



## Summary of Initiative 960

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 960. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

### BRIEF SUMMARY

- Declares that legislative actions that "raise taxes" require a two-thirds vote of each legislative chamber, and states that tax increases may be referred to the voters for their approval or rejection.
- Requires an advisory vote of the people on legislative actions that raise taxes if the legislative action is "blocked from a public vote" or is not referred to the people through referendum or initiative, and specifies voters' pamphlet information for advisory vote measures.
- Requires prior legislative approval of fees, both when imposing new fees or raising existing fees, regardless of whether the fee increase exceeds the fiscal growth factor.
- Specifies requirements and processes for the Office of Financial Management to publicize a ten-year cost projection and legislators' votes on any bill raising taxes or fees.

### BACKGROUND

#### Initiative 960

Initiative 960 was certified to the ballot on July 19, 2007.\* The ballot title and summary prepared by the Attorney General are as follows:

Ballot Title:

Statement of Subject: Initiative Measure No. 960 concerns tax and fee increases imposed by state government.

Concise Description: This measure would require two-thirds legislative approval or voter approval for tax increases, legislative approval of fee increases, certain published

information on tax-increasing bills, and advisory votes on taxes enacted without voter approval.

*Ballot Measure Summary:*

This measure would require either a two-thirds vote in each house of the legislature or voter approval for all tax increases. New or increased fees would require prior legislative approval. An advisory vote would be required on any new or increased taxes enacted by the legislature without voter approval. The office of financial management would be required to publish cost information and information regarding legislators' voting records on bills imposing or increasing taxes or fees.

\*NOTE: Initiative 960 is currently being challenged in the state Supreme Court on the ground that it exceeds the scope of the people's initiative power by attempting to amend the state Constitution. For this reason, plaintiffs argue that the initiative should not be placed on the ballot. Specifically, the plaintiffs appeal a superior court dismissal of allegations that I-960 would conflict with the state Constitution by: (1) requiring tax increases to be referred to the voters, in conflict with the referendum procedures specified in the state Constitution; and (2) requiring a two-thirds vote of the Legislature for tax increases, in conflict with the provisions of the state Constitution specifying a simple majority vote to enact legislation. On September 7, the state Supreme Court ruled that the challenge to the initiative's constitutionality is not subject to pre-election review and that it may be placed on the November 2007 ballot.

**Initiative 601**

In 1993 the voters enacted Initiative 601 (I-601), which established expenditure limits and restrictions on tax and fee increases. I-601 has been amended a number of times since its enactment.

*The State Expenditure Limit*

Under I-601, certain state expenditures are subject to an expenditure limit based on the fiscal growth factor (FGF). To set a fiscal year limit, the previous fiscal year's limit is adjusted by the FGF, and the limit is further adjusted for money and program transfers. The expenditure limit is adjusted upward if both the cost of a state program or function *and* the ongoing revenue needed to support the cost or function are shifted to an account subject to the limit. It is adjusted downward if the cost of a program or function is shifted out of accounts subject to the limit, *or* if moneys are transferred out of an account subject to the limit.

This expenditure limit originally applied only to the state General Fund, which accounts for over half of state operating budget expenditures. Effective July 1, 2007, the expenditure limit applies not only to the state General Fund but also to six "related funds:" the Public Safety and Education Account, the Equal Justice Subaccount, the Health Services Account, the Violence Reduction and Drug Enforcement Account, the Water Quality Account, and the Student Achievement Fund.

As of July 1, 2007, the FGF is a ten-year average of personal income growth. For example, for the fiscal year ending June 30, 2008, the FGF is 5.53 percent.

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### Restrictions on Tax Increases

I-601 establishes two voting requirements for tax increases:

- Any action or combination of actions by the legislature that "raises state revenue or requires revenue-neutral tax shifts" may be taken only if (1) approved by a two-thirds vote of each house of the legislature, and (2) state expenditures, including the new revenue, will not exceed the expenditure limit.
- If the legislative action to "raise state revenue" will result in expenditures in excess of the expenditure limit, then the action may not take effect until approved by the voters at the subsequent November election.

Although these requirements reference the expenditure limit, I-601 does not specify whether they apply only to tax increases deposited in funds subject to the expenditure limit or to all tax increases.

### Restrictions on Fee Increases

A fee is a charge, authorized by statute, that is required for a governmental service or privilege, such as a user fee or a regulatory fee. I-601 established restrictions on fee growth. In any fiscal year, state agencies may not increase existing fees in excess of FGF for that year without prior legislative approval. This restriction does not apply to the initial creation of a fee.

### **The Referendum Process and Advisory Votes**

Article II, section 1 of the state constitution (amendment 7) establishes a process for the voters to approve or reject legislation enacted by the legislature. There are two referendum powers:

- The legislature may enact a *referendum bill*, under which the legislature refers an act to the voters for their approval or rejection.
- The voters may place a *referendum measure* on the ballot (by filing a petition with signatures equal to four percent of the voters who voted in the last gubernatorial election) to reject a bill enacted by the legislature.

Under Article II, section 1, certain types of legislation are exempt from the referendum measure process, and the voters may not petition for a referendum on these types of bills. The standard "emergency clause" used in bills is based on these two constitutional exceptions to the referendum process:

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- Bills that are necessary for the support of the state government and its existing public institutions. This exception is interpreted to encompass appropriations legislation and revenue legislation.
- Bills that are necessary for the immediate preservation of the public peace, health, or safety.

