

# Initiative 960: Inefficient and ambiguous

by Jeff Chapman & Andrea Lee

Responsible, efficient, and accountable policymaking is hindered when artificial and excessive restraints are placed on the legislature. Such is the case with Initiative 960, an initiative on the November ballot that would undermine the ability of the state to formulate and implement rational and thoughtful responses to public priorities.<sup>1</sup> Contrary to claims of proponents the measure would not advance government transparency or voter awareness.

## Introduction

The recent creation of the Department of Early Learning is an example of forward-thinking legislative action that drew strong bipartisan support.<sup>2</sup> Increasing the state's investment in early learning has been a high priority of parents, educators, and employers for years. Similar policy decisions in other places have been shown to pay large dividends in the future.<sup>3</sup>

But until recently, early learning programs in Washington State were divided between various agencies and lacked a single entity with the responsibility of providing vision and management. Without a single responsible entity, there was a concern that new investments would not have the appropriate

oversight and available funds would not be spent efficiently.

In 2005, the legislature, using recommendations from a nonpartisan coalition of business, government, community, and education leaders, created the Department of Early Learning (DEL) to respond to this concern and set the stage for future investments.<sup>4</sup> This action has been widely praised as an example of how the legislature can act on broadly shared public priorities.

However, moving forward with investments in early learning will require the kind of complex fiscal decision-making that would be made far more difficult under I-960.

While the state legislative process certainly has room for improvement, I-960 would do

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# Key provisions of I-960

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## **Broaden the legal definition of tax increases**

*Under current law* as enacted by Initiative 601, the legislature may not raise taxes unless two-thirds of each house agrees to do so. This is true even if the tax increases are offset by tax decreases elsewhere. The law also sets a limit on how quickly the state budget can grow year-to-year.

*I-960 would* broaden the definition of raising taxes to include “any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account”. Bills meeting this definition would require a supermajority vote as well as a vote of the people if they would exceed the spending limit.

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## **Require legislative action on any fee increase**

*Under current law* the state may authorize state agencies, boards, or commissions to set the levels of fees charged for certain purposes. If a fee increase is above the spending limit, the legislature must approve the change. The legislature retains the ability to withdraw fee-setting authority.

*I-960 would* require any fee increase (from professional licensing fees to the cost of parking at winter recreational facilities) to be approved by a majority of the legislature.

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## **Require non-binding advisory votes on tax increases not otherwise sent to the ballot**

*Under current law* tax increases that exceed the spending limit must be approved by a vote of the people. There are exceptions if the state declares an emergency.

*I-960 would* require that all bills meeting the new definition of a tax increase and are not otherwise required to be approved at the ballot will be sent to the voters in a non-binding advisory vote. I-960 also prescribes the information available on the voters’ pamphlet and outlines exact language to be used in the ballot question.

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## **Create additional administrative requirements**

*I-960 would* place additional administrative requirements on the Office of Financial Management. It would require new spending on preparing the required advisory votes and on moving many new fee increases through the legislature.

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little to improve it. In fact, some elements of the initiative are likely to make that process less impartial and transparent. Moreover, I-960 is very complex and could lead to a number of unintended negative consequences that would be unlikely to reflect voter intent.

### **I-960 would complicate the most basic legislative decisions**

Potentially the most far-reaching provision of I-960 (and undoubtedly that which will cause the most confusion) is an expanded definition of “raising taxes”. I-960 would define tax increases as “any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account.”<sup>5</sup>

Current state law places hurdles before legislative actions that raise taxes or increase the size of the state budget. When read literally, I-960 could be seen to apply those same hurdles (including requiring a two-thirds majority vote in both houses) to basic accounting practices, even if there is no increase in taxes as a result.

Narrower interpretations are also possible. But at the very least, I-960’s vague redefinition of tax increases would likely trigger multiple legal reviews to settle a multitude of divergent interpretations. It is therefore difficult to analyze its potential impact from

a policy perspective. However, if the courts interpret the initiative literally, the basic functions of state government will be seriously impacted.

