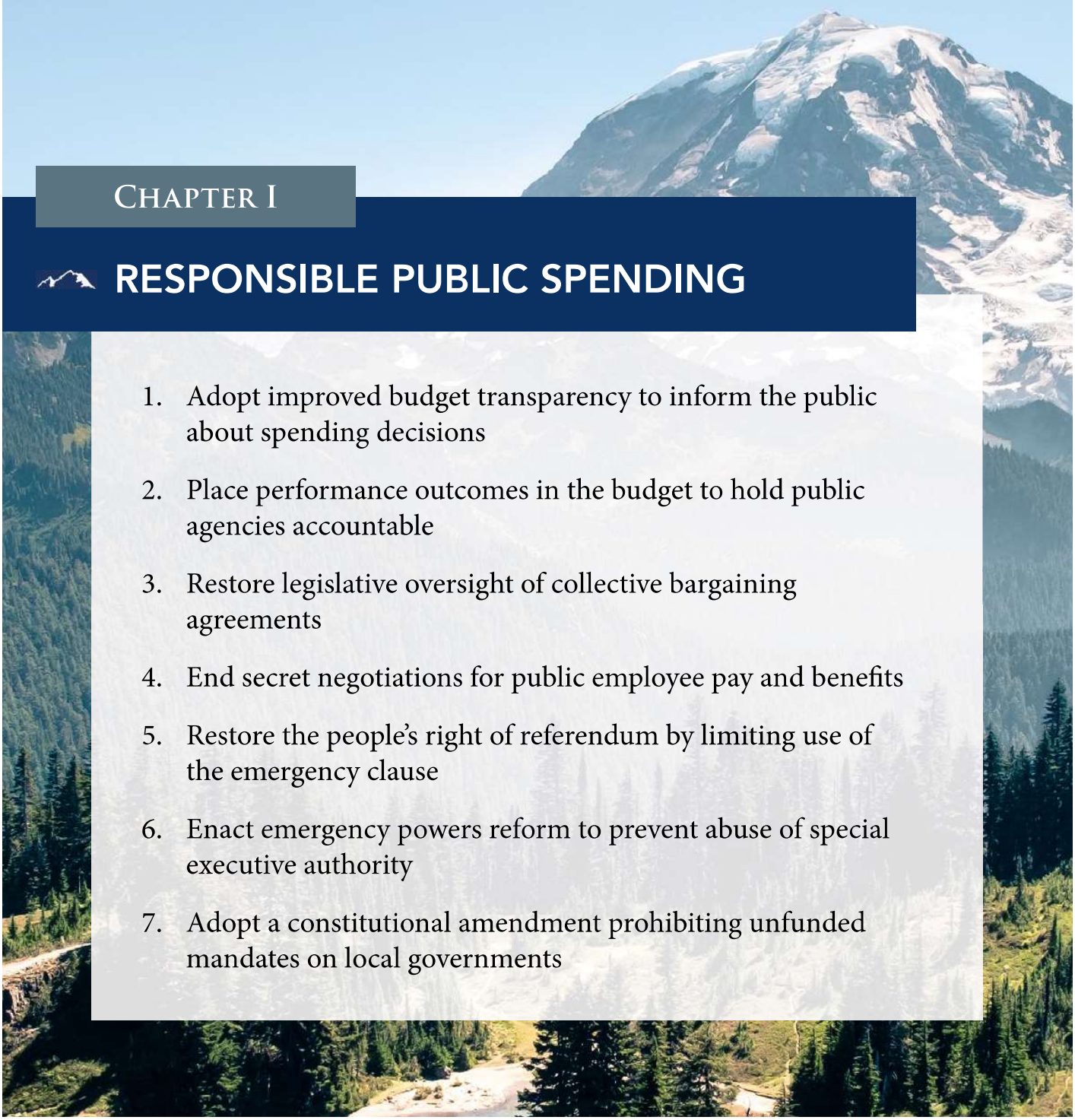
CHAPTER I

RESPONSIBLE PUBLIC SPENDING



CHAPTER I

RESPONSIBLE PUBLIC SPENDING

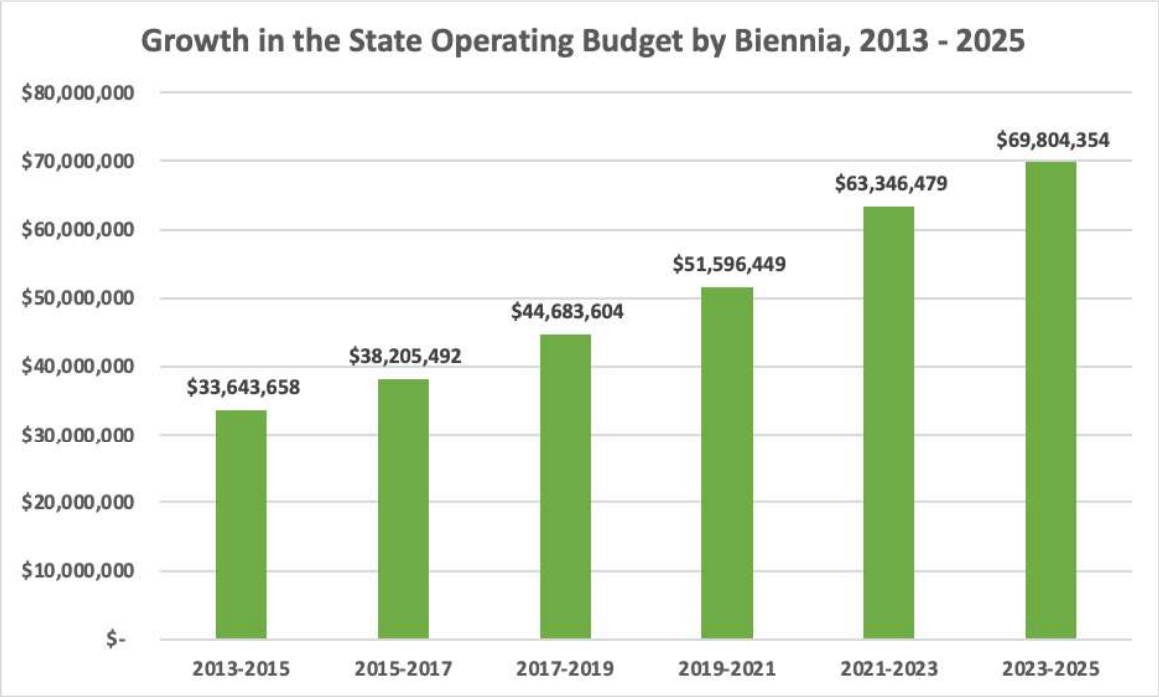
1. Adopt improved budget transparency to inform the public about spending decisions
2. Place performance outcomes in the budget to hold public agencies accountable
3. Restore legislative oversight of collective bargaining agreements
4. End secret negotiations for public employee pay and benefits
5. Restore the people's right of referendum by limiting use of the emergency clause
6. Enact emergency powers reform to prevent abuse of special executive authority
7. Adopt a constitutional amendment prohibiting unfunded mandates on local governments

Policy Recommendation:

1. ADOPT IMPROVED BUDGET TRANSPARENCY TO INFORM THE PUBLIC ABOUT SPENDING DECISIONS

The state's combined budgets (operating, capital and transportation) run to hundreds of pages and spend billions in taxpayer dollars. Lawmakers and the governor tax this money away from the people of Washington and collect it in the treasury. Then they are supposed to spend it for the public's benefit.

The state's operating budget has more than doubled in the past ten years, while the population grew by only 14%.[1] This dramatic increase in spending should be subject to additional discussion and scrutiny by lawmakers.



State Operating Budget spending increased by 109% over ten years while the state population increased by only 14%.

Yet despite the length and complexity of these documents, public hearings are usually held the same day the budgets are introduced, and they are then amended and enacted without enough time for meaningful public input.

Allowing genuine detailed review by the public before legislative hearings or votes on budget bills would increase public trust in government. It would enhance lawmakers' accountability for the spending decisions they make.

At a minimum, the time provided before the Legislature holds a public hearing on a budget bill should be 24 hours after the full details of the proposal are made public. One day is not too much to ask for public accountability. Ideally, lawmakers should provide even more time for public review.

Make budget offers public

As for budget negotiations between the House and Senate, the spending proposals exchanged privately between members of the House and Senate should be made publicly available.

Lawmakers may say that they cannot negotiate the budget in public (even though local government officials do just that). There is no reason, however, that each side's proposals cannot be publicly posted before secret budget meetings are held, so that everyone can see what is being proposed and what compromises are being included in the final budget deal.

