

Initiative 933, the Property Fairness Initiative

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A growing trend of “property fairness” initiatives, proposals designed to increase protection for individual landowners from the rise in land-use regulation, has reached Washington state in the form of Initiative 933. The philosophy behind the initiative is similar to the thinking that underlies most environmental regulation.

Property fairness – not making private landowners bear all the cost of a public benefit

Environmental regulations are built upon the principle that those who benefit from an activity, such as a manufacturing plant, must also absorb the costs of that activity, like paying to reduce the pollution they emit. Likewise, according to this principle, when the public benefits from keeping land in a natural state, the public should also pay for that benefit, instead of imposing the entire cost on individual landowners.

Initiative 933 seeks to carry out this principle in Washington. It has three key elements. First, it requires governments to fully examine the impact of regulations on private property. The initiative recognizes the inherent value of private property, requires government to analyze the potential financial impact of regulations on private property, along with whether the regulations will achieve their stated goals, and to see if there is a voluntary way to achieve those goals.

Next, if governments decide to impose new regulations, they would be required to pay affected landowners for the adverse financial impact of those regulations, or else waive the new rules.

Third, the initiative would have no effect on a range of regulations, including those which are applied evenly across a jurisdiction, that protect against immediate threats to health and safety, that regulate sex-offender housing and a range of other activities.

Likely limited impact

Based on our research of the results of Initiative 933 and a similar Oregon law (Measure 37), it appears Washington's initiative would have a limited impact here. For instance, the vast majority of claims are likely to come from individual landowners and families. Developers and corporations often have the resources to navigate complex regulations, while small landowners and families typically are unable to absorb those costs. This is the case in Oregon. In Washington state, the legislature has frequently recognized this problem, setting up programs to help compensate small landowners, such as in Washington's rigorous Forests and Fish Law.

Second, the time limits on Initiative 933 also limit its impact. Even in Oregon, where claims can be made to eliminate decades of regulations, the

typical nature of the claims find 80-acre parcels being turned into four 20-acre lots rather than becoming large subdivisions. Initiative 933 only allows the waiving of regulations imposed after January 1, 1996, greatly narrowing the field of potential claims.

Exaggerated cost predictions

Opponents of the initiative make a variety of dire predictions, focusing primarily on the potential cost of the initiative. They argue that the initiative could cost the state up to \$8 billion. Citing an outdated Oregon estimate made before Measure 37 passed that the law there would cost \$344 million per year, opponents have argued that administrative costs alone could cost tens of millions more. Our study demonstrates, however, that these estimates are based on faulty assumptions and are wide of the mark.

Rather than costing \$344 million per year, Oregon's budget to administer Measure 37 is only \$3 million per year.

Local government not liable for state rules

Additionally, opponents admitted that the cost estimates to the state were based on the false assumption that local jurisdictions would be financially liable for, but unable to waive, state rules. In fact, local jurisdictions would not be liable for state regulations. Also, the state legislature can decide to waive these rules. Given that ability, the impact would be much like Oregon, with local jurisdictions and the state paying nothing, then simply waiving rules for the limited number of claims it faced.

Limited impact on environmental rules

Opponents also argue that Initiative 933 would do significant damage to environmental regulations like the Clean Air Act, with one group saying that such laws might mean "total ecosystem collapse" in the Puget Sound. Our study concludes that, while a gray area, the impact of Initiative 933 on environmental regulations is likely to be limited, because rules that are applied evenly in a jurisdiction, which most environmental regulations are, cannot be waived under the initiative.

Conclusion

As a result, the best way for voters to determine how to vote on Initiative 933 is to not rely on speculative and largely inaccurate projections. Experience shows that many of the projections have been misleading and that the impact on the ground in Oregon is much more limited than opponents or proponents expected. Experience has also shown that the law in Oregon benefits small landowners almost exclusively.

Instead, voters who believe that government planners will provide the best path to the future are likely to vote against the initiative. Voters who believe that a few small landowners should not bear a disproportionate burden of land rules, and that the public should pay for public benefits, are likely to vote yes.

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Read the full text of Todd Myers' study on the effects of Initiative 933, and his earlier study on the effects of Measure 37, at www.washingtonpolicy.org