

## **Citizens Guide to Initiative 960, The Taxpayer Protection Act** **Part 2: Comparison of Initiative 601 and Initiative 960**

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### **Introduction**

In November the people of Washington will vote on Initiative 960, 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 second installment in our series explaining what Initiative 960 says and would do if passed. The first paper was an introduction to Initiative 960. This paper compares Initiative 601 and Initiative 960, summarizes the current Initiative 601 litigation (double counting of spending) and shows how Initiative 960 seeks to address these legal issues.

### **Background of Initiative 601**

To understand Initiative 960 and how it would change current law, a review of Initiative 601 is necessary. Adopted by the voters in 1993, Initiative 601:

- Limited the growth of state spending to a calculation based on inflation and population growth (called the fiscal growth factor);
- Required a two-thirds vote by the legislature for tax increases;
- Required legislative approval of any fee increases in excess of the fiscal growth factor, and;
- Required voter approval of any tax increase that would exceed the established spending limit.

In comparison, Initiative 960, if adopted by voters this November, would:

- Re-affirm the law established by Initiative 601 requiring state tax increases be adopted with a two-thirds vote in the legislature;

- Require legislative approval of all fee increases;
- Require a non-binding public advisory vote on any tax increase not sent to the voters by the legislature, and;
- Provide voters with a detailed cost analysis of all proposed tax and fee increases.

In 1993, proponents of Initiative 601 argued the voters should pass it because:

“Politicians can’t control spending and Washington’s citizens end up paying the bill through higher taxes. With I-601, the Taxpayer Protection Act, the people can set reasonable spending limits and give themselves the power to decide whether tax hikes are really needed.” [Source: 1993 Voter’s Pamphlet]

At the same time, opponents urged a no vote, saying:

“Washington citizens deserve a strong economy, good paying jobs, a clean environment, safe neighborhoods, quality education, and improved health care. This initiative will not help us achieve these goals. Every citizen should demand that taxes be raised prudently and public money be spent wisely. But this initiative is not the answer to legitimate calls for improved government efficiency and accountability.” [Source: 1993 Voter’s Pamphlet]

Agreeing with proponents, voters adopted Initiative 601.

### **Initiative 601’s impact on state spending increases**

In reviewing the rise in state spending before and after Initiative 601 took effect, it is clear the measure was successful in limiting the size of annual state spending increases. This is true at least until the law was amended by the legislature in recent years, changing the calculation of the spending limit established by the voters in 1993. The table below shows the 30-year trend in state spending increases.

**State Spending Increases 1979-81 to 2007-09**  
**General Fund State (GFS) and Near General Fund State (NGFS)**  
*(Source: Based on data from the Legislative Evaluation and Accountability Program)*