Once a conference budget (the final proposal agreed upon by members of the House and Senate) is presented to the Legislature and the public, again, only 24 hours is offered to review the budget. This does not give lawmakers or the public enough time to review and provide additional feedback on the budget.

Conclusion

Providing this additional time would give the public a better idea of what is occurring with the state's most important legislation. Additionally, lawmakers would better understand the details, so there would be no surprises when final roll call votes are taken.

Policy Recommendation:

2. PLACE PERFORMANCE OUTCOMES IN THE BUDGET TO HOLD PUBLIC AGENCIES ACCOUNTABLE

As holders of the state's purse strings, lawmakers are in the best position to pose the "Why" question to be answered by agencies before authorizing taxpayer dollars to be spent. One way to accomplish this is for the Legislature to require agency managers to identify at least one expected performance outcome for each program for which they are seeking funds.

This process would become the Legislature's version of budget instructions to agencies. This would re-focus state budget hearings on whether public programs are working, and whether they should continue to exist. Public programs often fail, and lawmakers should have an equitable measure of

what works and does not work rather than blindly funding government programs year after year simply because they already exist.

In the past the Office of Financial Management (OFM) has instructed state agencies, boards and commissions to engage in a "Priorities of Government" process "to develop and implement a quality management, accountability and performance system..."[2] The effort failed, and was unsuccessful at setting priorities, providing better service to the public or limiting the growth of state government.

Later, Governor Inslee issued Executive Order 13-04 instituting his Results Washington initiative based on his concept of "Lean Management" business principles. Like the earlier effort, Results Washington failed.[3] It did not meet its stated goals, nor did it limit the government or reduce the financial burden state officials impose on taxpayers. The tax burden in Washington sharply increased under Governor Inslee, while overall state spending doubled.

These failed past efforts show that Executive Order announcements and press releases from the governor's office don't work. To improve budget accountability, high-level performance expectations should be written directly into the budget, so lawmakers and citizens can quickly see whether policy goals have been met before agency requests for new or increased spending are approved.

Policy Recommendation:

3. RESTORE LEGISLATIVE OVERSIGHT OF COLLECTIVE BARGAINING AGREEMENTS

In 2002, Governor Gary Locke signed House Bill 1268, which fundamentally altered the balance of power between the governor and Legislature concerning state employee pay and benefits in the budget. The bill's purpose was to reform Washington's civil service laws and for the first time in state history, give state employee unions the power to negotiate directly with the governor behind closed doors for salary and benefit increases.

The law weakened democratic norms by giving the people less say over public spending. Before 2002, collective bargaining for state employees was limited to non-economic issues such as work conditions, while salary

and benefit levels were determined through the normal budget process in the elected Legislature.

Negotiating with the governor in secret

Since the collective bargaining law went into full effect in 2004, unions no longer have their priorities weighed equally with every other special interest during the legislative budget debate. Instead, they negotiate directly with the governor in secret, while the people's representatives are limited to voting "yes" or "no" to the entire contract, with no amendments, that was already agreed to by the governor.

This secrecy has come under increased scrutiny when public record requests were made to view negotiation documents between the governor's office and these unions. The governor's office refused to provide the records until after the Legislature finalized the budget. A lawsuit was filed, and the judge disagreed with the governor's office.[4] The governor was forced to turn over records and pay fines and legal fees.[5] The court's ruling confirmed that taxpayers have the right to know the details of negotiations that go into contracts for state employees.

Not only are there serious transparency concerns with this arrangement, but there are also potential constitutional flaws by unduly restricting the Legislature's constitutional authority to write the state budget.

When announcing the first secretly negotiated state employee contracts in 2004, Governor Gary Locke said:

> "This year's contract negotiations mark the first time in state history that unions have been able to bargain with the state for wages and benefits. The new personnel reform law passed by the Legislature in 2002 expanded the state's collective bargaining activities to include wages and benefits. In the past, the Legislature unilaterally set those terms."[6]

Missing in this statement, however, is that this was also the first time in state history these spending decisions were not made in public. Governor Locke failed to note he had negotiated the contracts in secret, often with the same union executives who were his most important political supporters.

Secret talks on public spending violate the constitution

The decision made in 2002 that limited the authority of lawmakers to set priorities within the budget on state employee compensation should be reversed. This is especially important considering the compelling arguments made in the University of Washington Law Review, noting the 2002 law is an unconstitutional infringement on the Legislature's authority to make budget decisions.[7]

Conclusion

Ultimately, state employee union contracts negotiated solely with the governor should be limited to non-economic issues, like working conditions. Anything requiring an appropriation should be part of the Legislature's normal open and public budget process. This safeguard is especially important when public-sector unions are also political funders and campaign donors of the sitting governor. Powerful unions end up negotiating levels of public spending with the same top government official that they helped put into office.