### **I-960 could turn basic accounting practices into polarizing debates**

In order to understand the potential effects of I-960, it must be understood that the state treasury is made up of a number of separate accounts and funds, just as the asset holdings of large firms and organizations. The state uses different accounts and funds to separate specific revenue sources as well as revenue intended for specific purposes.

Transfers between funds are a standard accounting practice for all levels of government. Subjecting fund transfers to the same supermajority requirements as tax increases could make even the routine functions of government unnecessarily subject to polarizing and time-consuming political debates.

### **I-960 could prevent the legislature from adjusting budgets to meet changing needs**

Further, the use of the word “budget” in the I-960 definition is unclear. When the legislature enacts a budget, it is essentially a list of ways government is allowed to spend money, how much can be spent, and from which accounts the money may be drawn. Since revenue is not technically “deposited in” budgets, the meaning of this I-960 clause is a mystery.

In trying to interpret this clause, one could assume that the word “deposit” is used incorrectly. That interpretation could result in limiting state revenue increases to those approved by a two-thirds legislative vote. Thus, any revenue growth resulting naturally from an expanding economy and growing population could be prohibited by I-960, severely hindering the ability of legislators to respond to natural growth in the cost of existing commitments, such as the expected growth in seniors requiring state-assisted nursing home care or the school-age population. Under a broad interpretation of I-960, revenue could be frozen at current levels without supermajority agreement. Existing revenue would have to be stretched to meet the needs of a growing population.

If I-960 were to pass, this clause might be interpreted to assume that the word “budget” was used incorrectly and that the definition applies only to funds and accounts. Regardless, this ambiguous phrasing could open the state to numerous lawsuits challenging each component of the entire state budget.

### **I-960 would add new layers to existing ambiguity**

Similar ambiguities in the existing law have already provoked major legal disputes. Current law is vague and the difference between appropriations, expenditures, and transfers is disputed, leading to ongoing fights over the scope and applicability to the two-thirds requirement and the spending limit. A case

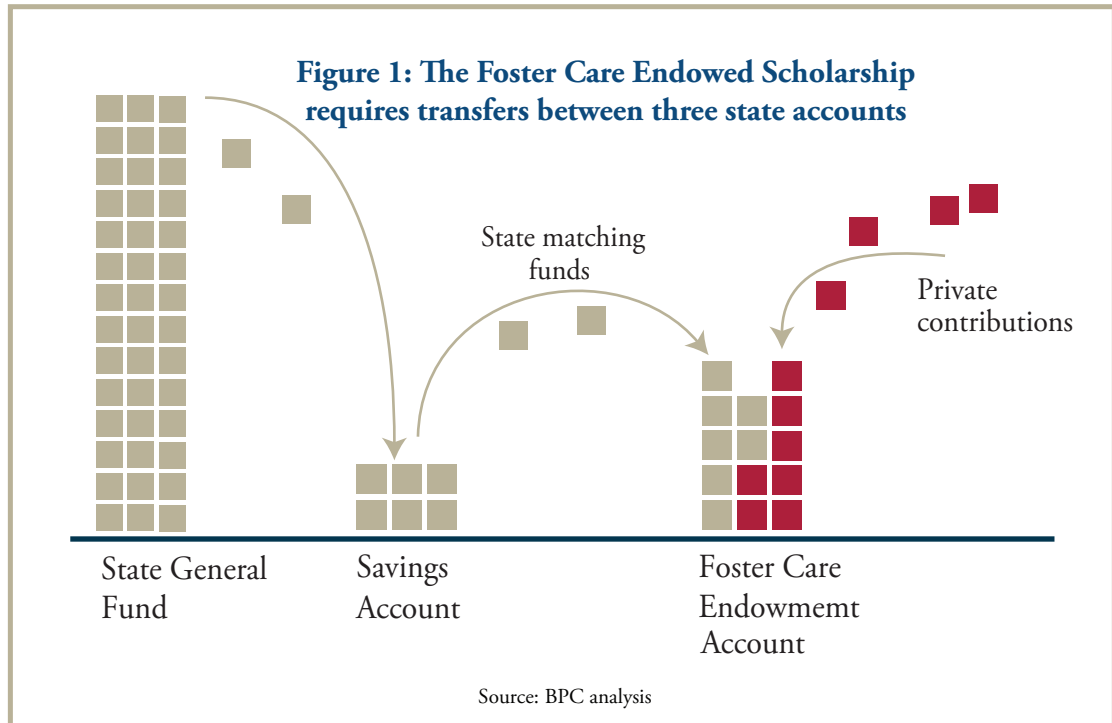
currently pending before the state Supreme Court argues that the two-thirds approval requirement embedded in existing law (via I-601) is being violated by the state.<sup>6</sup> I-960 would take this already contentious legal ambiguity and layer it with new questions and disputed interpretations that would have to be sorted out in the courts.

