

Citizens Guide to Initiative 960, The Taxpayer Protection Act

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Introduction

In November the people of Washington will vote on Initiative 960. The measure is sponsored by Tim Eyman and 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.

Over the next few weeks WPC's Center for Government Reform will write a series of short papers explaining what Initiative 960 says, review the main arguments for and against its major policy changes, how it would work with existing law (Initiative 601), and what practical impact it would have on state budgeting. This first paper is an introduction to Initiative 960 and describes the legal battle to keep it off the ballot.

Text of Initiative 960

The text of Initiative 960 runs fifteen pages and consists of 19 sections. Initiative 960's official ballot measure summary reads:

“This measure would require either a two-thirds vote in each house of the legislature or voter approval for all tax increases. New or increased fees would require prior legislative approval. An advisory vote would be required on any new or increased taxes enacted by the legislature without voter approval. The office of financial management would be required to publish cost information and information regarding legislators' voting records on bills imposing or increasing taxes or fees.”

The intent section of Initiative 960 says (in part):

“With this measure, the people intend to protect taxpayers by creating a series of accountability procedures to ensure greater legislative transparency, broader public participation, and wider agreement before state government takes more of the people's money. This measure protects taxpayers and relates to tax and fee increases imposed by state government. This measure would require publication

of cost projections, information on public hearings, and legislators' sponsorship and voting records on bills increasing taxes and fees, allow either two-thirds legislative approval or voter approval for tax increases, and require advisory votes on tax increases blocked from citizen referendum.”

The two-third vote requirement for tax increases was previously enacted into law by the 1993 voter-approved Initiative 601 tax and spending limit. Ironically, using only a simple majority vote, the legislature has suspended the two-third vote requirement in the past to enable tax increase to escape the two-third vote threshold. This occurred most recently during the 2005 Legislative Session.

By including this requirement in Initiative 960, if adopted by the voters, the legislature would be prohibited for two years from suspending the two-thirds vote threshold with a simple majority vote due to the constitutional rules concerning amending voter-approved initiatives. Legislative changes to initiatives during the first two years of enactment require a two-thirds vote.

The major policy provisions of Initiative 960 are:

- Section 2 – Requires 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.
- Section 5 – Re-affirms the voters' and legislature's past commitment to requiring a 2/3 legislative vote to increase taxes. The Initiative broadly defines taxes to include gas-taxes and those taxes taken off budget (like the death-tax) to avoid triggering compliance with Initiative 601. This section also closes a loophole in Initiative 601 that allows spending to be counted twice in order to artificially increase the state spending limit (the state Supreme Court is expected to rule soon on this practice).
- Section 6 – Requires a non-binding public advisory vote if the legislature does not submit tax increases to the voters for approval via a legislative referendum.
- Section 14 – 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.

Each of these sections will be discussed in detail in future articles.

Battle over Initiative 960 begins early

On the strength of more than 300,000 submitted signatures (224,880 valid signatures required for certification), Initiative 960 qualified in July as the only statewide citizen initiative certified for the 2007 election.

However, the battle over Initiative 960 began long before the signatures were counted. In May, Initiative 960 opponents, Futurewise and Service Employees International Union 775, sued Secretary of State Sam Reed to keep him from certifying Initiative 960 for the ballot, even if enough valid signatures were eventually turned in.

The opponents' main legal argument was that Initiative 960 does not qualify as a valid ballot measure. This claim was based on their belief that if enacted, Initiative 960 would be unconstitutional because they believe its policy provisions would amend the state Constitution by changing the constitutional process for enacting legislation and taxes. An initiative cannot be used to amend the Constitution. The opponents also argued that I-960:

- Drains state revenue placing the stability of state resources in doubt;
- Replaces the referendum process;
- Subjects revenue measures to mandatory referendum, and;
- Impedes the legislature's ability to delegate authority to levy fees.

Defending the Secretary of State, Attorney General Rob McKenna argued the Court should dismiss the case because pre-election challenges to initiatives based on their supposed unconstitutionality are prohibited in Washington state. While saying the proper time to consider constitutional challenges is after an initiative is approved by the voters, McKenna did note in legal briefs that he does not concede that opponents "have properly analyzed or characterized what I-960 would do or how it would operate if enacted."

Siding with the Attorney General, the King County Superior Court on July 13, 2007 rejected the pre-election challenge to Initiative 960, thus allowing the initiative to proceed to the November ballot for voters to consider. The Court's dismissal of the case means that if opponents want to challenge Initiative 960 on constitutional grounds they have to do it after the election.

Next up: comparison of Initiative 601 and Initiative 960

The next installment of our series on Initiative 960 will be a comparison of Initiative 601 and Initiative 960, as well as a summary of the current Initiative 601 litigation (double counting of spending) and how Initiative 960 seeks to address the legal issues raised. Future areas of focus will look into the pro and con statements concerning the major policy provisions of Initiative 960.

Jason Mercier is the Center for Government Reform Director at Washington Policy Center. . Nothing in this document should be taken as any attempt to aid or hinder the passage of any legislation before any legislative body. Contact Washington Policy Center at 206-937-9691 or www.washingtonpolicy.org.