

SJR 8213: Amending the Constitution to require a two-thirds majority vote of the legislature to raise taxes

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Introduction

In February 2013, the State Supreme Court in a 6-3 ruling overturned the five-time voter approved requirement for tax increases to receive a supermajority vote of the Legislature or voter approval. 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, some lawmakers have introduced SJR 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 allow voters, for the sixth time, to consider this taxpayer protection policy and, if they choose, to place the requirement into the state's constitution.

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% yes vote and approval in 44 of the 49 legislative districts¹)

¹"2012 Yes Percentage By Legislative District," Washington Policy Center, December 2012 at <http://www.washingtonpolicy.org/sites/default/files/1185%20legislative%20district.pdf>

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% yes vote)

1998: Referendum 49 - Affirmed the tax limitation provisions of 1993's Initiative 601 (passed with 57% yes vote)

1993: Initiative 601 - Required a two-thirds vote in the legislature or voter approval for tax increases (passed with 51% yes vote)

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 other Western states, including California, Arizona and neighboring Oregon. Of the states with supermajority tax limitations, only the requirements in Washington and Wisconsin were ordinary law. The requirements in all other the states are part of the state constitution.²

² "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>.

Existing Supermajority Requirements in State Constitution

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 appear to be policy choices. One could argue that requiring a supermajority vote to increase the financial burden the state places on its citizens is no more undemocratic than the many similar restrictions that are already part of the state constitution.

Several of these provisions have been part of Washington's constitution since its ratification in 1889. The most recent supermajority restriction was added by lawmakers and voters in 2007 with the requirement for a three-fifths legislative vote to access funds in the budget stabilization account.³ It is clear that supermajority vote requirements are not undemocratic. In most cases they are not even controversial.

Based on the numerous supermajority vote restrictions currently in Washington's constitution, letting voters consider a constitutional supermajority restriction to raise tax 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 8213

Although the State Supreme Court struck down the state's decades-old statutory supermajority for taxes requirement, the justices were clear that

³ "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>.

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."*⁴

SJR 8213 would allow the Legislature and people to make this decision.

According to the bill report for SJR 8213:

*"A two-thirds vote of both the House of Representatives and the Senate is required to raise taxes. 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. A majority vote in both the House of Representatives and the Senate is required to impose or increase a fee in any fiscal year."*⁵

SJR 8213 also allows the Legislature, with a simple majority vote, to refer a tax increase to voters for approval. This text reflects the policies from the prior five initiatives the people have approved requiring a supermajority vote or voter approval to raise taxes.

⁴ "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>.

⁵ "SJR 8213: Amending the Constitution to require a two-thirds majority vote of the legislature to raise taxes," <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=8213&year=2013>.

Conclusion

Washington Policy Center has long recommended a two-thirds vote requirement protection for taxpayers.⁶ For the past 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% vote and approval in 44 of the state's 49 legislative districts. In fact, the tax limitation received more votes in 2012 than either President Obama or Governor Inslee. Allowing the people to vote on a constitutional amendment would be representative of the public will and would help end this debate once and for all.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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⁶“Policy Guide For Washington State: Fourth Edition,” Washington Policy Center, 2012.