### **I-960 would require legislative action on the most minor fee increases**

Under I-960, even the most minor of fee increases would have to be passed by legislative action, a practice that could limit the time available for the legislature to act on higher priorities. Even a proposal to raise the cost of parking at state recreational facilities by 25 cents would require time consuming and expensive analysis and legislative action.

Under current law, the legislature is able to grant discretion to government agencies or public commissions to determine certain fee increases. This practice is efficient, since the legislature has a limited time period during which they must make decisions on hundreds of proposals.

The legislature retains the ultimate authority over fee increases and can act if agencies overstep reasonable discretion. Additionally, under current law, fee increases above a certain percentage are automatically sent to a vote of the legislature.



## I-960 could undermine policy innovation

Examples abound of good policy choices made recently that would have been made far more difficult under I-960. Two of those examples are described here.

### Example #1: Scholarships for foster students

Children who are in the foster care system in their late teens are more likely to drop out of high school and less likely to enroll in higher education than their peers.<sup>7</sup> In 2005, the legislature took a modest step to address this problem by establishing the Foster Care Endowed Scholarship.<sup>8</sup> The Higher Education

Coordinating Board (HECB) was charged with raising private donations to build an endowment that will fund college scholarships for young adults emerging from foster care. The state then matches the private donations, doubling the size of the available scholarship funds while encouraging private effort.

The process for setting up this program involved creating two new accounts in the state budget (Figure 1). The first was opened to hold the program's endowment. Private donations are deposited into this account, while public matching funds are initially placed into a second, separate "savings" account. As private contributions grow, state matching

funds are then transferred from the “savings” account to the endowment account.

The bill establishing this scholarship program was unanimously supported by the legislature and there was no opposition testimony during the hearing process. It was an inexpensive, bipartisan spending decision that was established under a private/public partnership to address a real social problem.

However, the 2005 legislature did not expect to be required to “sell” the scholarship to the public that fall as a “tax increase.” Under I-960, expansion of the program could be held up by a minority of legislators who might seek to use the popular program as a political football and to force a public vote on any increase in funding. An additional perverse consequence of I-960 would be that if a program such as this proved unsuccessful, transferring the state’s investment back into the general fund for other purposes could also be fall under the initiative’s definition of a “tax increase.”

### **Example #2: Local criminal justice assistance**

The state uses two accounts (the County Criminal Justice Assistance Fund and the Municipal Criminal Justice Assistance Fund) to assist in criminal justice efforts at the local level.<sup>9</sup> Until 2000, these accounts received significant funding from the motor vehicle excise tax (MVET). When the MVET was repealed, funding was threatened for pro-

grams including domestic violence reduction, law enforcement innovation, and State Patrol crime labs.

In 2001, the state legislature decided that local criminal justice assistance was a priority for state spending, and transferred money from the state general fund into the Criminal Justice Assistance Funds. It was a spending decision based on what a legislative majority felt was an important public priority.