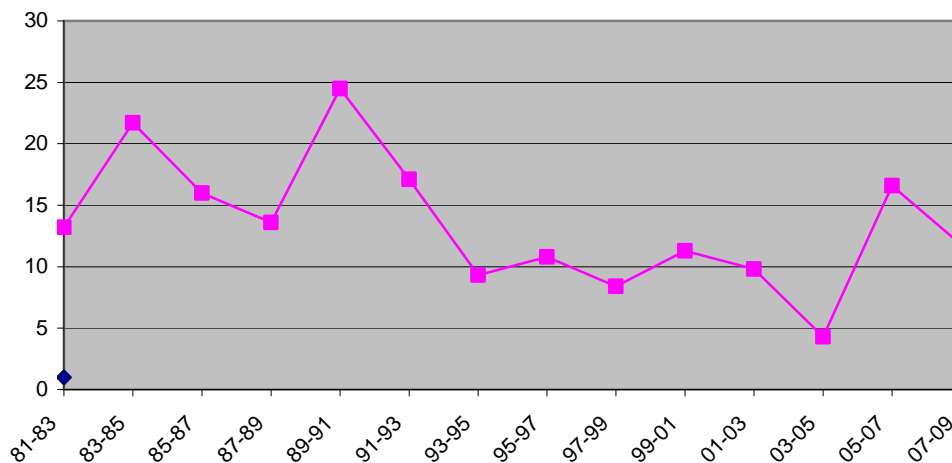
<b>Biennium</b>	<b>GFS Expenditures</b>	<b>% Increase</b>	<b>NGFS Expenditures</b>	<b>% Increase</b>
1979-81	\$5,775,901,000	N/A	\$5,775,901,000	N/A
1981-83	\$6,539,951,000	13.2%	\$6,539,951,000	13.2%
1983-85	\$7,957,920,000	21.7%	\$7,957,920,000	21.7%
1985-87	\$9,184,246,000	15.4%	\$9,230,046,000	16.0%
1987-89	\$10,404,193,000	13.3%	\$10,484,133,000	13.6%
1989-91	\$12,844,273,000	23.5%	\$13,056,989,000	24.5%
1991-93	\$14,982,598,000	16.6%	\$15,294,588,000	17.1%
1993-95*	\$16,314,035,000	8.9%	\$16,722,260,000	9.3%
1995-97	\$17,732,644,000	8.7%	\$18,527,285,000	10.8%
1997-99	\$19,158,884,000	8.0%	\$20,082,207,000	8.4%
1999-01**	\$21,046,741,000	9.9%	\$22,352,753,000	11.3%
2001-03	\$22,548,787,000	7.1%	\$24,545,518,000	9.8%
2003-05	\$23,671,703,000	5.0%	\$25,607,496,000	4.3%
2005-07**	\$27,509,540,000	16.2%	\$29,853,117,000	16.6%
2007-09	\$29,622,901,000	7.7%	\$33,364,407,000	11.8%

*\*Initiative 601 takes effect*

*\*\*Major legislative changes to Initiative 601 spending limit calculation*

In the decade before Initiative 601, state spending rose on average by 17.3 percent per biennium. Since Initiative 601 became law, state spending increases have averaged 8.9 percent, almost half the previous rate of spending increase. This post-Initiative 601 average includes the past two budgets adopted under Governor Gregoire, with their combined 25.1 percent increase (30.3 percent NGFS) in spending. These budgets reflect the higher spending increases allowed under changes the legislature made to Initiative 601 in 2005.

**Percentage Increase in NGFS Spending 1979-81 to 2007-09**



The graph above shows a major drop in the percentage increase in state spending after Initiative 601 took effect during the 1993-95 biennium. Up until the major changes to the law by the legislature in 2005, these percentage increases were relatively stable. After 2005, the rate of spending increase rose sharply.

The General Fund State (GFS) is the main account from which most of the state's expenditures are made (excluding federal funds). In recent years, however, spending that used to be made from the general fund has been moved "off budget" to related accounts. These accounts are called the Near General Fund State (NGFS).

### Legislative amendments of Initiative 601

The legislature has amended Initiative 601 twelve times since the measure became law. While most of these amendments were minor, the legislature has suspended the two-thirds vote requirement twice (2002 and 2005) and enacted major changes to the way the spending limit is calculated on four occasions (1998, 2000, 2005 and 2006). These changes resulted in the limit being calculated to allow a higher level of spending increase.

The major legislative amendments to Initiative 601 are:

- 1998 – While reenacting and reaffirming Initiative 601, Referendum 49 allowed diversion of Motor Vehicle Excise Tax revenues (car tabs) without lowering the spending limit.
- 2000 – Creation of "two-way street" loophole (the subject of current litigation). This allowed the spending limit to be increased for program costs or money that is transferred into the state general fund.
- 2002 – Two-thirds vote requirement for tax increases and expenditures from emergency reserve suspended for 2001-03 biennium.

