

SJR 8200: Amending the Constitution to require a two-thirds majority vote of the legislature to raise taxes

Senate could also add supermajority requirement to its rules

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Key Findings

1. *SJR 8200 would allow voters to decide whether the state constitution should be amended to require a two-thirds majority vote of the legislature to raise taxes.*
2. *Voters in Washington have voted for a two-thirds vote requirement for tax increases five times over the past 20 years.*
3. *These requirements are common. There are nearly two-dozen supermajority requirements currently in Washington's constitution.*
4. *The Senate Majority Coalition Caucus should affirm their support for this popular taxpayer protection by placing the supermajority vote requirement to raise taxes in Senate rules.*

Introduction

In 2011, twelve Democratic lawmakers in the House and Senate joined the Washington Education Association (WEA) and League of Education Voters in a lawsuit to overturn the five-time voter approved requirement for tax increases to receive a supermajority vote of the legislature or voter approval.¹ In February 2013, the state supreme court agreed in a 6-3 ruling, striking down the statutory tax restriction. In the past, when the court has invalidated a law passed by the people, the legislature has sought to implement what the people want (Initiative 695 reducing car tab costs and Initiative 747 limiting property tax increases are recent examples).

In response to the court's ruling on statutory tax limitation, some lawmakers

in the 2014 legislative session introduced Senate Joint Resolution 8213, a measure to amend the state constitution to require a two-thirds majority vote of the legislature to raise taxes. This proposed constitutional amendment would have allowed voters, for the sixth time, to consider this taxpayer protection policy and, if they choose, to place the requirement in the state's constitution.

When brought to the Senate floor for a vote, however, SJR 8213 received 25 votes in support, a majority, but falling short of the 33 needed to advance to the House. The proposal has now been re-introduced for the 2015 legislative session as SJR 8200.

Based on the responses to our supermajority-for-tax-increases legislative survey, we know that the members of the Majority Coalition Caucus (MCC) in the Senate support allowing the voters to consider a constitutional amendment to put the voter approved policy into the

¹ "Suit attempts again to kill tax-hike rule," By Brad Shannon, *The Olympian*, July 26, 2011 at http://www.theolympian.com/2011/07/26/1737755_suit-attempts-again-to-kill-tax.html?rh=1.

constitution.² While efforts continue to move a constitutional amendment to the ballot for voters to consider, the MCC could re-affirm its support for this popular taxpayer protection by placing the requirement in Senate rules.

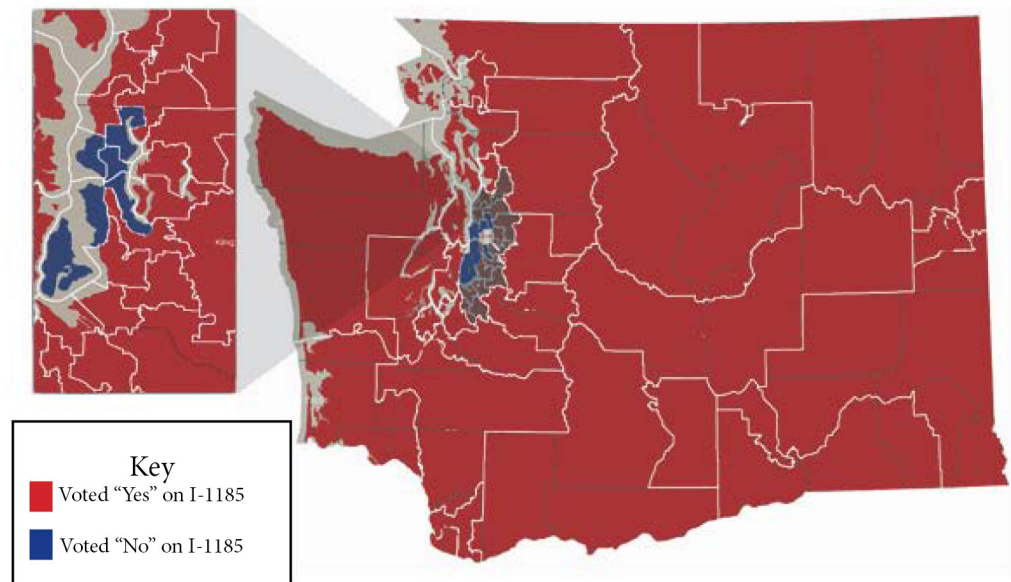
Past Tax Limitation

Tax limitation is popular. Voters in Washington have enacted or affirmed the two-thirds vote requirement for tax increases five times during the past 20 years:

