

Key Findings

- The Community Bill of Rights will expand government entitlement programs, not individual rights.
- Taxpayers could be on the hook to pay for proposed programs that have no funding mechanism in place.
- The broad policy agenda is not affordable under the city's current budget.
- The measure will likely face scrutiny in courts under the state's "single subject law."

Citizens' Guide To Proposition 4 In Spokane "Community Bill Of Rights"

by Abby Burlingame, Research Assistant, &
Carl Gipson, Director, Center for Small Business

September 2009

Background

This November, voters in the city of Spokane will vote on a Community Bill of Rights ballot measure. The measure, promoted by a community action group called "Envision Spokane," seeks to amend the Spokane City Charter to either expand current entitlement programs or institute new ones.

The measure would codify rights for various entities. Also referred to as the "Spokane Community Bill of Rights," the measure is a first of its kind in the United States. The aim is to use government authority to guarantee the legal right of every citizen to a sustainable and locally-based economy, affordable preventative medical care, affordable housing, and affordable and renewable energy. The bill would also assign legal rights to the natural environment and to neighborhoods so that communities could determine their own futures. The proposal would direct how workers would be paid, how many apprentices must be employed, and that union rights are mandatory in the workplace.

Charter Amendment Platform

The text of the Community Bill of Rights includes the following provisions:

1. Residents have the right to a locally-based economy
2. Residents have the right to affordable preventative health care
3. Residents have the right to affordable and safe housing
4. Residents have the right to affordable and renewable energy
5. The natural environment has the right to exist and flourish
6. Residents have the right to determine the future of their neighborhoods
7. Workers have the right to be paid the prevailing wage, and the right to work as apprentices, on certain construction projects
8. Workers have the right to employer neutrality when unionizing, and the right to constitutional protections within the workplace

Envision Spokane is an umbrella group made up of over twenty groups including unions, some community organizations, and some neighborhood councils, a few of which have ties to national organizations. The group says its goal is to "build a sustainable, democratic, and healthy Spokane by addressing those factors that impact quality of life, local economies, health care, neighborhoods, and other community issues within Spokane."¹

¹ <http://www.envisionspokane.org/index.html>; accessed on September 15, 2009.

Analysis

Several practical questions are raised by a broadly based measure such as this. First, the measure does not specify how city officials could implement these lofty goals, nor are any new taxes proposed to pay for these new or expanded programs. Second, the many topics in this measure may be challenged in court under the “single subject” rule. Third, the measure’s broad policy agenda is not affordable under the city’s current budget.

Envision Spokane says the legal rights created by the proposed Charter Amendments would be provided by the city at no added cost to the city. They are counting on program infrastructure that is already in place to provide many of these services.² And the measure would ensure that no corporation or business entity could possess any legal rights, privileges, powers or protections should a dispute arise.

However, in late July, the Spokane City Council attached two advisory questions to accompany Proposition 4, these are Propositions 2 and 3. Proposition 2 asks voters, “Should the Spokane City Council pursue additional funding sources, as needed, in order to fund the implementation of the provisions of the Envision Spokane Community Bill of Rights ballot proposition, if the proposition is approved by the voters?” Voters are given a ‘yes’ or ‘no’ answer.

Proposition 3 asks voters, “Should the Spokane City Council reduce funding in existing General Fund programs, as needed to reallocate funding in order to fund the implementation of the provisions of the Envision Spokane Community Bill of Rights ballot proposition, if the proposition is approved by the voters?” Again, voters are asked to choose ‘yes’ or ‘no’.

Legal Implications

A large amount of litigation would likely result in order to codify the particulars of the Bill of Rights, should voters enact it. The Spokane City Council has expressed its concerns that the vagueness of the measure will facilitate lawsuits brought by city residents who feel their new legal rights are not being met by city services. Since the proposal clearly states that, “the City of Spokane shall defend such action against any legal challenges,” council members say they fear this would impose a major financial burden on the city.

While backers of the measure assume the city will be sued to overturn the measure should it pass, there may also be lawsuits filed by citizen wishing to specify what each provision actually means.