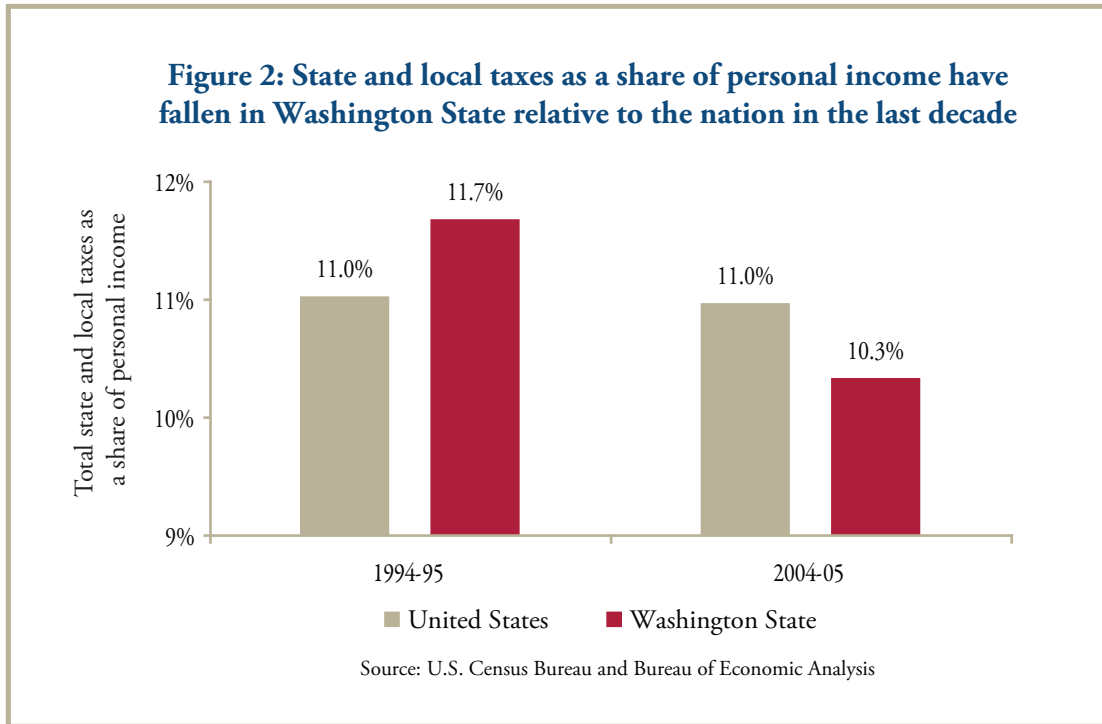
Under the literal definition of I-960, the decision made by the 2001 legislature to reprioritize available revenue in the wake of a significant tax cut would have been considered a tax increase. As such, it would have required a two-thirds majority vote along with an advisory vote, even though the decision did not change the level of taxes.

### **Does Washington State need I-960?**

While I-960 is poorly drafted and could potentially trap the state government in a legal quagmire, the measure reflects some real frustrations that should be addressed by the legislature in more productive ways.

### **Does I-960 respond to concerns that taxes are too high?**

Many Washingtonians feel that they pay too much of their income in state and local taxes. There is good reason for this in many cases: the state and local tax system here is more



imbalanced than in any other state. According to data from the Institute for Taxation and Economic Policy, Washingtonians at the lower end of the income scale paid more of their household income in state and local taxes than in any other state (nearly 18 percent in 2002).<sup>10</sup> For lower- and moderate-income Washingtonians, I-960 may resonate with their frustration over an inequitable tax structure. However, I-960 fails to address the crux of our tax system's problem.

On a statewide level, taxes in Washington State are actually low when compared to other states and historical trends. In 2005, Washingtonians paid lower state and local taxes than the residents of 35 other states.<sup>11</sup>

From 1995 to 2005 tax levels have declined in Washington from 11.7 percent as a share of personal income to 10.3 percent (Figure 2). State and local taxes nationwide during that same period remained constant as a share of personal income, underlining the significance of decreasing tax levels in Washington.

