Initiative No. 1033 – an Initiative Limiting State, County and City Revenue

The Washington Secretary of State has certified Initiative No. 1033 (“I-1033”), the latest initiative sponsored by Tim Eyman, for the November 2009 ballot.¹ If approved by Washington voters, I-1033 would limit the growth of state, county and city “general fund” revenues received from taxes, fees, and other charges not expressly approved by the voters. I-1033 would apply to general fund revenues, commencing with general fund revenues received in 2010 with the limit set at the 2009 level, adjusted as described below. I-1033 applies only to the state, counties and cities, and would not directly apply to ports, public utility districts, transit districts, and other governmental entities.

The text of I-1033 is similar to other taxpayer “bill of rights” (“TABOR”) legislation introduced nationwide. TABOR measures have been defeated at the polls in various states, including Oregon and California. According to published reports, between 2005 and 2009, TABOR measures have been introduced in state legislatures in many states without success.² Colorado voters approved a similar initiative in 1992, but in 2005 voters approved the suspension of the Colorado initiative due to its fiscal impact.³

Under I-1033, general fund revenue for any year would be limited to the amount of revenue received by the state, county or city, as applicable, in the previous year, plus a percentage increase reflecting inflation and population growth. The rate of inflation and population growth would be determined by the Washington State Office of Financial Management. Revenues received above the inflation and population growth allowances must be deposited into a “lower property taxes account” and used to reduce property taxes for the subsequent year. The effect of the limitation is exacerbated during a recession as the initiative does not provide for recovery in the event of an economic downturn.⁴

¹ The text of I-1033, as well as the ballot title and summary, are available at www.secstate.wa.gov/elections/initiatives/text/i1033.pdf.
² See no1033.com and www.ballot.org.
³ Additional information on the Colorado legislation can be obtained from the Colorado Center on Law and Policy, www.cclponline.org.
I-1033 purports to exclude voter-approved revenue from the initiative’s reach, but is drafted only to exclude revenue approved by voters after the date of the initiative. The initiative does not exclude revenues previously approved by the voters, or revenues scheduled to be considered by the voters in 2009. Increases in these voter-approved revenues would be taken into account in calculating total general fund revenue and implementing any resulting reductions in property taxes.

The initiative also does not distinguish among revenue derived from taxes, fees and other governmental charges deposited to the general fund. Aggregate increases in general fund revenues arising from any combination of these sources in excess of the inflation and population growth factor would trigger the requirement for a deposit to the jurisdiction’s lower property taxes account. In other words, as noted above, an increase in a previously voter-approved sales or other tax deposited to the general fund could trigger a decrease in property taxes, as could an increase in general fund revenue from regulatory fees, even if such fees can legally be used only for limited purposes. It is unclear how prior voter approvals can be honored and how legal limitations regarding the use of particular types of revenues can be reconciled with I-1033’s blanket treatment of these revenues.

The initiative’s limitations are in addition to the current levy lid in chapter 84.55 RCW. It is unclear how these limitations will be harmonized. Chapter 84.55 RCW limits the total dollar amount of regular property taxes levied by an individual local taxing district with a population over 10,000 to the amount of such taxes levied in the highest of the three most recent years multiplied by a limit factor, plus an adjustment to account for new construction, annexations, improvements, construction of electric generation wind turbine facilities classified as personal property, and state-assessed property. The limit factor is the lesser of 101% of the highest levy in the three previous years (taking into account permitted adjustments) or 100% plus inflation. Taxing districts with a population of less than 10,000 are subject to a flat 101% limitation. I-1033 amends RCW 84.55.010, with the expressed intent of providing for a limitation on property tax levies that is “in addition to the limit factor,” although the amendatory language is unclear due to incorrect cross references and other drafting ambiguities.

The initiative anticipates that jurisdictions may try to insulate funding for certain functions by shifting funding out of their general funds. So, if after January 1, 2009, the state or a county or city shifts any program or function from its general fund to another fund or account, or transfers any general fund revenue to another fund or account, the limitations set forth in the initiative would apply to the aggregate of the general fund plus the amount shifted and/or transferred for that year and all subsequent years. An exception is made for funds transferred by the state to and from the Budget Stabilization Account under Article VII, Section 12 of the Washington Constitution. With regard to cities and counties, although the express intent of the initiative is to permit cities and counties to use reserve funds to supplement limited general fund revenue, the text of the initiative itself does not provide such exception.

The direct and indirect financial impacts of I-1033 on the state, counties, and cities and the indirect financial impacts of the initiative on other jurisdictions in Washington are currently being reviewed. Likewise, the constitutionality of the initiative, as well as its impact on laws that authorize existing voter-approved revenues and that limit the use of certain revenues, will require consideration. Two areas require immediate attention: disclosing to potential bond investors the potential impact of I-1033, and modifying ballot

6 Additional information on the potential impact of I-1033 can be obtained from the Washington State Budget and Policy Center, www.budgetandpolicy.org.
language for upcoming special election questions to anticipate the initiative, where possible.

If you have any questions regarding I-1033, including addressing disclosure and ballot language issues, please call the authors, any of our municipal finance attorneys, Gerry Johnson, Paul Lawrence or Matt Segal at (206) 623-7580.