

# MEMORANDUM

**Date:** April 5, 2006  
**To:** Washington Realtors® Members  
**From:** Jon Soine, Chair, Property Rights Task Force  
Property Rights Task Force Members  
**RE:** Property Fairness Initiative (I-933)

---

REALTORS® realize that Initiative 933, the “Property Fairness Initiative” addresses an important issue for Washington citizens. It is a complex issue, one that REALTORS® take seriously. For that reason, REALTORS® formed a Task Force to thoroughly analyze this proposal before we come to conclusions about it—conclusions that may impact our 24,000 members, 2 million homeowners, and the public policy makers whom we endeavor to supply with the highest quality of information and data. Our Task Force review will center on the impact of the Initiative in furthering the REALTORS® efforts to promote balanced communities where Washington residents can live, work and recreate.

The Task Force met recently to review the Initiative and legal analyses of it, and to hear presentations from its sponsors and opponents. The Task Force is continuing its work to clearly understand the implications of the Initiative with respect to housing, the economy, taxes and the overall quality of our neighborhoods and communities. Our goal is to provide REALTORS® an informed and thoughtful recommendation.

While the Task Force continues its work, we felt it important to provide REALTORS® with some initial information. Below are key websites to review. Also, attached to this memo you will find a basic summary of the Initiative and an analysis of the Pros and Cons of this proposal. This information will help inform you about the Initiative and help you weigh the potential impacts on your communities, businesses, and clients.

**Websites on the full text, support and opposition to the Initiative:**

Property Fairness Initiative Text:

<http://www.secstate.wa.gov/elections/initiatives/text/i933.pdf>

Property Fairness Coalition: <http://www.propertyfairness.com/>

Community Protection Coalition: <http://www.protectcommunities.org>

# Property Fairness Initiative – Information Sheet

**THE INITIATIVE TITLE AS IT WOULD APPEAR ON THE BALLOT:** "This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments."

## SUMMARY OF THE INITIATIVE

**Section 1 (Purpose and Findings):** This section discusses the purpose and intent of the Initiative.

**Section 2 (Consideration of Impacts and Definitions):** The first subsection of this section establishes a process requiring agencies to consider and document the impacts of their regulatory actions on private property, consider alternatives, and estimate compensation due to damages. The second subsection defines key terms including "private property," which is defined as real, personal, and other types of property, and "damaging the use or value," which is defined as including prohibiting or restricting uses that were legally existing or permissible as of January 1, 1996. The definition of "damaging the use of value" also has exceptions, including regulations relating to public health and safety, and regulations in existence prior to January 1, 1996.

**Section 3 (Compensation or Waiver):** This section would require that any governmental agency seeking to enforce or apply a regulation of private property that would result in "damaging the use or value" of such property must pay compensation for that damage *in advance*. In the alternative, the state or local governmental agency may simply refrain from taking such action and thereby avoid liability.

**Section 4 (No Fee for Seeking Waiver):** State or local governmental agencies are not permitted to charge any fee for considering whether to waive or grant a variance from a regulation to avoid liability for compensation.

**Section 5 (No Prohibition on Use):** No future state or local governmental agency regulation may prohibit any use of private property legally existing at the time of adoption of the Ballot Initiative.

**Section 6 (Liberal Construction):** In general, the Ballot Initiative's provisions are to be liberally construed to achieve its purposes.

**Section 7 (Other Remedies Not Affected):** The remedies provided by the Ballot Initiative would not preclude a property owner from seeking other statutory or constitutional remedies.

**Section 8 (Subheadings), Section 9 (Partial Invalidity) and Section 10 (Title of Act):** Subheadings for sections are not part of the law, invalidity of any portion of the law does not affect portions not invalidated, and the act is to be known as the "Property Fairness Act."

## PRO AND CONS OF INITIATIVE

| PROs*   | CONs*   |
|---|---|
| <ul style="list-style-type: none"> <li>• Measure will curtail enforcement of planning and zoning regulations adopted since 1996, particularly restrictions on types of uses and amount of property that can be used.</li> <li>• Measure requires government to reimburse property owners when regulations passed devalue or restrict the use of property.</li> <li>• Sends government a strong message about protecting property rights</li> <li>• Allows market to determine what land is developed and the type of development.</li> <li>• Costs of regulations born by larger population rather than the smaller population who may be the only portion affected by a regulation.</li> <li>• Government entities will have incentive to make efficient decisions—entities will need to determine the benefit and determine whether worth using public funds or determine other compensation solutions for affected landowners.</li> <li>• Protects private property rights from overreaching government regulations- governments will need to reassess impact of proposed regulations.</li> <li>• Provides opportunity to reconsider regulatory approaches to accommodating growth while ensuring livable communities.</li> <li>• Will place fiscal pressure on local governments to adopt a more cautionary approach and accommodate the rights of individual land owners.</li> <li>• Provides incentive to devise and implement voluntary market-based and public-private partnership approaches to land conservation and the preservation of open space and resource lands, particularly farm and forest land.</li> <li>• Initiative would close the “loophole” for partial takings. Government could not rely on leaving “some use” of a property to avoid a potential takings claim.</li> </ul> | <ul style="list-style-type: none"> <li>• Zoning restrictions could return to those in 1996, potentially reducing environmental protections and allowing growth and construction that impacts quality of life. Commercial uses may be placed in residential neighborhoods and urban development in rural areas. Homeowner’s expectations regarding their neighborhood no longer predictable.</li> <li>• As drafted, measure appears to exempt all private property, not just real property from <i>any</i> non-compensated damage to such property resulting from government regulation with only specific exceptions for limited cases and types of regulation described and are to be narrowly construed.</li> <li>• Requirement for government to determine the impact of a regulation is vaguely written with little guidance on how to assess impacts resulting in paralyzing governmental entities and preventing adoption of new regulations.</li> <li>• Governments forced to raise taxes, including real estate excise taxes to pay property owners for impact of regulations determine regulation important to implementation of community goals.</li> <li>• The market place will not necessarily lead to and efficiently developed community or one that is desirable to live in or to development conducive to efficient and cost-effective public infrastructure investments for the greater community.</li> <li>• May result in local government halting or delaying the construction of capital facilities as one means of slowing growth.</li> <li>• May impact the enforcement of regulations that are either federally –mandated or have federal funding consequences thus affecting the state’s ability to claim certain federal funding support. Example is the National Flood Insurance Program.</li> <li>• May impact salmon and Puget Sound recovery efforts and/or jeopardize funding leading federal government to stipulate actions to be taken at the local level.</li> <li>• May lead to much confusion and litigation, resulting in courts solving the majority of land-use problems which will be time-consuming and wasteful.</li> <li>• May delay permits at the local level. Staff time will be needed to review requested waivers as well as normal workload. Hard to know the processing costs and costs of compensation. Oregon Secretary of State estimated Measure 37 would cost state and local governments \$344 million per year in administrative costs alone.</li> </ul> |

\* Based on analysis by Robinson & Cole LLP, February 2006