

In Our View: I-1366 Poses A Dilemma

Legislature should put constitutional amendment on taxes on the ballot

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Voters across the state have placed lawmakers in a lose-lose situation.

By passing Initiative 1366 with 53 percent of the vote (57 percent of Clark County voters approved), the electorate has given the Legislature two distasteful options: Place a constitutional amendment on next year's ballot to require a two-thirds legislative supermajority for tax increases, or see the state's sales tax decrease from 6.5 percent to 5.5 percent.

A ballot measure likely would be passed by voters, considering that they have approved of a two-thirds supermajority on five occasions and provided tacit approval again last week — and such a requirement would hamper the state's ability to deal with the realities of governing. On the other hand, a reduction in the sales tax would reduce state revenue by an estimated \$8 billion over six years, arriving at a time when the state is faced with a court-mandated boost to funding basic education and a court-mandated fix to its mental-health system. The result would be cuts to social services, higher education, wildfire prevention, environmental protections, and many other items that enhance the quality of life for residents.

That being said, lawmakers next year should hold their noses and place a constitutional amendment on the ballot. This is not an endorsement of a two-thirds requirement — such a decision will be left for another time. But it is an acknowledgement that the voters have told the Legislature that they would like the opportunity to vote on such a constitutional amendment or see a reduction in the sales tax. Approving a ballot measure would be the less odorous choice between those options.

Meanwhile, the passage of I-1366 is certain to face a court challenge. In August, Judge Dean Lum in King County Superior Court cleared the path for the initiative to appear on the ballot, but he noted the possibility that it would be deemed unconstitutional. The state Supreme Court, as a matter of practice, has declined to rule on the constitutionality of ballot measures before the public votes upon them, but it likely will get an opportunity now that I-1366 has passed.

Some have urged the court to overturn I-1366 for any number of reasons, suggesting that the measure unconstitutionally deals with multiple topics, or that it unconstitutionally coerces the Legislature into a specific action. We would not be so presumptuous to suggest that the court should rule one way or another as a matter of political preference; if the measure is unconstitutional, then it's unconstitutional, and that will be up to the determination of legal experts. But the court should undertake the issue and make a determination before lawmakers delve into the intricacies of implementing Initiative 1366.

One interesting note that adds to the convoluted nature of I-1366 is that the measure will be defended in court by the state Attorney General's office. That is the same office

that is investigating serious Public Disclosure Commission complaints against initiative author Tim Eyman, and Attorney General Bob Ferguson has stressed that those working on the PDC allegations will be walled off from the attorneys working on I-1366.

There is much not to like about the passage of Initiative 1366, and The Columbian argued editorially against the measure prior to last week's election. But the public again has told lawmakers that they should be better stewards of the people's money and — barring a court ruling to the contrary — lawmakers must be compelled to listen. Their best option is to place a two-thirds amendment on the ballot.