In general, courts defer to the legislature's decision to include (or omit) an emergency clause in determining whether legislation falls within (or without) the exemptions and thus is not (or is) subject to the voters' referendum power. Courts have also held that a bill within the "support of state government" exemption may be exempt from referendum even in the absence of a legislative "emergency clause."

Although the legislature has previously authorized regional advisory votes on certain issues, there is not currently any provision in law for the citizens to take a statewide advisory vote on a legislative enactment.

### **Information for Ballot Measures**

The voters' pamphlet must contain the following information about ballot measures referred to the people: the ballot title, statements prepared by the Attorney General summarizing current law and explaining the effect of the measure if it became law, a fiscal impact statement prepared by the Office of Financial Management (OFM), votes cast for and against the measure in the legislature (if applicable), pro and con arguments and rebuttals of those arguments, the names of persons who submitted those arguments, and the full text of the measure.

The fiscal impact statement must describe the projected increase or decrease in revenues, costs, expenditures, or indebtedness that state or local governments would experience if the ballot measure were approved.

Ballot titles may be appealed to the Thurston County Superior Court.

### **Fiscal Impact Information for Legislation**

House and Senate rules require public notice of and access to committee hearings on legislation. Information about bills, including summaries, fiscal information, sponsorship, and legislators' voting records, is available to the public at the Capitol and on the legislature's website.

Legislators may request fiscal notes to provide information on the cost of proposed legislation. A fiscal note estimates the revenue and expenditure impact of the proposed legislation for the current fiscal biennium and for the two following biennia. Generally, the OFM has primary responsibility for developing and approving fiscal notes, which it prepares in coordination with the affected

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agencies. After the OFM has approved a fiscal note, copies are filed with the appropriate legislative committees and are made available to the public at the Capitol and on the OFM's and the legislature's websites. The fiscal note must follow or be attached to the legislation to the extent possible.

## **SUMMARY OF INITIATIVE 960**

### **The Expenditure Limit**

A statement of intent declares that the expenditure limit law is to be clarified so that the requirement for a vote of the people on tax increases that exceed the expenditure limit is not circumvented.

Where the cost of a state program or function and the ongoing revenue needed to support the program or function are shifted to an account subject to the limit, the limit may not be increased if the shifted revenue had previously been shifted from an account subject to the limit.

### **Restrictions on Tax Increases**

A statement of intent declares that the people want to continue the policy that requires a two-thirds vote for approving tax increases, whether the increase is inside or outside the general fund.

The legislative supermajority vote and vote of the people requirements apply to any legislative action that "raises taxes," rather than to any action that "raises revenue or requires revenue-neutral tax shifts." Further, these requirements apply to taxes deposited in any fund, not just the general fund or other funds subject to the limit. "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 statement of intent declares that if the legislature cannot receive a two-thirds vote in the legislature for a tax increase, then the Constitution provides the option of referring the tax increase to the voters through the referendum bill process.

Pursuant to the constitutional referendum power, tax increases may be referred to the voters for their approval or rejection.

### **Restrictions on Fee Increases**

A statement of intent declares that the authority to impose or increase fees should be returned to elected representatives rather than agency officials, and that fee increases should be debated openly and subject to an up-or-down vote by elected officials.

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All fee increases (not just those in excess of the FGF) and all new fees require prior legislative approval. Legislation authorizing fee increases is subject to the cost projection process described below.

### **The Referendum Process and Advisory Votes**

A statement of intent declares that (1) the legislature has thwarted the voters' right of referendum through "excessive use of the emergency clause;" and (2) if the voters are not allowed to vote on a tax increase, then the voters should be allowed to make their views known through a non-binding advisory vote.

A legislative action that raises taxes requires an advisory vote of the people at the next general election if the legislative action is "blocked from a public vote" or is not referred to the people by a referendum petition. "Blocked from a public vote" includes adding a "emergency clause" to a bill, bonding or contractually obligating taxes, or otherwise preventing a referendum on a bill.

If the action raising taxes involves more than one revenue source, each revenue source is subject to a separate advisory vote.

The advisory vote requirement does not apply if the legislative action raising taxes is referred to the people by the legislature or is included in an initiative to the people.

### **Ballot Titles and Voters' Pamphlet Information for Advisory Vote Measures**

The Attorney General must notify the Secretary of State of any tax increase that is subject to an advisory vote. The Attorney General must prepare a ballot description of the tax increase, which includes the ten-year projected dollar amount of the increase. The ballot description is not subject to appeal.

The voters' pamphlet requirements for other ballot measures do not apply to advisory vote measures. The voters' pamphlet for advisory vote measures must provide two pages with specified information, including: the ballot description prepared by the Attorney General; the OFM's most recent cost projection; legislator's names and contact information, including party affiliation, hometown, and office and e-mail addresses; and how legislators voted on the tax increase.

### **Fiscal Impact Information for Proposed Tax and Fee Legislation**

A statement of intent declares that the people want independent analyses of tax increases and information on legislation that proposes tax and fee increases.

The OFM must prepare cost projections of bills that raise taxes or increase fees. The OFM must publicize this information on the OFM website and via press release to all legislators, the news

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media, and the public. The cost projection must project the bill's costs for the first ten years, with breakdowns by year and by revenue source. The press release must also list the names of the legislators who sponsored the bill, along with their contact information and party affiliation. When a bill is scheduled for hearing in a legislative committee, or is approved by a legislative committee or the Senate or House of Representatives, the OFM must update its projections to reflect any revisions and must provide an updated press release, which must include information about how legislators voted.

Preparation of these cost projections takes precedence over the preparation of fiscal notes on legislation, and during the legislative process the cost projections must follow or be attached to the legislation to the extent possible.