Policy Recommendation:

4. END SECRET NEGOTIATIONS FOR PUBLIC EMPLOYEE PAY AND BENEFITS

Since 2004, the governor has negotiated with union executives in secret to decide how much taxpayers will pay in salaries and benefits to state employees. The secret talks involve hundreds of millions of dollars in public spending every biennium.

Before 2004, for over 115 years, salaries for public employees were treated like a normal part of the budget process, with committee hearings, a public comment period, recorded legislative votes and other hallmarks of democracy.

Keeping lawmakers in the dark

Not only are union contract negotiations conducted in secret, but none of the records are subject to public disclosure until after the contract is signed into law (when the governor approves the budget). Lawmakers approving

these contracts should not be kept in the dark until the deal is done and it is too late to make changes.

Some level of collective bargaining transparency is currently standard policy in nearly half of the states across the country. Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves. Once public officials meet with union negotiators, however, the public is allowed to monitor the process.

In Washington, these closed-door negotiations should be subject to the state's Open Public Meetings Act (OPMA) or at a minimum utilize a process like the one used by the City of Costa Mesa in California to keep the public informed. That process is called COIN (Civic Openness in Negotiations).

Under this system, all of the proposals and documents that are to be discussed in secret negotiations are made publicly available before and after budget meetings, with fiscal analysis provided showing the public the true cost of each proposal.

Informing the public about promises and trade-offs

While not full-fledged open meetings, providing access to all of the documents before meetings would inform the public about the promises and trade-offs being proposed with their tax dollars before an agreement is reached. This would also help make it clear whether one side or the other is being unreasonable and would quickly reveal whether anyone, whether a union executive or a state official, is acting in bad faith.

Several examples of collective bargaining transparency already exist at the local level in Washington. Examples include government union negotiations in Gig Harbor, Lincoln County, Kittitas County, Ferry County, Spokane County, the City of Spokane, the Pullman School District, and the Kennewick School District.[8]

Explaining why the Pullman School District embraces collective bargaining transparency, the district's finance manager Diane Hodge, said:

"We just think it's fair for all of the members to know what's being offered on both sides."[9]

Ending secrecy in government employee contract negotiations is popular. A statewide poll of 500 Washington voters found that 76 percent supported "requiring collective bargaining negotiations for government employers to be open to the public."[10]

Several newspaper editorials have also been published which call for government officials to open the doors to the public concerning government employment contracts. One example is this editorial by *The Spokesman-Review*:[11]

> "Bargainers say an open process would politicize the process and prevent frank discussions. These arguments are unpersuasive.
>
> "It's already a political process, with the heavy influence of unions on the minds of governors, mayors and commissioners seeking re-election. The people left outside the door are paying for the decisions made by those inside. And we highly doubt honesty would go by the wayside if the public were watching. More likely, it would be cringe-inducing negotiating points that would go unspoken..."
>
> "The key question for government is: Do you trust the public? If the answer is no, don't expect it in return."

Conclusion

State and local employment contracts should not be negotiated in secret. The public provides the money for these agreements. Taxpayers should be allowed to follow the process and hold government officials accountable for the spending decisions made on their behalf.

Policy Recommendation:

5. RESTORE THE PEOPLE'S RIGHT OF REFERENDUM BY LIMITING USE OF THE EMERGENCY CLAUSE

To provide a check on the Legislature, the state constitution grants the people the power to veto unwanted legislation using a referendum. According to the secretary of state:

> "The referendum allows citizens, through the petition process, to refer acts of the legislature to the ballot before they become law."[12]

This power applies to any bill the Legislature adopts except those that include an emergency clause. An emergency clause states that a bill is exempt from repeal by voter referendum because it is:

> "...necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions."[13]

The use of the emergency clause allows a bill to take effect immediately once it is signed by the governor.

Responding to public emergencies

The emergency clause allows the state government to respond quickly to true public emergencies, like civic unrest or a natural disaster. Yet, lawmakers regularly abuse the exemption by attaching emergency clauses to routine bills. The result is that lawmakers often label unpopular political decisions as "emergencies" to shield themselves from public accountability.