The vagueness of this proposal will contribute to confusion amongst city officials charged with implementing the measure. This is demonstrated in the text of the proposal itself, “*Any person, neighborhood, or neighborhood council whose rights have been violated could file a lawsuit to enforce their rights, or the City of Spokane, or any person seeking to enforce the rights of ecosystems.*”

Envision Spokane says the city would not be affected by litigation, even though it admits broad terms are used to encourage litigation. Envision Spokane also says some of these rights are to be clarified by the courts or further city legislation and that broad terms such as “ensure” and “affordable” were used for that specific purpose.³ Envision Spokane says ambiguity is left “to allow the

² “Envision Spokane makes response”, by Kai Huschke campaign director for Envision Spokane, *Spokane Journal of Business*, July 2009.

³ http://www.envisionspokane.org/energy_fa.html; accessed September 15, 2009.

definition to change in response to individual disputes,” and that, “Those specific disputes will define the terms.”

While litigation is one of many costs associated with this proposal, other costs exist with the implementation of each new legal right. These provisions require further city staff and enforcement personnel as well as increased cost to taxpayers.

According to the Spokane City Charter, the subject of any ordinance (in this case a proposed measure), “shall be set out clearly in the title thereof, and no ordinance except one making appropriations shall contain more than one subject. Ordinances making appropriations shall be confined to the subject of appropriations.”⁴ It is likely a court would invalidate the measure on these grounds, should voters pass it in November.

Likewise, according to Article 2, Section 19 of the Washington State Constitution, “No bill shall embrace more than one subject, and that shall be expressed in the title.” So it is unlikely such a wide-ranging measure would survive judicial scrutiny.

In the Washington State Supreme Court opinion *Burien v. Kiga*, the Court defined the single subject rule as “When a measure embodies two unrelated subjects, it is impossible for the court to assess whether either subject would have received majority support if voted on separately... it necessarily required the voters who supported one subject of the measure to vote for an unrelated subject they might or might not have supported.”⁵ The Court opinion explains that even when the title is so broad as to encompass a topic like community rights, it may serve various purposes. If it first prescribes legislation and then provides for the city to act or *ensure* that the facilities or structures are guaranteed, it is considered to contain more than one subject – therefore, the courts would likely strike such a bill or measure.

Economic and Social Cost of the Proposal

The true cost of the proposed Amendments is impossible to quantify fully. Any time regulations are introduced into an economy that governs development or causes behavioral change, no accurate price can be attached. However, some basic assumptions can be made about some of the proposed changes.

Currently, non-profit clinics such as Community Health Association of Spokane exist for those without insurance and offer services based on income. These non-profit clinics are government-subsidized and expanding these clinics would require further subsidies to ensure residents have affordable, preventative health care. Pay-for-service preventative care clinics such as Freedom Health Group currently offer preventative services for a monthly fee that may or may not meet the “affordable” condition. These services cost \$75 a month and give continuous primary care to enrolled members.⁶

Envision Spokane claims there are 23,000 uninsured in the city that need affordable, preventative coverage. Assuming the extremely low rate of preventative coverage (\$75 per month), covering the 23,000 uninsured for *just* preventative coverage would cost approximately \$20 million per year. The cost would surely increase if the city is required to cover those who currently have some coverage but are just barely scraping by. Although the proposal does not specify that the city must pay those costs, it does require that the city guarantee those services and that

⁴ City of Spokane – City Charter, Article III, section 13. Available at: <http://www.spokanecity.org/services/documents/charter/#Sec13>.

⁵ See 144 Wn.2d 819, *Burien v. Kiga*, September 2001.

⁶ See Freedom Health Group online at: <http://www.freedomhealthgroup.com>.

they are affordable, which assumes that any cost deemed not affordable must be borne by these clinics or by taxpayers.

