



WASHINGTON  
POLICY CENTER

# POLICY GUIDE

For Washington State

6th Edition

Edited by Paul Guppy





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# A THINK TANK DEDICATED

TO IMPROVING THE LIVES OF PEOPLE IN WASHINGTON STATE

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Washington Policy Center (WPC) is an independent, non-profit think tank that works to improve the lives of people in Washington state by providing accurate, high-quality research and innovative solutions for policymakers, the media and the general public. WPC brings a credible, free-market perspective to the public debate in Washington state.

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**FOR WASHINGTON STATE**

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6th Edition  
Edited by Paul Guppy

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## **About the Editor and Authors**



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# POLICY GUIDE

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## FOR WASHINGTON STATE

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### Foreword

by Daniel Mead Smith, President

Thank you for your interest in this 6th edition of the Policy Guide for Washington State and our work at Washington Policy Center (WPC). We are an independent, non-profit research and educational organization with offices in Seattle, Olympia, Spokane and the Tri-Cities.

The majority of our supporters are individuals, families and small business owners. Over 90 percent of our support comes from in-state sources. All contributions are independent and voluntary; we do not receive government money.

Our research program is centered on eight areas of public policy: budget, taxes and government reform; protecting the environment; promoting agriculture; reforming health care; improving education; protecting small business; improving transportation; and promoting labor reform and worker rights. We also provide a free, nonpartisan website, [WashingtonVotes.org](http://WashingtonVotes.org), to inform people about bills, roll call votes and other legislative action taking place at the state capitol.

We use many sources in our research, particularly data and reports provided by local, state and federal government agencies. However, all findings, conclusions and policy recommendations are determined solely by WPC analysts, based on objective and well-sourced research.

Typical users of our research are state lawmakers, agency officials, city and county officials, reporters for print, broadcast and online media and our thousands of members across the state. News organizations frequently use WPC research when covering public issues. Our experts and research findings and policy recommendations are cited in news reports over a thousand times every year.

Washington Policy Center is not a political organization. We promote ideas and independent research, not parties or candidates. Our experts serve as a resource to lawmakers of both parties to promote sound policies that benefit the people of Washington.

Similar to the 5th edition of our Policy Guide, this new edition presents what we believe are the best ideas and reforms needed to make the greatest positive difference for the people of our great state. These are the policy recommendations that we think policymakers should adopt as their main priorities.

We hope you find this latest edition of the Policy Guide for Washington State both useful and informative. Its purpose is to advance better governance and policy reforms that benefit the people of our state. As such, it is a key part of the mission of Washington Policy Center, which is to promote public policy ideas that improve the lives of all Washingtonians. You can learn more at [www.washingtonpolicy.org](http://www.washingtonpolicy.org).

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# **POLICY GUIDE**

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**FOR WASHINGTON STATE**

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Introduction to the 6th Edition  
by Paul Guppy, Vice President for Research







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# CHAPTER ONE

## RESPONSIBLE PUBLIC SPENDING

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### **1. Policy Recommendation: 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.

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. Often the Governor signs budget bills quickly without receiving considered input from the public.

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

At a minimum, the time provided before the legislature holds a public hearing or votes on a budget bill should be 24 hours after 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 that are 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 the proposals of each side 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.

Not only would the public have a better idea of what is occurring with the state's most important legislation, but lawmakers would also know what positions legislative leadership recommended, so there would be no surprises when final roll call votes are taken.

### **Enact needed policy changes before a budget vote**

Another budget reform would be to prohibit a vote on the operating budget until all the policies necessary to carry out a balanced budget have been passed first. By actually voting on the policy changes, like tax increases, necessary to balance a proposed budget, the House and Senate would know exactly what level of funding would be under each budget proposal, and that each house can actually muster the votes necessary to implement the budget its members are proposing.

## **2. Policy Recommendation: 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 they are seeking to fund.



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 actually working and whether they should continue to exist. Public programs often fail, and lawmakers should have an equitable measure of what works and what does not work, rather than blindly funding government programs every year simply because they already exist.

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.

