

Initiatives Update

Initiative 747

On July 6, the supporters of Permanent Offense completed turning in their petitions for Initiative 747. Tim Eyman said he had 280,000 signatures, and he only needs 197,734 to get the initiative on the November ballot. Historically, approximately ten to fifteen percent of signatures gathered are found to be invalid. Although the Secretary of State may not have completed the review of the signatures by the time we go to press, it appears that Initiative 747 will be found to have enough valid signatures to be on the ballot.

This initiative is fairly simple compared to Initiative 695 and Initiative 722. And, as such, it is less likely to have constitutional problems.

It has three provisions:

- It puts a limit of one percent on increases in regular property tax levies of taxing districts.
- It amends RCW 84.55.0101, the “substantial need” statute.
- It allows higher property tax increases if approved by the voters. This provision is currently in the statutes.

Changes in the “limit factor.”

Section 2 of the initiative amends the definition of “limit factor” in RCW 84.55.005 – the amount by which a taxing jurisdiction can increase the amount of its regular property tax levy. Currently, the limit factor for jurisdictions with a population under 10,000 is six percent.¹ Under Initiative 747, the limit factor for these jurisdictions would fall to one percent.

For taxing districts with a population of 10,000 or over, the “limit factor” is currently the lesser of six percent or the increase in the implicit price deflator for personal consumption expenditures (IPD) for the 12-month period ending in July of each year as published in the September issue of the *Survey of Current Business* by the Bureau of Economic Analysis. Under the provisions of Initiative 747, the limit factor for these jurisdictions would fall to the lesser of the IPD or one percent.

Changes in “substantial need” statute.

Section 3 of Initiative 747 amends RCW 84.55.0101, the “substantial need” statute. Currently, those taxing districts with a population of 10,000 or more can authorize a regular property levy increase of more than the growth in the IPD up to an amount of six percent by a finding of “substantial need” by a supermajority vote of the council or two out of three commissioners. Under the provisions of Initiative 747, they could levy an increase of more than the IPD, up to a maximum of one percent, upon a finding of substantial need.

¹“Wait a minute! Shouldn’t this read **two** percent, rather than **six**? That’s how the initiative reads.” Here is the explanation. While Initiative 747 reads as if Initiative 722 were in effect, implementation of Initiative 722 is stayed pending final Washington State Supreme Court review. Initiative 722 has never been implemented due to a preliminary injunction placed on the initiative before it went into effect.

However, since the IPD is likely to be higher than one percent most of the time, this statute would no longer be that useful if the initiative passed.

Provision for voter-approved property tax increases.

Section 3 also adds language providing that tax increases higher than one percent can be approved by the voters at an election held according to RCW 84.55.050. That statute already provides for levy lid lifts by voter approval, so Section 3 does not add anything to current law.

Here is how a levy lid lift works.

Taxing jurisdictions that are levying property taxes at a rate lower than their statutory maximums can ask the voters to lift the levy lid so they can increase their levy by more than six percent. A simple majority vote is required. For example, assume that a city's statutory maximum rate is \$3.375 per thousand dollars assessed valuation and that the rate next year under the 106 percent lid will be \$3.00. The city can place a proposition before the voters to raise the levy by all or part of the remaining \$0.375 capacity. The proposition can limit the period for which the levy is made, but it need not do so. And, it can limit the purpose for which the funds will be spent, but this is also not a requirement. Of course, voters may be more likely to vote affirmatively if the period of time is limited and the purpose stated.

If Initiative 747 is passed, this statute would have to be used for any levy increases of more than one percent.

What should local governments be doing now?

- Inform yourself on what local government officials can and cannot do to oppose or support a ballot issue. We have some articles on this subject on our Initiative 747 Web page at <http://www.mrsc.org/747/i747.htm>.
- Calculate what the impact would be on your budget for 2002 and the future, assuming that the voters would not want to increase taxes. The effect is cumulative, so the potential losses get bigger as time passes.

The Department of Revenue has made some preliminary estimates of the aggregate losses to all taxing districts. Their staff is now going to be doing an estimate for each taxing district in the state. They will have to make some assumptions. Cities and counties are probably in a better position to know what assumptions to make for their jurisdictions and should make their own estimates.

- Put your budget together, knowing that the initiative could possibly pass. If it does, **it will affect property taxes for 2002**. And, of course, it will be too late to ask the voters for an increase for next year.

Initiative 722

On June 12, the Washington State Supreme Court heard oral arguments on Initiative 722. This initiative had previously been found unconstitutional by Judge Christine Pomeroy of the Thurston County Superior Court in March. (You can listen to the arguments at the TVW Web site at: <http://www.tvw.org/search/eventResults.cfm?EvtType=D&Date=2001&CFID=372401&CFTOKEN=93765689>.)

As a short reminder (a more complete discussion can be found at <http://www.mrsc.org/722/i-722.pdf>), some of the provisions of the initiative were:

- Declaring tax and fee increases adopted between July 2, 1999 and December 31, 1999 null and void and requiring refunds.
- Using a property tax exemption to limit the increase in taxable assessed valuation to the value of the property in 1999 plus new construction and, plus the lesser of the increase in the IPD or two percent. (In many cases, this valuation would be less than market value.)
- Limiting property levies to the lesser of the increase in the IPD or two percent.
- Repealing the statute that allows municipalities to "bank" (save) unused levy capacity that they choose not to use in one year for potential use in a future year.

Most of time was spent on the "single subject rule" argument. Article 2, section 19 of our state constitution requires legislative bills, including initiatives, to have a single subject so that voters do not have the dilemma of having to vote for or against an entire initiative when they support only one part. Opponents of the initiative argued that Initiative 722 has at least two subjects: 1) nullifying tax and fee increases and 2) limiting property taxes. This is a very important issue, because if the court finds that the single subject provision was violated, the entire initiative will be found unconstitutional.

If the court does not find that the single subject rule was violated, it is possible that it may find only some sections of the initiative unconstitutional. (The most likely ones are sections 3 and 4, which would allow assessments at less than market value. This would violate the uniformity provision of the constitution, which requires that taxes be the same for any class of property.) So, it is possible that the requirement the tax and fee refund requirement will be the only section to emerge unscathed. However, most attorneys think it very unlikely that the court would uphold this section, because prior courts have found that refunding taxes that were validly levied and collected would be an unconstitutional "gift of public funds." However, as one attorney said, "You never know what a court will do."

The decision is expected in late summer or early autumn.