The Affordable Housing principle would also contribute to cost increases to the city. In order to be considered affordable, the Spokane Low Income Housing Consortium states that no more than 30% of any household income should be spent on rent and utilities combined. The Consortium concludes that approximately one-third of the households in Spokane County are rentals and that half of those renters are paying more than the affordable rate.⁷ The state's Office of Financial Management (OFM) estimates that the population of the city is 205,500, which means 34,250 are paying more than the affordable rental rate.⁸ Of that number, OFM estimates that 2,419 persons reside in each household.⁹ When combining these estimates there are 14,158 households paying unaffordable rates for housing. Spokane County as a whole currently has only 12,000 affordable units available, which leaves at least a shortfall of 2,158 affordable rental units in the city.

Envision Spokane suggests that the city will work with developers to create more affordable housing through zoning and incentives. In truth, it indirectly curtails the creation of new affordable housing and ensures future housing shortages by forcing new mandates on developers. Builders in cities that mandate more affordable housing units are finding that financing is difficult, with stringent regulations and higher labor costs. For example, in Montgomery County, Maryland, regulations nearly killed development until county officials decided to allow builders to buy out of some restrictive regulations.¹⁰ With the downturn in the market, developers would likely find regulations and requirements in Spokane to be restrictive and will build outside city limits in an area with fewer costs.

Ensuring affordable and renewable energy is another of the measure's goals. Supporters of the measure claim that high energy costs would be reduced through tapping into more clean energy sources. Unfortunately, clean energy sources cost more than traditional ones and frequently they fall short of producing the actual savings supporters claim.¹¹

This proposal could lead to a mandate that local utility companies provide affordable and renewable energy or face litigation. This would be very difficult, if not impossible to achieve if hydropower is not categorized as a "renewable" resource, as it is not under the state's definition of green energy. Currently the Avista Corporation, the major supplier of electricity to the city of Spokane, says that hydropower makes up 60% of the total electricity used by its customers.¹² Because the Spokane proposal would assign legal "rights" to the natural environment, utility providers could have to find alternative ways of providing energy, such as solar or wind.

However, solar energy currently costs about four to five times as much as hydropower in the state of Washington.¹³ Another complication is that Initiative

⁷ Telephone interview with Cindy Algeo, Spokane Low Income Housing Consortium on September 3, 2009.

⁸ April 1 population of Cities, Towns, and Counties Used for Allocation of Selected State Revenues State of Washington, Washington State Office of Financial Management, at <http://www.ofm.wa.gov/pop/april1/finalpop2009.pdf>.

⁹ "Illustrative Household and Persons per Household Projections Using the Growth Management Act Population Projections: 2005 and 2010," Washington State Office of Financial Management, at <http://www.ofm.wa.gov/pop/illustrative/cohhproj.pdf>.

¹⁰ "Inclusionary Zoning's Big Movement," by Alyssa Katz, *City Limits Magazine*, January/February 2005.

¹¹ For more information on green energy and specifically LEED-certified school construction, see, "'Green' Building Standards Not Improving Student Learning but are Reducing Funding for Necessary Education Programs," by Todd Myers, Washington Policy Center.

¹² Avista Corporation, Resources and Transmission Services: Hydropower, retrieved on September 1, 2009, <http://www.avistautilities.com/inside/resources/merchant/hydropower/Pages/default.aspx>.

¹³ See <http://www.solarbuzz.com/SolarPrices.htm> for current solar power rates and <http://www.eia>.

937, passed by Washington voters in 2006, mandates that utility providers meet certain levels of renewable resources. Because hydropower is not classified as renewable, there is currently no excess capacity to reallocate to customers to keep prices down. Therefore, utility costs will increase dramatically in order to meet both the Initiative 937 and Proposition 4 mandates.

That a piece of legislation or a measure would seek to assign legal rights to nature or the environment is not new. The guarantee of rights for the environment has been added into constitutions in Ecuador and Switzerland. These provisions give legal recourse on behalf of the environment to those who feel its rights are being infringed or denied.

