

POLICY NOTE

Citizens' Guide to Initiative 1366, the Taxpayer Protection Act

by Jason Mercier, Director, Center for Government Reform

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*This Policy Note is a summary of our Policy Brief: **Citizens' Guide to Initiative 1366, the Taxpayer Protection Act.** Sources can be found inside the full study on www.washingtonpolicy.org.*

Key Findings

1. Five times voters have approved a supermajority vote requirement for tax increases, but the trade-off policy proposed by Initiative 1366 is different.
2. If passed, Initiative 1366 would cut the state sales tax rate by one percentage point, from 6.5 percent to 5.5 percent, unless lawmakers choose to send voters a constitutional amendment requiring a supermajority vote in the legislature to raise taxes.
3. If the sales tax reduction takes effect, the state's Office of Financial Management estimates state General Fund revenue would decrease by \$8 billion over six years.
4. Initiative 1366 does not say whether the sales tax cut or the constitutional amendment would be the preferred choice of voters. This ambiguity may lead to confusion about what voters actually want.
5. Separately from Initiative 1366, Washington Policy Center recommends lawmakers give voters the final say in whether our state should have a supermajority vote requirement to raise taxes.

Introduction

In November the people of Washington will vote on Initiative 1366, the "Taxpayer Protection Act." The measure would enact a one-percentage point reduction in the state sales tax, from 6.5 percent to 5.5 percent, unless lawmakers send to voters a constitutional amendment requiring a supermajority vote in the legislature to increase taxes. Washington Policy Center has long supported a supermajority vote requirement in the legislature to increase taxes, and voters on five occasions have approved this requirement, the trade-off policy proposed by Initiative 1366 though is different.

Does Initiative 1366 "force" the legislature to take a certain action?

The state Office of Financial Management's (OFM) fiscal impact statement for Initiative 1366 makes it clear the legislature is provided a choice:

"The initiative presents the Legislature with a choice that leads to two possible and mutually exclusive scenarios. The Office of Financial Management (OFM) cannot predict how the Legislature will act."

Though the general political assumption is that most lawmakers would not want the sales tax rate reduced from 6.5 percent to 5.5 percent, leading them to send a constitutional tax limitation amendment to the voters, the text of Initiative 1366 does not specify a preference on which action should occur. It only provides that taxes should either be cut or tax increases restricted, whichever the legislature chooses.

Should the sales tax reduction take effect, OFM estimates "over the next six fiscal years, sales tax revenue for the state General Fund would decrease \$8 billion." This would be a substantial tax reduction for taxpayers but would put also pressure on funding current state programs.

Is Initiative 1366 a legal ballot proposal?

On August 14, 2015, King County Superior Court Judge Dean Lum ruled that Initiative 1366 is likely an illegal constitutional amendment that exceeds the power of initiative, but he refrained from preventing the proposal from appearing on the ballot. Following this ruling, opponents



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immediately filed an appeal to the state supreme court to keep voters from considering Initiative 1366.

Defending the people's right to vote on the proposal, Secretary of State Kim Wyman filed a brief encouraging the supreme court not only to keep Initiative 1366 on the ballot, but to rule that the proposal is not a constitutional amendment and is therefore well within the people's power of initiative.

On September 4, 2015, the Supreme Court issued a brief order unanimously allowing Initiative 1366 to appear on the 2015 general election ballot. The justices also said, however, that, "The [opponents'] appeal is retained by this Court for a decision on the merits." It is unclear whether the Court agreed with the trial court finding that Initiative 1366 is likely unconstitutional but is allowing a vote anyway, or whether the court agreed with the Secretary of State's position.

What will the legislature do if Initiative 1366 is approved by voters?

These appear to be the various outcomes if Initiative 1366 is approved:

- Reduction in state sales tax rate, or;
- The legislature refers to voters a supermajority requirement to increase taxes constitutional amendment, thus canceling the sales tax rate cut, or;
- The legislature suspends or amends Initiative 1366 (would require a two-thirds vote), or;
- The legislature allows the sales tax rate cut to take effect and instead raises a different tax by a simple majority vote to collect enough revenue to balance the budget.

Of course, with the Supreme Court saying it would consider the issue later "for a decision on the merits," another potential outcome is additional litigation that prevents Initiative 1366 from ever taking effect.

Conclusion

Initiative 1366 provides a choice for the legislature to permit either a sales tax rate cut of one percentage point or allow the voters to consider a constitutional amendment to make enacting future tax increases harder.

The text of Initiative 1366 itself, however, does not express a preference between the proposed sales tax cut or lawmakers acting on a constitutional amendment. This may lead to confusion about what action voters actually want the legislature to take if Initiative 1366 is passed. What is certain is that approval of Initiative 1366 would spark a debate in the legislature over taxes that would take into account the public's views on the various policy options.

Separately from the election outcome, however, Washington Policy Center has long recommended that lawmakers give voters the final say in the seemingly unending debate over the supermajority requirement for tax increases, and let the people vote on this general policy as a constitutional amendment.