No major state taxes were increased in Washington from 1994 to 2001, while many taxes were cut.<sup>12</sup>

- A number of exemptions were made to the business and occupation (B&O) tax as well as sales taxes paid by business.
- Though the ballot measure to replace

motor vehicle excise taxes with \$30 car tabs was declared unconstitutional, the legislature quickly adopted the key provisions, which added up to a significant revenue loss.

- Two initiatives restricting the growth of property tax levies were passed.

Since 2001, there have been modest tax increases to fund public priorities and to close the deficit that resulted from a combination of tax cuts and a significant economic downturn. Two gas tax increases were implemented in order to fund transportation projects, an additional sales tax on the automobile sales was implemented, and the cigarette tax was increased and primarily dedicated to health and safety programs. Finally, the state estate tax was made independent of the federal estate tax, with the revenue dedicated to class size reduction, expansion of higher education enrollment and financial aid for students from low-income households. The estate tax won broad public support when an initiative attempting to repeal it was solidly defeated in a 2006 statewide vote.

### **Does I-960 respond to concerns about a lack of openness and transparency in state government?**

The intent section of I-960 declares, “transparency and openness leads to more public involvement and better understanding.”<sup>13</sup> Ideas to increase government transparency are certainly needed in Washington State. Often, the lawmaking process moves too

rapidly, with insufficient information for the public. This results in a daunting system that is fully accessible only to legislative staff and lobbyists.

To this end, I-960 contains an interesting idea that should be considered. It would require the Office of Financial Management to email regular updates on tax-related bills to interested members of the public.<sup>14</sup> Using the simplicity and low cost of email to inform interested citizens is an idea that merits serious consideration. While a wealth of information is available on the state’s websites, it is often difficult to find and is not easily understood.

However, the emails mandated by I-960 would be sharply restricted—and unbalanced—in the information they provide; the messages would be limited to ten-year cost projections and a list of the legislators who voted in support of the tax-related bill. In an indication of the apparent biases of the initiative’s authors, the requirement does not mandate that the email contain a nonpartisan analysis of the proposal that would explain the purpose or potential benefits of a proposal.

The preparation of these ten-year cost projections would be required for any bill meeting the new broad definition of “raising taxes” as well as all fee increases, a costly administrative undertaking with little benefit. I-960 would actually require these projections to take precedence over the existing and more detailed fiscal notes. Fiscal notes, prepared

upon request by legislators, include non-partisan summaries of current law and potential effects. They also include six year cost projections and are heavily relied upon by legislators in order to make informed decisions. The fiscal notes provide a better model for the type of information that could be made more readily available to the public.

The required advisory votes suffer from similar problems—they would not provide voters with an opportunity to become more informed. In fact, I-960 seems to restrict the scope of the information provided to voters, thus likely skewing the advisory votes toward a negative result and undermining the state’s neutrality on ballot issues.

With other types of ballot initiatives, the voters’ pamphlet is required to contain, among other things, an explanation (written by the attorney general) of the proposal and how it would affect current law as well as written arguments from both proponents and opponents of the issue.

I-960 would amend the law governing the voters’ pamphlet by eliminating those requirements in the case of advisory votes.<sup>15</sup> It would only require the ballot question and a list of every legislator’s contact information, party affiliation, and how they voted. The ballot question would only allow 13 words to describe the policy decision that would be sandwiched between biased language such as “the legislature imposed, without a vote of the people” and the generic “for government

**I-960 would ask voters to make decisions on complex fiscal policy based on a 13-word description in the voters’ pamphlet**

“The legislature imposed, without a vote of the people, [ 13 word description of policy ] costing \$X million, in its first ten years, for government spending.”

spending” rather than a specific description of the policy’s purpose (see above).

Reasoned fiscal policy decisions require more information than would be provided by I-960. This may be especially true for bills that would be defined as “tax increases” under I-960’s new definition, but would not actually increase taxes.