### **3. Policy Recommendation: Adopt budget reforms to end the threat of a government shutdown**

During recent budget cycles, Washington lawmakers have come dangerously close to forcing a government shutdown due to failures in the budget process. The 2017-19 state budget was signed just after 11:00 p.m. on the last day of the funding period, barely beating the midnight deadline. The 2015-17 state budget was signed just 18 minutes before a government shutdown would have occurred. The 2013-15 budget was finalized just a few hours before state agencies would have been forced to close. Such reckless irresponsibility would get private-sector managers fired.

In each case, the tax revenue paid by citizens had increased substantially, meaning threatened government shutdowns were occurring during times of rising revenues, not deficits. The government has plenty of money, lawmakers and the Governor simply cannot agree on how to spend it.

Describing the problem this type of secret-budget-brinksmanship creates, former state Senator Guy Palumbo said in 2017:<sup>1</sup>

“This year’s budget process has been a nightmare. With the threat of a government shutdown mere hours away, we produced and passed an operating budget without any public input.

“Not to mention, most legislators, myself included, were given only a few hours to review the budget – a document that is 620 pages long. This is unacceptable, especially when we are implementing monumental K-12 education reform that will have an impact for generations to come.”

### **Three ways to prevent a government shutdown**

There is no reason a government shutdown should occur, even in a deficit situation, let alone at a time of rising tax revenues. To end this threat, lawmakers should enact reforms that assure people who rely on vital government services that a political impasse will not close agency doors.

Here are three structural reforms lawmakers should adopt:

1. Early-action base budget at the beginning of the legislative session (as in Utah);
2. Continuing resolution enactment in the last week of a regular session if no budget is passed (as in New Hampshire, North Carolina and South Carolina);
3. Constitutional amendment authorizing continuing appropriations at current spending levels if there is no budget by the end of the session (as in Rhode Island and Wisconsin).

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<sup>1</sup> “2017-19 budget: “This deal is getting worse all the time,” by Jason Mercier, Washington Policy Center, July 8, 2017, at <https://www.washingtonpolicy.org/publications/detail/2017-19-budget-this-deal-is-getting-worse-all-the-time>.

Under an early action base budget process, budget writers from the state House and Senate would meet on a day between the November revenue forecast and the beginning of the legislative session in January to agree on a base budget framework.

This would ensure that current spending levels could be maintained under projected revenue. Then lawmakers would review and approve the base budget during the first weeks of the legislative session so state government operations would continue at current spending levels in case a budget impasse occurs late in the session.

### **Giving lawmakers time to consider the “real” budget**

After approval of a contingency base budget, the rest of the legislative session would be devoted to debating whether lawmakers should increase or decrease the “real” budget compared to the base budget levels to reflect the updated revenue numbers provided by the February state revenue forecast.

Another option lawmakers should consider is to enact a continuing resolution during the last week of session when no formal budget agreement has been reached. This is similar to the base budget process used in Utah, but action happens at the end of session instead of at the beginning. States that use this budget fail-safe process include New Hampshire, North Carolina and South Carolina.

The early-action base budget and continuing resolution safeguards require the legislature to take positive action to avoid a government shutdown. Though the hope is that lawmakers would do so, there is no guarantee they would act in time. This is why the automatic continuation of spending at current levels, a policy used by Rhode Island and Wisconsin, should be considered.

Article 8, Section 4 of the Washington state constitution requires

the legislature to approve all appropriations before public money can be spent, so adopting a policy that automatically continues spending at current levels into a new fiscal year would likely require voters to pass a constitutional amendment.

### **Assuring the public**

Adoption of one of these three proven budget reforms — using a base budget process, approval of a continuing resolution, or authorizing continued spending at current levels until a budget can be adopted — would end the threat of a government shutdown in our state.

Ideally, lawmakers should come to a budget agreement during the 105-day regular legislative session. But as history has continually demonstrated, the public cannot be assured of that happy outcome. That is why structural budget reforms are needed to prevent the doubt and uncertainty created by threatened state government shutdowns, and to assure the public that essential programs will continue.

## **4. Policy Recommendation: Restore legislative oversight of collective bargaining agreements**

In 2002 Governor Gary Locke signed a bill, HB 1268, that 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 union executives the power to negotiate directly with the Governor behind closed doors for salary and benefit increases.

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 legislature.

