

Make the Difficult Impossible

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MAKE THE DIFFICULT IMPOSSIBLE: The new Senate majority firmly established their legislative priorities on the opening day of their 2015 session in Olympia this week: Dropping in place a supermajority requirement for revenue increases. Currently, a measure passes when 25 of the Senate's 49 members approve it. The proposed rule change would apply to tax measures being considered by the chamber by requiring two-thirds—or 33—votes. The procedural change—pushed forward by Whatcom County Sen. Doug Ericksen and his Republican counterpart in Spokane, is equal parts tone deaf, legislatively burdensome and constitutionally bankrupt.

The procedural rules were adopted by a vote of 26 to 23. The whole of the Senate Republican caucus voted for the rules, while the whole of the Democratic caucus voted against them. Thus, the slimmest majority imposed a supermajority requirement on the chamber.

The Washington State Supreme Court already commented in 2013 on the constitutionality of such a requirement when imposed by direct legislation (you want to change the structure and function of the constitution, change the constitution!). Ericksen's proposal cleverly gets around that, not by law but by making the requirement part of the agreed procedural order of the chamber. The court, however, has already commented extensively on the wisdom of such a rule:

"The language and history of the constitution evince a principle favoring a simple majority vote for legislation," a plurality of justices wrote in their 2013 opinion, noting a change "would fundamentally alter our system of government, and such alteration is possible only through constitutional amendment. Washington's government was founded as a representative democracy based on simple majority rule. More importantly, the framers were particularly concerned with a tyranny of the minority.

"This preference for simple majority rule is evident from the very language of the constitution, which required only a simple majority vote for ordinary legislation and reserved a supermajority vote for special circumstances," they wrote. "Thus, the framers were aware of the significance that a supermajority vote requirement entailed and consciously limited it to special circumstances; the passage of ordinary legislation is not one of those.

"While the current supermajority requirement applies only to tax increases," they wrote in 2013, "if carried to its logical conclusion, the argument could allow all legislation to be conditioned on a supermajority vote. In other words," they reasoned, "a simple majority of the people or the legislature could require particular bills to receive 90 percent approval rather than just a two-thirds approval, thus essentially ensuring that those types of bills would never pass."

Had the framers wished to give the legislature the ability to alter the majority vote requirement of the constitution, justices argued, they would have provided provisions to do so. Embedded within their reasoning, justices understood that funding a law may be essential to the function of the law, and rules curtailing the former can cripple the latter.

Arriving on Day One of their session, Ericksen's stunt illustrates just how difficult it may be for the deeply divided Legislature to arrive at consensus on the important work ahead.

Republicans love the constitution and voter-approved initiatives. Except when they don't; and while their caucus rants about their sacred duty to voter mandates on taxation and balanced budgets, they're silent about voter mandates that blow holes in the budget and command new revenues. For that's what voters surely did when they approved Initiative 1351 last November to improve classroom size in the state's public schools.

The state Office of Financial Management (OFM) and legislative analysis indicates I-1351, the K-12 class-size reduction measure, will cost \$2 billion this budget cycle. And the measure, which voters approved in November, didn't provide any way to pay for itself. Additionally, lawmakers are under severe pressure to fully fund public education as mandated by the state constitution, reinforced by the Supreme Court's *McCleary* decision on K-12 education.

McCleary, an action brought by the state's public school districts, not only found the state was failing to meet current obligations; but justices also declared school districts are paying too much of basic education costs through local tax levies. The state also needs to address that, the court concluded, imposing new revenue burdens. The court has already found the Legislature in contempt of their ruling by failing to find solutions last session, foretelling a constitutional crisis should lawmakers fail to act this session.

The response of Ericksen and Republicans? Make the difficult impossible.

Senate Republicans were quick to explain their restrictions apply only to new taxes—the sorts that might take the burden off existing sales, property and business taxes—namely, new revenue models outlined by Gov. Jay Inslee in his proposed biennial budget. Those models include a small capital gains tax and carbon pricing solutions designed to address the state's structural deficit.

“The real purpose of today's vote was to shield Senate Republicans' powerful and wealthy friends—including companies like BP, ConocoPhillips, Tesoro, and Shell—from having to worry about paying their fair share in dues to our state anytime soon,” commented Andrew Villeneuve, founder of the Northwest Progressive Institute. “It is well known among policymakers that our state's tax obligations presently fall hardest on families with the least, and Republicans want to make sure it stays that way.”

In Ericksen's case, it is early repayment of the more than half a million dollars in reelection funds that poured into his campaign from special interest lobbyists last year, according to public disclosures. Only one day on the job, and he's serving his constituents very well indeed.