In addition, the number of advisory votes placed on each year’s ballot could be overwhelming to both voters and state government. Potentially any fiscal decision could require an advisory vote. If a policy involves multiple revenue sources or multiple account transfers, each would require a separate vote. The result could be dozens of votes annually that responsible voters would be required to study and make decisions on with limited information.

## Conclusion

Greater government transparency and accountability are laudable goals that should be pursued. Unfortunately, I-960 would likely produce the opposite result, actually threatening effective and accountable governance.

The initiative will likely require dozens of unnecessary legislative and public votes on routine actions while explicitly limiting the information from which voters can base reasoned decisions. Furthermore, the ambiguities in the initiative text will likely generate conflicting interpretations that will require court intervention at significant taxpayer expense.

I-960 would be enacted at a time when the legislature, the governor, the private sector, and

the public all agree that investments in early learning are critical to the future of the state. There is also broad agreement that all children in the state should have access to quality health care and that the state budget needs greater stability.

A close analysis of I-960 indicates that it would undermine the ability of the state to provide innovative solutions to these and other issues of public concern.

*The Budget & Policy Center gratefully acknowledges Hugh Spitzer for his legal expertise and the support of the Annie E. Casey Foundation, Bill & Melinda Gates Foundation, Paul G. Allen Families Foundation, and the Public Welfare Foundation.*

## Endnotes

1. The full text of I-960 is available from the Secretary of State at <http://apps.leg.wa.gov/documents/billdocs/2007-08/Htm/Initiatives/Initiative%20to%20the%20People/INITIATIVE%20960.htm>.
2. For more information on the creation of DEL, see <http://www.del.wa.gov/About/About.shtml>. The session law that created DEL is available at <https://dlr.leg.wa.gov/billsummary/default.aspx?year=2005&bill=2964>.
3. See Washington Learns Committee. "Washington Learns: A world-class, learner-focused, seamless education." <http://www.washingtonlearns.wa.gov/report/FinalReport.pdf>.
4. The DEL was a recommendation of Washington Learns, <http://www.washingtonlearns.wa.gov/>.
5. I-960 Section 5, part 6.
6. Washington State Farm Bureau Federation, et al. vs. Gov. Christine Gregoire. Other plaintiffs include the Washington State Grange, National Federation of Independent Business, Building Industry Association of Washington, and the Washington Association of REALTORS. Also in that lawsuit, the argument has been raised that I-601 itself may be unconstitutional because it provides for automatic voter referenda without requiring collection of signatures before placing the matter on the ballot.
7. Pecora, P., Kessler, R., Williams, J., O'Brien, K., Downs, A., English, D., White, J., Hiripi, E., White, C., Wiggins, T., & Holmes, K. (2005). Improving family foster care: Findings from the Northwest Foster Care Alumni Study. Seattle, WA: Casey Family Programs.
8. For more information on the creation of the Foster Care Endowed Scholarship, see <http://www.hecb.wa.gov/financialaid/other/FosterCareEndowedScholarship.asp>. The session law that created DEL is available at <https://dlr.leg.wa.gov/billsummary/default.aspx?year=2005&bill=1050>.
9. More information is available at <http://www.cted.wa.gov/site/322/default.aspx>.
10. McIntyre, Robert et al. 2002. "Who Pays? A Distributional Analysis of the Tax Systems in All 50 States 2nd Edition." The Institute on Taxation and Economic Policy. <http://itepnet.org/whopays.htm>.
11. See Kaushik, Sandeep and Jeff Chapman. "Washington State Taxes Remain Low Compared to Other States." Washington State Budget & Policy Center. <http://www.budgetandpolicy.org/documents/lowtax.pdf>.
12. See [http://dor.wa.gov/docs/reports/2007/Tax\\_Reference\\_2007/03taxhistory.pdf](http://dor.wa.gov/docs/reports/2007/Tax_Reference_2007/03taxhistory.pdf) for a history of state tax changes.
13. I-960 Section 1 (Intent).
14. I-960 Section 2.
15. I-960 Section 13.