- 2005 – Two-thirds vote requirement for tax increases and expenditures from emergency reserve suspended for 2005-07 biennium. Effective with the 2007-09 biennium, the fiscal growth factor is changed from the current three-year rolling average of population increase and inflation to the ten-year average growth in personal income. “Two-way street” loophole is narrowed by discounting the impact of transfers between the state general fund and related funds.
- 2006 – The spending limit assumed for the adoption of 2005-07 budget in 2005 is re-affirmed by the legislature. This action was an attempt by the legislature to end a lawsuit filed against lawmakers for violating Initiative 601 in 2005. The status of this ongoing litigation is described below.

### **Summary of current Initiative 601 litigation**

Although the legislature suspended the supermajority vote requirement for tax increases in 2005 for the 2005-07 biennium, it did not suspend Initiative 601’s requirement that if tax increases would result in expenditures above the spending limit, voter-approval is required. This fact is the basis for a lawsuit filed in 2005 against the legislature for violating Initiative 601.

The lawsuit was filed by the Washington State Farm Bureau, Washington State Grange, National Federation of Independent Business, Building Industry Association of Washington, Evergreen Freedom Foundation, Washington Association of REALTORS, and Snohomish County taxpayer Steve Neighbors.

In 2005, the legislature enacted approximately \$400 million in tax increases with a simple-majority vote and without voter-approval. The largest of these tax increases were:

- Cigarettes – \$175 million
- Death-tax – \$139 million
- Liquor – \$47 million
- Extended warranties for product repairs or replacements – \$37 million

Though a two-thirds vote was not required for these tax increases due to the legislature’s suspension of the law, voter-approval was still required if the tax increases would result in expenditures in excess of the spending limit. The lawsuit filed against the legislature in 2005 argues the tax increases were above the spending limit and therefore in violation of the law since they did not receive voter approval.

In March 2006, Snohomish County Superior Court Judge James Allendoerfer ruled the legislature did violate Initiative 601 when it adopted the 2005-07 budget and enacted several tax increases without a vote of the people. This case has been appealed to the state Supreme Court. A ruling is expected any week.

Judge Allendoerfer ordered the state to reduce its spending for the 2005-07 budget and invalidated most of the tax increases until ratified by a vote of the people. His order is not in effect while the case is on appeal. The death and cigarette taxes survived on a technicality. Initiative 601's provisions at the time applied only to the state's general fund. When enacting the death and cigarette taxes, the legislature dedicated the revenue to an off-budget account, which was not subject to the Initiative 601 limit.

When issuing his ruling, Allendoerfer said:

“Here, the legislature exploited a loophole in I-601 for the express purpose of artificially increasing the expenditure limit so as to avoid a vote by the people on the new taxes included in the biennium budget. The loophole, designated ‘triangulation’ by the plaintiffs, and referred to by legislative staff as a ‘huge loophole,’ and the ‘magic three-for-one provision,’ has the potential of trumping the intent and spirit of I-601 altogether.”

The heart of the case focused on the “two-way street” loophole adopted by the legislature in 2000 and whether money could be spent twice to increase the spending limit. In an attempt to raise the spending limit high enough so that the taxes adopted during 2005 would not be subject to a vote of the people, the legislature:

- Transferred \$250 million from the Health Services Account to the General Fund State; then,
- “Appropriated” \$250 million from the General Fund State to the Violence Reduction and Drug Enforcement Account; and finally,
- Transferred \$250 million from the Violence Reduction and Drug Enforcement Account back to the Health Services Account.

The effect of this merry-go-round treatment of \$250 million was an artificial increase in the spending limit high enough to avoid triggering the public vote requirement for the new taxes enacted in 2005. During oral arguments before the state Supreme Court, Justice Susan Owens referred to the budget maneuvering by the legislature as a “shell game” designed to avoid a vote of the people.

### **Initiative 960's attempt to address Initiative 601 litigation**

Responding to the machinations of the legislature in 2005, the sponsors of Initiative 960 attempt to eliminate the possibility of similar budget maneuvers being used in the future to avoid the state spending limit. Specifically addressing the use of double counting spending to artificially increase the spending limit, Section 5 (5) of Initiative 960 says that any increase in the spending limit cannot be based on transfers (or appropriations) of money that originated in the general fund or a related fund.

