



## Budget Tidbits... just the facts

Senate Republican Caucus

### Budget Brief #3: (3/6/08)

### Paving the Way for 2009 Tax Increases

*A look at the lawsuit against a key taxpayer-protection rule in Initiative 960*

#### A. Headlines tell the story

- Feb. 20, Seattle Times -- "*New budget forecast shows state coming up \$2.4B short*"
- Feb. 28, Associated Press -- "*WA House speaker: Taxes possible to shore up next year's budget*"
- March 3, Spokane Spokesman-Review's "Eye on Olympia" -- "*(Senate Majority Leader) Brown suing to overturn high threshold for increasing taxes*"

#### B. The 2/3<sup>rd</sup> requirement to raise taxes

Initiative 960, passed by voters last November, required a 2/3<sup>rd</sup> vote of the Legislature to raise taxes. The initiative defined raising taxes as "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."<sup>1</sup>

The 2/3<sup>rd</sup> requirement to raise taxes is not novel. Voters approved a similar requirement via Initiative 601 in 1993. Yet, as a statute, the requirement may be changed by the Legislature. That's exactly what happened in 2002 and 2005, when a simple majority "suspended" the provision for the 2001-03 and 2005-07 biennia, respectively.<sup>2</sup> The 2005 suspension led to tax and revenue increases of nearly \$500 million.<sup>3</sup>

This gets to the real value of I-960: Under Article II, sec. (1)(c) of the state constitution, initiatives passed by the people are given enhanced protection from legislative changes during their first two years and can only be altered with a 2/3<sup>rd</sup> vote of the legislature.<sup>4</sup>

Simply put, when voters passed I-960, they wanted to limit the Legislature's ability to raise taxes without a 2/3<sup>rd</sup> vote. It was a way to regain protections that had steadily eroded since the Legislature became able to modify I-601 at will with a simple majority vote.

### **C. Lawsuit seeks to overturn 2/3<sup>rd</sup> requirement before 2009 session**

On Monday, Senate Majority Leader Lisa Brown (D-Spokane) filed suit in the Supreme Court seeking to have the 2/3<sup>rd</sup> requirement to raise taxes under I-960 declared unconstitutional. The relief requested is telling, seeking a court order that:

“Rules that this Court will retain this case to determine the Constitutional question raised, and sets a briefing and hearing schedule that allows the final termination of that decision **before the next legislative session begins in January 2009.**”<sup>5</sup>

The request for a time-specific resolution is unusual and suggests two things:

- One, the bill in question (Senate Bill 6931) is merely a vehicle to bring the issue before the court, rather than the prime concern.<sup>6</sup> Separation of powers prohibits compelling action on the bill once the Legislature has adjourned. Yet the pleadings to the court are content with a post-session resolution.
- Two, the paramount concern is resolution *before the 2009 session* of the legality of the 2/3<sup>rd</sup> requirement to raise taxes.
  - Why pre-2009? As noted earlier, the constitution gives heightened protection to an initiative in its first two years. After 2009, I-960 could be amended by a simple majority, rendering the limitations placed on the majority inconsequential, and making any post-2009 session court decision of little practical impact.<sup>7</sup>

### **D. 2/3<sup>rd</sup> requirement an obstacle to next session’s potential budget plans**

This leads to the real issue of why the lawsuit was filed. Public statements suggest the majority party has considered the \$2.4 billion deficit forecast for next biennium and concluded tax increases are likely, or – to be entirely accurate – at least enough of a possibility that it can’t afford to have the 2/3<sup>rd</sup> requirement still in place when the Legislature convenes next session.

From recent press articles:

- “Thursday’s comments from Speaker Frank Chopp, D-Seattle, are the strongest signal yet that Democratic leaders think higher taxes could be needed to balance the 2009-11 budget, which will be written by next year’s legislature.” – AP, 2/28<sup>8</sup>
- “Asked about Chopp’s comments, Senate budget Chairwoman Margarita Prentice, D-Renton, sounded a similar note: ‘Obviously, we’ll take a look at anything. But we’ll have to look at circumstances then.’” – AP, 2/28<sup>9</sup>
- Even the Governor responded to a question about a large deficit forecast next biennium by saying “[t]here are some issues with regard to 960 that are very, very cumbersome.” -- Spokesman-Review’s “Eye on Olympia”, 3/3<sup>10</sup>

## Bottom Line

By seeking to overturn the 2/3<sup>rd</sup> requirement to raise taxes, is the majority party setting the stage to raise taxes next year?

1. RCW 43.135.035(6).
2. SB 6819 (2002) (suspended 2/3<sup>rd</sup> requirement to raise taxes during 2001-03 biennium and authorized simple majority to tap into the emergency reserve fund); SSB 6078 (2005) (suspended 2/3<sup>rd</sup> requirement to raise taxes through June 30, 2007).
3. ESHB 2314 (2005) and ESB 6096 (2005) were the primary tax measures.
4. Article II, sec. 1(c) in relevant part: “No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house[.]”
5. Petition against State Officer in filing of Brown vs. Owen, p. 10.
6. SB 6931 proposed authorizing a 42 cent per liter surcharge on liquor, raising just under \$10 million in the 2007-09 biennium.
7. This is not to say that a post-2009 session decision would not have legal value; merely that as a practical matter a legislative majority is no longer constrained by the 2/3<sup>rd</sup> requirement after the 2009 session.
8. “WA House speaker: Taxes possible to shore up next year’s budget”, Associated Press (2/28/08)
9. Id.
10. “Brown suing to overturn high threshold for increasing taxes, says it’s unconstitutional . . .”, Spokesman-Review’s “Eye on Olympia” blog (3/3/08). Governor Gregoire’s former law firm, Foster Pepper, is the firm seeking to have I-960’s 2/3<sup>rd</sup> requirement to raise taxes declared unconstitutional.