- 2012: Initiative 1185 - Required a two-thirds vote in the legislature or voter approval for tax increases (passed statewide with 64 percent yes vote and
- approval in 44 of the 49 legislative districts)³
- 2010: Initiative 1053 - Required a two-thirds vote in the legislature or voter approval for tax increases (passed with 64% yes vote)
- 2007: Initiative 960 - Required a two-thirds vote in the legislature or voter approval for tax increases (passed with 51 percent yes vote)
- 1998: Referendum 49 - Affirmed the tax limitation provisions of 1993's Initiative 601 (passed with 57 percent yes vote)
- 1993: Initiative 601 - Required a two-thirds vote in the legislature or voter approval for tax increases (passed with 51 percent yes vote)

Vote on Initiative 1185 Tax Limitation by Legislative District, November 2012

A majority of voters supported Initiative 1185 in 44 out of 49 legislative districts, and by a 64% margin statewide



2 "Updated legislative tax survey results," Washington Policy Center, October 23, 2014 at <http://www.washingtonpolicy.org/blog/post/updated-legislative-tax-survey-results-0>.

3 "Citizens' Guide to Initiative 1185: To Affirm the Two-thirds Vote Requirement for Tax Increases," Washington Policy Center, September 2012 at <http://www.washingtonpolicy.org/publications/notes/citizens-guide-initiative-1185-affirm-two-thirds-vote-requirement-tax-increases>.

Tax limitation in other states

Requiring a supermajority vote in the legislature to increase taxes is not unique to Washington. Prior to the court's ruling, 18 states (counting Washington) had some form of supermajority vote requirement for tax increases. These 18 include several Western states, including California, Arizona and neighboring Oregon. Of the states with supermajority tax limitations, only the requirements in Washington and Wisconsin were enacted as ordinary law. The requirements in all the other states are part of the state constitution.⁴

Existing supermajority requirements in state constitution

A supermajority requirement is not anti-democratic, as some critics claim. There are nearly two-dozen supermajority requirements currently in Washington's constitution. These provisions have been placed there to require a high-vote threshold for certain government actions. These restrictions are policy choices. Requiring a supermajority vote to increase the financial burden the state places on its citizens is no more undemocratic than the many other supermajority requirements that are already part of the state constitution.

Several of these provisions have been part of Washington's constitution since its ratification in 1889. Lawmakers and voters added the most recent supermajority restriction in 2007, with the requirement for a three-fifths legislative vote to spend funds from the budget stabilization

account.⁵ It is clear that supermajority vote requirements are not undemocratic. In most cases they are not even controversial.

Letting voters consider a constitutional supermajority restriction to raise taxes would not be embracing undemocratic principles. Instead it would be following the existing constitutional precedents for requiring higher vote thresholds for certain government actions.

SJR 8200

Although the state supreme court struck down the state's decades-old statutory supermajority-for-tax-increases law, the justices were clear that they were not ruling on the "wisdom" of the policy itself, and instead that ultimately the people should decide:

*"Our holding is not a judgment on the wisdom of requiring a supermajority for passage of tax legislation. Such judgment is left to the legislative branch of our government. Should the people and the legislature still wish to require a supermajority vote, they should do so through a constitutional amendment."*⁶

SJR 8200 would allow the legislature and people to make this decision. Along with requiring a supermajority vote for tax increases the proposal allows the legislature, with a simple majority vote, to refer a tax increase to voters for approval. This text reflects the policy of the prior five initiatives the people have approved.