As for the legislature's practice of taking taxes off budget to avoid triggering the provisions of Initiative 601, as occurred in 2005 with the cigarette and death tax increases, Initiative 960 expands the tax requirements of Initiative 601 to include all state taxes. Initiative 960's Section 5 (6) reads:

“For the purposes of this act, ‘raises taxes’ means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.”

Under this definition of “raises taxes,” all state tax increases, including those for the transportation budget (gas taxes) would be subject to the two-third vote requirement for approval.

### **Opponent's criticism of tax definition**

Initiative 960 opponents base their strongest criticism on the measure's definition of “raises taxes.” Opponents argue:

“Standard accounting decisions as well as routine budget-making could be considered ‘tax increases’ under I-960 even if there is no increase in taxes as a result. By labeling these decisions as ‘tax increases,’ a minority of lawmakers could hold up legislative action . . . An ambiguous clause in I-960 could freeze the current budget structure without supermajority agreement.” [Washington Budget and Policy Center paper, *I-960: Inefficient and ambiguous*, August 2007]

Initiative 960 sponsor Tim Eyman responds to this criticism by saying:

“The clear language and clear intent of I-960 involves any action that ‘raises taxes.’ In fact, I-960 includes a provision (section 5, subsection 5) which specifically stops the legislature from counting transferred funds as ‘new revenue.’ . . . I-960 clarifies the law and ensures that transferred funds are not considered ‘new revenue.’ Since transferred funds under I-960 aren't ‘new revenue,’ then they certainly don't require 2/3's legislative approval.” [E-mail from Tim Eyman August 9, 2007]

### **Context of Initiative 960's definition of “raises taxes”**

The prospect that every financial transaction by the legislature (such as transferring funds between accounts) would require a two-thirds legislative vote or a public advisory vote is indeed troubling because of the burden this would create on the legislative process.

The question is whether Initiative 960's definition of tax increases would lead to the budget gridlock predicted by opponents.

To determine whether or not this provision of Initiative 960 is ambiguous, as opponents charge, courts would ask whether it is reasonable to interpret Section 5 (6) of Initiative 960 to include any action of the legislature that increases revenue in any account

or budget (like a fund transfer or budget increase). But this inquiry would have to take into account the overall statutory structure into which Initiative 960 fits, as well as the rest of the initiative text itself.

A 1994 memo by the Attorney General’s Office, concerning the interpretation of Initiative 601, demonstrates this principle:

- “In interpreting an ambiguous provision of law we are guided by the rules of statutory construction. ‘The rules of statutory construction apply to initiatives as well as to legislative enactments. . . . The collective intent of the people is to be ascertained when construing a law adopted by the vote of the people.’”
- “‘In interpreting [an initiative], we must look to the voters’ intent and the language of the Initiative as the average informed lay voter would read it.’”
- “‘In construing a statute, a provision will be viewed in relation to other provisions of the statute and its object as a whole.’”
- “‘[T]he statute must be read as a whole; intent is not to be determined by a single sentence.’”

What does this mean for Initiative 960? Even if the section defining what “raises taxes” means were open to two or more reasonable interpretations, and thus ambiguous, the intent of the section is clear when it is viewed in the context of the whole initiative. Neither adopting the final budget or transferring existing funds among accounts would require a two-thirds vote.

Nowhere in the ballot title, summary, intent section or text of Initiative 960 does it say that a two-thirds vote requirement 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.

### **Next up: Detailed review of Initiative 960’s policy provisions**

In the next installment of our series on Initiative 960, we will review the major policy provisions of the initiative and the pro and con statements concerning them. The provisions to be reviewed include Initiative 960’s requirement that all fee increases receive legislative approval, requiring non-binding public advisory votes on tax increases not sent to the voters for approval, and providing voters with a detailed, publicly-available cost analysis of all proposed tax and fee increases.

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