In Switzerland, geneticists are having difficulties conducting field trials on wheat because the government fears it offends plant “dignity.” These protections have been added to the Swiss Constitution and have caused research to move from Switzerland to the United States in order to avoid further disruption.¹⁴

Richard Stewart, a law professor at New York University, points out that suing on behalf of the environment can often lead people to confuse how they feel about the environment with what is actually good or bad for it. He points out that it is not nature assigning value to an action, rather actions are judged through subjective litigation.¹⁵

In the United States many local communities trying to ban corporate activity in their neighborhoods are seeking new ways of creating neighborhood rights, similar to the proposed Spokane Community Bill of Rights. While it may sound good, the measure would open the door to litigation similar to that mentioned above. Additionally, it is a major deterrent to businesses and economic development and those wishing to develop or modify their own personal property.

The wages and rights of workers also fall under the Spokane Community Bill of Rights. Wage and apprentice requirements would be imposed on all private projects in excess of \$2 million and all publicly-subsidized projects within the City of Spokane. Litigation would most likely be brought against any company engaged in a construction project of less than \$2 million that did not comply, yet benefitted from any state or local tax breaks – hence the inclusion of “publicly subsidized projects.” Again, there is no way to detail specifically the cost of lost opportunities from businesses cancelling construction projects – whether public or private – but the net economic impact would be negative.

Conclusion

The Community Bill of Rights contains many contradictory provisions, which will conflict with each other if fully implemented. For example:

- Using hydro-power would contradict the right of rivers to flow freely;
- Development of affordable housing could contradict the rights of Neighborhood Councils to determine their own futures;
- Mandating prevailing wage rates on construction projects that are publicly subsidized could contradict with providing affordable housing;
- More stringent environmental regulations could also conflict with development of affordable housing;

doe.gov/cneaf/electricity/epm/table5_6_b.html for current residential power rates for Washington.

¹⁴ “Switzerland’s Green Power Revolution: Ethicists Ponder Plants’ Rights,” by Gautam Zaik, *Wall Street Journal*, October 10, 2008.

¹⁵ “Should nature be able to take you to court?” by Rebecca Tuhus-Dubrow, *The Boston Globe*, July 19, 2009.

The right to guaranteed affordable preventative health care could conflict with a fee-for-service program, if the program is unable to provide medical services for the mandated cost.

While these contradictions would be legally challenging, they would be costly to Spokane if city officials were required to provide these services under the terms of the proposed Amendments. Much of the language associated with the measure is vague on purpose, so that courts and future city legislation can take the lead in defining what the Amendments really mean. Unfortunately, this means that when voters go to the polls in November, they may not have an accurate understanding of what it is they are voting on.

In fact, these are not “rights” so much as they are entitlements. Envision Spokane wants every citizen to be legally entitled to health care, renewable energy, affordable housing and more. Ordinary natural rights, such as the right to free speech, do not carry with them an expensive government-run program. Nor do the traditional rights in the U.S. Constitution specifically claim that certain entities have no rights – as the Envision Spokane measure says about corporations and businesses under section nine of the proposition.

Supporters of the Amendments argue that their proposal would spur economic development through a healthier, happier and more sustainable community. However, many of these provisions are aimed directly at curtailing the rights of business owners and developers within the City of Spokane. Placing further regulations and complications on businesses would either drive up prices, as supplies become constricted, or cause businesses and their jobs to relocate to outside the city limits or in Idaho. That would deprive the city even further of the necessary tax revenue it needs to carry out the proposed services. Unlike private developers and contractors, who can take their business to another city, city officials cannot escape the cost of such stringent legal requirements. Taxpayers, however, are less likely to move to escape a higher tax burden and would be on the hook to pay for increased costs to the city.

A healthy economy is necessary for the city to fund many of its essential services. When private-sector businesses and citizens thrive, they pay taxes. That tax revenue pays for police, fire, schools, streets, subsidized medical care for the most vulnerable and more. Demonizing private businesses and imposing new legal liabilities would likely cause other businesses thinking of expanding or relocating to Spokane to move elsewhere.

Carl Gipson is director for small business, technology, and telecommunications research at Washington Policy Center, a non-partisan independent policy research organization in Seattle and Olympia. Abbey Burlingame is a research assistant with WPC's Doug and Janet True Internship Program. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.