The most effective way to end the Legislature's abuse of the emergency clause is a constitutional amendment creating a supermajority vote requirement for its use. The Legislature would then be prohibited from attaching an emergency clause unless the bill was approved by a 60 percent vote. This is enough to prevent political majorities from abusing the rule, while allowing the Legislature to respond quickly to true public emergencies.

For example, during the COVID-19 years, Governor Inslee ruled primarily by executive order, but if given the chance lawmakers would have passed most of these emergency public health measures by large bi-partisan majorities.

Budget bills funding the government could be made exempt from the supermajority vote requirement, allowing them to pass with a simple majority and not be subject to a referendum.

Emergency clause as a blank check

Lawmakers should enact constitutional reforms in response to the state supreme court's granting of total deference to a legislative declaration of an emergency. In a 6-3 ruling, the court upheld the Legislature's declaration of an emergency whether or not there was a true emergency.[14] The impact

of the ruling was to give the Legislature a blank check to use emergency clauses any time it wants. This has the effect of lawmakers routinely stripping the people of their right of referendum. The dissenting judges, however, wrote blistering objections to the majority's decision.

For example, Justice Richard Sanders warned that the ruling allows the Legislature to avoid the people's right of referendum:

> "Where the Legislature uses an emergency clause simply to avoid a referendum rather than respond in good faith to a true 'emergency'...and where the court essentially delegates its independent role as a constitutional guardian to the legislative branch of government in its power struggle against the popular branch of government; I find little left of the people's right of referendum."[15]

There is a better way to allow the Legislature to respond to true emergencies while protecting the people's right of referendum. The following is from South Dakota's constitution:

> "Effective date of acts -- Emergency clause. No act shall take effect until ninety days after the adjournment of the session at which it passed, unless in case of emergency, (to be expressed in the preamble or body of the act) the Legislature shall by a vote of two-thirds of all the members elected of each house, otherwise direct."[16]

Like South Dakota, Washington should also require a supermajority vote if lawmakers want to declare an emergency to prevent a referendum. In previous years, forward-thinking lawmakers have introduced bills to do this but the bills have not been adopted.[17]

Conclusion

If a true public emergency warrants blocking the people's right to a referendum, a 60 percent vote requirement in the Legislature should not be difficult to achieve. In the case of a real crisis, as occurred with COVID-19, the public would most likely welcome the use of the emergency clause by the Legislature, recognizing it is intended to be used at just such a critical time.

Political convenience should no longer serve as a reason for lawmakers to deny the people their right of referendum.

Policy Recommendation:

6. ENACT EMERGENCY POWERS REFORM TO PREVENT ABUSE OF SPECIAL EXECUTIVE AUTHORITY

On February 29, 2020, Governor Inslee issued a declaration of a state of emergency in response to COVID-19.[18] Over the next two-and-a-half years the governor issued dozens of executive orders that imposed restrictions on all citizens and businesses. Many of these orders caused lasting harm and resulted in the bankruptcy of thousands of small businesses. Meanwhile, most governors had already ended their emergency declarations, or they had expired automatically, after just six months.[19]

Governor Inslee provided no metrics or estimates of when he would end arbitrary rule, and he did not give up unregulated emergency powers for 975 days, longer than nearly any other state.

During a natural disaster, state government needs the ability to react quickly to protect life and ensure law and order. To that end, emergency powers are granted to every state governor to ensure rapid response. However, those powers need to be limited in duration and safeguarded with legislative oversight and appropriate checks and balances.

Washington's governor has some of the broadest executive emergency powers among states. Washington ranks 45th worst in the nation in not maintaining limits on the executive's emergency power.[20] In Washington a state of emergency can only be declared by the governor and can only be ended by the governor.[21] During the self-declared emergency period, the only legislative oversight is a 30-day limit over suspended statutes. The Legislature cannot modify or end an emergency proclamation.

The open-ended nature of Washington's emergency powers law contradicts the basic safeguards of the state constitution. Article 1, Section 1 states:

> "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."[22]

When the Legislature is barred from meaningful oversight of emergency powers, the people are denied their constitutional right to consent to how they are governed.

Reforming emergency power

Washington State needs meaningful emergency power reforms. This includes the ability to end or modify an existing emergency proclamation without a veto by the governor. Most states set a clear time limit on the one-man rule of a governor. Washington state should have a time limit of 30 days, after which elected lawmakers can decide whether or not a public emergency still exists.