## Negotiating with the Governor in secret

Since the collective bargaining law went into full effect in 2004, union executives no longer have their priorities weighed equally with every other special interest during the legislative budget debate. Instead, they now negotiate directly with the Governor in secret, while lawmakers only have the opportunity to say “yes” or “no” to the entire contract agreed to with the Governor.

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.”<sup>2</sup>

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

<sup>2</sup> “State, Unions Reach Tentative Agreement,” press release, Office of Governor Gary Locke, September 13, 2004 at <http://www.digitalarchives.wa.gov/governorlocke/press/press-view.asp?pressRelease=1689&newsType=1>.

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.<sup>3</sup>

Ultimately, state employee union contracts negotiated solely with the Governor should be limited to non-economic issues, like working conditions. Anything requiring an appropriation (especially new spending that relies on a tax increase) should be part of the normal open and public budget process in the legislature. This safeguard is especially important when public-sector unions are also political allies of the sitting Governor.

### **5. Policy Recommendation: End secret negotiations for public employee pay and benefits**

Since 2004, as noted, the Governor has been granted the authority to negotiate secretly with union executives to determine how much taxpayers will pay for compensation to government employees. The secret talks involve government employee compensation totaling hundreds of millions in public spending per biennium.

Before 2004, those spending decisions were made in public as part of the normal legislative budget process, with the opportunity for comment at public hearings, before state officials made employee compensation promises.

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3 "Stealing the Public Purse: Why Washington's Collective Bargaining Law for State Employees Violates the State Constitution," by Christopher D. Abbott, *Washington Law Review*, 2006-02, Volume 81, 2006, at <https://digital.law.washington.edu/dspace-law/handle/1773.1/263>.

## Keeping lawmakers in the dark

Not only are public 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 budget is approved by the Governor). Lawmakers responsible for approving these contracts and the taxpayers who are asked to pay for them 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.

This is exactly what occurs in Florida. As that state's Attorney General explains:

“The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law.”<sup>4</sup>

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

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4 “Overview of the Sunshine and Public Records Law,” Section D - What types of discussions are covered by the Sunshine Law?, Reporter's Handbook, the Florida Bar, accessed May 24, 2016, at <https://www.floridabar.org/DIVCOM/PI/RHandbook01.nsf/f5b2cbf2a827c0198525624b00057d30/07c774c1b21fa055852568a40074b173!OpenDocument#D.WHATTYPESOFDISCUSSIONSARE>.

## Chapter 1: Spending Policy

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 meetings between the negotiating parties, with fiscal analysis provided showing the costs.

### **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 union executive or state official, is acting in bad faith.

There are several examples of collective bargaining transparency that already exist at the local level in Washington state. Examples include government union negotiations in Gig Harbor, Lincoln County, Kittitas County, Ferry County, Spokane County, the Pullman School District, and the Kennewick School District.<sup>5</sup>

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

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<sup>5</sup> “Kennewick School District opens the doors to collective bargaining,” by Erin Shannon, blog post, Washington Policy Center, June 27, 2019, at <https://www.washingtonpolicy.org/publications/detail/kennewick-school-district-opens-the-doors-to-collective-bargaining>, and “Gig Harbor council asks for open labor negotiations,” by Jake Gregg, *Tacoma News Tribune*, July 23, 2019, at <https://www-1.thenewstribune.com/news/local/community/gateway/article233013217.html>.



Hodge said, “We just think it’s fair for all of the members to know what’s being offered on both sides.”<sup>6</sup>

Ending secrecy in government employee contract negotiations is popular. A statewide poll of 500 Washington voters conducted in 2015 found that 76% supported “requiring collective bargaining negotiations for government employers to be open to the public.”<sup>7</sup>

Several newspaper editorials have also been written which call for government officials to open the doors to the public concerning government employment contracts. One such example is this editorial by *The Spokesman-Review*:<sup>8</sup>

“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.”

6 “Teacher-contract process needs transparent bargaining,” editorial, *The Seattle Times*, August 29, 2018, at <https://www.seattletimes.com/opinion/editorials/seattle-stalemate-shows-need-for-open-bargaining/>.