4 "Citizens' Guide to Initiative 1185: To Affirm the Two-thirds Vote Requirement for Tax Increases," Washington Policy Center, September 2012 at <http://www.washingtonpolicy.org/publications/notes/citizens-guide-initiative-1185-affirm-two-thirds-vote-requirement-tax-increases>.

5 "Citizens Guide to SJR 8206, Budget Stabilization Account," Washington Policy Center, September 2007 at <http://www.washingtonpolicy.org/publications/notes/citizens-guide-sjr-8206-budget-stabilization-account>.

6 "League of Education Voters v. State of Washington," Washington State Supreme Court, February 28, 2013 at <http://www.courts.wa.gov/index.cfm?fa=controller.managefiles&filePath=Opinions&fileName=87425-5%20opinion.pdf>.

Changing Senate rules

While efforts continue to move a constitutional amendment to the ballot the Senate can re-affirm its support for this popular taxpayer protection by placing the requirement in its rules for the 2015 legislative session.

This could be done while complying with the supreme court's 2013 ruling. Under that ruling a majority vote is required on *final passage* for a tax increase. Article 2, Section 9 of the state constitution, however, makes it clear the legislature can set its own procedural rules:

*"Each house may determine the rules of its own proceedings."*⁷

This means that short of restricting the vote required on final passage, the Senate could adopt a supermajority vote requirement for tax increases earlier in the procedural process. This could be modeled after the prior Senate Rule 53 that required a supermajority vote to amend a budget bill:

*"Rule 53 (old). No amendment to the budget, capital budget or supplemental budget, not incorporated in the bill as reported by the ways and means committee, shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed."*⁸

The Senate could adopt a new Rule 53 (currently is reserved) under the title "Revenue Increase Bills and Amendments" that says something to the effect of:

"No bill that increases state tax revenue deposited in any fund or account for

the operating budget shall be placed on the Senate floor calendar except by the affirmative vote of sixty percent of the senators elected or appointed. For bills already on the floor, no amendment that increases revenue shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed."

To avoid any ambiguity on the intent of this new requirement, Senate Rule 48 and Rule 50 could also be amended to add similar language for relieving a committee of a revenue-increase bill or for approval by the Rules Committee before floor action. By placing this provision in its rules, the Senate would be honoring the intent of voters by requiring a supermajority vote to advance tax increases to the floor.

Conclusion

Washington Policy Center has long recommended a supermajority vote requirement protection for taxpayers.⁹ For over 20 years the voters have consistently said they want their lawmakers to reach a broad consensus on the need to raise taxes or to include the voters directly in the decision.

Although the supreme court invalidated this taxpayer protection as ordinary law, its ruling did not negate the fact that on five separate occasions the voters have demanded this requirement, most recently with statewide passage of Initiative 1185 with a 64 percent vote and approval in 44 of the state's 49 legislative districts (see map). In fact, the tax limitation initiative received more votes in 2012 than either President Obama or Governor Inslee.¹⁰

7 "Washington State Constitution," at <http://www.leg.wa.gov/LAWSANDAGENCYRULES/Pages/constitution.aspx>.

8 "Senate Resolution 8601," January 12, 2009 at <http://lawfilesexternal.leg.wa.gov/biennium/2009-10/Pdf/Bills/Senate%20Resolutions/8601-Permanent%20Senate%20Rules.pdf>.

9 "Policy Guide For Washington State: Fourth Edition," Tax and Fee Protections, page 61, Washington Policy Center, 2012.

10 "November 06, 2012 General Election Results," Washington Secretary of State, at <http://vote.wa.gov/results/20121106/default.htm>.

Allowing the people to vote on a constitutional amendment, like the one proposed by SJR 8200, would be representative of the public will and would help end the debate over tax limitation once and for all. In the meantime, senators can show their commitment to implementing the will of the people as reflected by the consistent support at the ballot box for this taxpayer protection, by placing the requirement into Senate rules.

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