This is true whether the Legislature agrees or disagrees with every decision the governor makes during an emergency. The Legislature may approve of the governor's action and even agree that emergency powers should be extended for another 30 days.

Reasonable emergency powers are needed

In a true public emergency governors need broad powers to act fast. Legislative bodies take longer to assemble and act than a single executive, so they temporarily delegate their power to the executive in emergencies. But these powers are supposed to be transferred for a limited time, with meaningful legislative oversight of the decisions the governor makes.

Requiring affirmative legislative approval after a set point in time does not remove a single power from the governor's ability to govern. All existing authority would remain. The only change would be that secret policymaking would have to be justified to the people's legislative representatives to continue an emergency policy. In that way democracy would be protected and the people's right to self-government would be respected.

Conclusion

Our system of governance is not meant to be the arbitrary rule of one man working behind closed doors. An emergency order should never last 975 days unless it has received affirmative authorization from the legislative branch of government.

Policy Recommendation:

7. ADOPT A CONSTITUTIONAL AMENDMENT PROHIBITING UNFUNDED MANDATES ON LOCAL GOVERNMENTS

Washington voters have repeatedly adopted tax and spending restrictions to control state spending growth and force budget prioritization to avoid unnecessary tax increases.

Though these tax restrictions have since been thrown out by the state supreme court, the budget requirements passed by voters remain in law. This includes the prohibition barring the Legislature from imposing unfunded mandates on local governments. If unfunded mandates are against state law, why are local governments still being subjected to them?[23]

Based on ballot measures adopted by voters in 1979 and 1993, unfunded mandates on local government should not be occurring. Here is the ballot summary for Initiative 62, adopted in 1979 to control state tax revenue growth:

> "This limit would apply only to the state – not to local governments. The initiative, however, would prohibit the legislature from requiring local governments to offer new or expanded services unless the costs are paid by the state."[24]

Section 6 of Initiative 62 explicitly provides:

> "(1) The legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any taxing district unless the districts are reimbursed for the costs thereof by the state."

After Initiative 62 failed adequately to control state tax and spending increases, the voters adopted Initiative 601 in 1993. Along with imposing new tax and spending limits, the ballot summary for Initiative 601 noted:

> "The Legislature would be prohibited from imposing responsibility for new programs or increased levels of service on any political subdivision of the state, unless the subdivision is fully reimbursed by specific appropriation by the state."[25]

The combination of Initiative 62 and Initiative 601 restrictions on unfunded mandates makes up the current state prohibition found in state law:

> ". . . the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any political subdivision of the state unless the subdivision is fully reimbursed by the state for the costs of the new programs or increases in service levels."[26]

The intent of voters was clear in adopting these two initiatives. State spending and taxes should be restricted, and local governments protected so lawmakers do not simply shift the cost of programs and expect local officials to raise taxes to fund them. In contrast, that is exactly what is happening today.

Rather than comply with state law that prohibits unfunded mandates, lawmakers' response appears to give local governments new taxing authority or weaken other tax protections like the voter-approved cap on property taxes.

Since the current voter-approved law prohibiting unfunded mandates is not working, legislators should look at how other states protect their local governments. In 1995, New Jersey voters adopted the "State Mandate, State Pay" constitutional amendment. Unlike Washington's often-ignored statutory ban, the New Jersey constitutional amendment has an enforcement mechanism to ensure compliance:

> "The Legislature shall create by law a Council on Local Mandates. The Council shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate."

According to the New Jersey Council on Local Mandates:

> "The Council, which began operations in 1996, is a bipartisan body that is independent of the Executive, Legislative and Judicial branches of State government... Council deliberations begin with the filing of a complaint by a county, municipality, or school board, or by a county executive or mayor who has been directly elected by voters."[27]

Lawmakers easily ignore the Washington state law barring imposition of unfunded local mandates. This is the exact situation voters tried to prevent when they passed Initiative 62 and Initiative 601. The goal was to force fiscal discipline on the state while preventing costs and pressure for tax increases to be shifted to local governments.

Conclusion

Especially in a time of record state revenues and spending, the answer to unfunded mandates is not to tell local officials to raise taxes, but instead for lawmakers to direct state spending within existing revenue to comply with the law. The ongoing failure of lawmakers to do so shows that additional safeguards against unfunded mandates are needed to protect local officials and taxpayers.

ADDITIONAL RESOURCES

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