7 Wickers Group statewide poll of 500 Washington voters, June 2015, copy available on request.

8 “Lincoln County leads way on government transparency,” editorial, *The Spokesman Review*, September 18, 2016, at <http://www.spokesman.com/stories/2016/sep/18/editorial-lincoln-county-leads-on-transparency/>.

### Conclusion

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

### **6. Policy Recommendation: Restore the people’s right of referendum by limiting the use of the emergency clause**

To provide a check on the legislature, the state constitution grants the people the power to veto unwanted legislation through the use of 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.”<sup>9</sup> This power applies to any bill adopted by the legislature except those that include an emergency clause.

An emergency clause states that a bill is exempt from repeal by referendum because the bill is, “necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.”<sup>10</sup> The use of the emergency clause allows bills to take effect immediately once signed by the governor.

### **Responding to public emergencies**

The emergency clause allows the state government to respond

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9 “Referendum Quick Facts,” Elections and Voting, Washington Secretary of State, accessed May 24, 2016, at <http://www.sos.wa.gov/elections/ReferendumQuickFacts.aspx>.

10 “Constitution of the State of Washington,” Article 2, Section 1, Legislative Information Center, revised January 12, 2011, at <http://leg.wa.gov/lawsandagen-cyrules/documents/12-2010-wastateconstitution.pdf>.

quickly to true public emergencies, like civil unrest or a natural disaster, yet lawmakers routinely 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.

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

### **Court labels a business deal a “public emergency”**

Constitutional reforms are needed due to the state supreme court’s granting of total deference to a legislative declaration of an emergency. The first opportunity the supreme court had to address the legislature’s questionable use of an emergency clause was in 1995 with the passage of SB 6049, to provide public funding for the Mariners baseball stadium in Seattle.

In a 6-3 ruling upholding the denial of a people’s referendum, the court said:

“Ultimately, the emergency that faced the Legislature was that the Seattle Mariners would be put up for sale on Oct. 30 (1995) unless, prior to that date, the Legislature enacted

legislation that would assure the development of a new publicly owned baseball stadium for King County.”<sup>11</sup>

For the first time, the court declared that a business deal involving a professional sports team fell under the definition of “public emergency.” The supreme court had an opportunity to revisit this ruling in 2005 when a case raised the question of whether the legislature’s suspension of a voter-approved limit on tax increases was a “public emergency” that required denying the people’s right to a referendum.

### **Emergency clause as a blank check**

Again, in a 6-3 ruling, the court upheld the legislature’s declaration of an emergency.<sup>12</sup> 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.”<sup>13</sup>

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11 “Court Upholds Financing for New Ballpark,” by David Postman, *The Seattle Times*, December 21, 1996, at <http://community.seattletimes.nwsources.com/archive/?date=19961221&slug=2366157>.

12 “Washington State Farm Bureau v. Reed,” Washington State Supreme Court, July 14, 2005, at <http://caselaw.findlaw.com/wa-supreme-court/1428354.html>.

13 Ibid.

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 (Article 3, Section 22):<sup>14</sup>

“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.”

Like South Dakota, Washington should also require a supermajority vote if lawmakers want to declare an emergency to prevent a referendum. Bills have been proposed in Olympia in previous years to do this but have not been adopted (see, for example, SJR 8206 from 2013).<sup>15</sup>

### **Political convenience and the people’s rights**

If a true public emergency occurs that 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, 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, however, should no longer serve as a reason to deny the people their right of referendum.

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14 “South Dakota State Constitution,” Secretary of State, accessed on August 20, 2019, at <https://sdsos.gov/general-information/assets/2017SouthDakotaConstitution.pdf>.

15 “SJR 8206, Amending the Constitution to require emergency clauses only be allowed by amendment to a bill and approved by sixty percent of each house of the legislature,” Washington State Legislature, January 18, 2013, at <https://app.leg.wa.gov/billsummary?BillNumber=8206&Year=2013&Initiative=false>.

## **7. Policy Recommendation: Provide voters more information about the fiscal impact of ballot measures**

Based on the recent passage of several budget-busting initiatives, there is a growing sense in the legislature that voters need more information about the fiscal impact of ballot measures before the election.

Just as when lawmakers consider a bill, voters should also take into consideration the financial effects of what they are being asked to approve. This is why the Office of Financial Management issues a fiscal note for each qualified ballot measure and includes that information in the voters' guide.<sup>16</sup> Many voters, however, do not review this fiscal note carefully before casting their votes.

