretation can Initiative 960 be described as a new spending limit that would restrict state expenditures. In fact, the measure would do nothing to restore the original Initiative 601 fiscal growth factor, meaning the change made in 2005 by the legislature to base the limit on the 10-year average of personal income growth would remain in effect. The major impact Initiative 960 would have on the current state spending limit, if passed, is the legislature would have to follow the rules it put on itself when it amended Initiative 601 in 2005.

Aside from addressing the loopholes to the state's spending limit, Initiative 960 requires legislative approval of fee increases, non-binding public advisory votes on tax increases not sent to the voters for approval, and provides voters with a detailed cost analysis of all proposed tax and fee increases.

The question now before voters is whether these provisions to add transparency and disclosure requirements for tax and fee increases are worth the additional costs and workload for state government.