### **Providing greater transparency**

One way to provide greater transparency on the financial effect of ballot measures is to put the estimated fiscal impact in the actual ballot language summary. The following is an example of how that language could look:

“OFM has determined this proposal would increase state spending by [dollar amount] without providing a revenue source. This means other state spending may be reduced or taxes increased to implement the proposal. Should this measure be enacted into law?”

This would complement the existing fiscal note the Office of Financial Management provides on ballot measures, while putting the financial implications of the measure in the ballot title, so it is directly before voters.

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<sup>16</sup> “Revised Code of Washington 29A.72.025 - Fiscal impact statements,” effective date July 1, 2004, Washington State Legislature <http://apps.leg.wa.gov/RCW/default.aspx?cite=29A.72.025>.

After being informed about how much a ballot measure will cost, and voters still decide to push spending far beyond what existing revenue will sustain, lawmakers could still balance the budget with a two-thirds vote to change, repeal or temporarily suspend the voter-approved limit on tax increases.

## **8. Policy Recommendation: Adopt 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 on 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?

Commenting on his growing frustration with unfunded mandates and the lack of understanding from the legislature, Lincoln County Commissioner Scott Hutsell said, “We are providing these services on behalf of the State. I think sometimes we get treated like foreign countries.”<sup>17</sup>

Based on ballot measures adopted by voters in 1979 and 1993, however, 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:

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17 “State law prohibits unfunded mandates, yet local governments continue to be burdened by them,” by Jason Mercier, Washington Policy Center, April 10, 2018, at <https://www.washingtonpolicy.org/publications/detail/state-law-prohibits-unfunded-mandates-yet-local-governments-continue-to-be-burdened-by-them>.

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“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.”<sup>18</sup>

Section 6 of Initiative 62 explicitly provided:

“(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 to control state tax and spending increases adequately, 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.”<sup>19</sup>

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

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18 “1979 Voters Pamphlet – General Election November 6,” Washington Secretary of State, at [https://www.sos.wa.gov/\\_assets/elections/voters%20pamphlet%201979.pdf](https://www.sos.wa.gov/_assets/elections/voters%20pamphlet%201979.pdf).

19 “State of Washington Voters Pamphlet – General Election November 2, 1993,” Washington Secretary of State, at [https://www.sos.wa.gov/\\_assets/elections/voters%20pamphlet%201993.pdf](https://www.sos.wa.gov/_assets/elections/voters%20pamphlet%201993.pdf).



subdivision is fully reimbursed by the state for the costs of the new programs or increases in service levels.”<sup>20</sup>

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. Unfortunately, that is exactly what is happening today.

Rather than comply with state law that prohibits unfunded mandates, the response from lawmakers appears to be 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 consider how other states protect their local governments. In 1995, New Jersey voters adopted the “State Mandate, State Pay” constitutional amendment. Unlike Washington’s oft-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,

<sup>20</sup> Revised Code of Washington 43.135.060, “Prohibition of new or extended programs without full reimbursement – Transfer of programs – Determination of costs.”

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municipality, or school board, or by a county executive or mayor who has been directly elected by voters.”<sup>21</sup>

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.

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, however, shows that additional protections against unfunded mandates are needed for local officials and taxpayers.

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<sup>21</sup> “State of New Jersey Council on Local Mandates,” accessed on August 20, 2019, at <https://www.state.nj.us/localmandates/amendment/>.

**Additional resources**

“Should it be easy to declare a referendum-killing ‘emergency’?” by Jason Mercier, Washington Policy Center, March 7, 2019

“Revenue forecast shows it’s time for a sales tax cut,” by Jason Mercier, Legislative Memo, Washington Policy Center, January 2019

“Transparency in public employee collective bargaining: How Washington compares to other states,” by Erin Shannon, Policy Brief, Washington Policy Center, December 2018

“Budget reforms are needed to end the threat of state government shut-downs,” by Jason Mercier, Policy Notes, Washington Policy Center, September 2015

“Changing the budget status quo,” by Paul Guppy and Jason Mercier, Policy Notes, Washington Policy Center, December 2008

