

## **The Full Text of I-933:**

**AN ACT Relating to providing fairness in government regulation of property; adding new sections to chapter 64.40 RCW; adding a new section to chapter 36.70A RCW; and creating new sections.**

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:**

### **INTENT TO REQUIRE FAIRNESS WHEN GOVERNMENT**

#### **REGULATES PRIVATE PROPERTY**

NEW SECTION. **Sec. 1.** This act is intended to protect the use and value of private property while providing for a healthy environment and ensuring that government agencies do not damage the use or value of private property, except if necessary to prevent threats to human health and safety. The people also intend to recognize and promote the unique interests, knowledge, and abilities private property owners have to protect the environment and land. To this end, government agencies must consider whether voluntary cooperation of property owners will meet the legitimate interests of the government instead of inflexible regulation of property.

The people find that over the last decade governmental restrictions on the use of property have increased substantially, creating hardships for many, and destroying reasonable expectations of being able to make reasonable beneficial use of property. Article I, section 16 of the state Constitution requires that government not take or damage property without first paying just compensation to the property owner. The people find that government entities should provide compensation for damage to property as provided in this act, but should also first evaluate whether the government's decision that causes damage is necessary and in the public interest.

The people find that eminent domain is an extraordinary power in the hands of government and potentially subject to misuse. When government threatens to take or takes private property under eminent domain, it should not take property which is unnecessary for public use or is primarily for private use, nor should it take property for a longer period of time than is necessary.

Responsible fiscal management and fundamental principles of good government require that government decision makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected rights in property. Agencies should review their actions carefully to prevent unnecessary taking or damaging of private property. The purpose of this act is to assist governmental agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections of property and to reduce the risk of inadvertent burdens on the public in creating liability for the government or undue burdens on private parties.

**FAIRNESS WHEN GOVERNMENT REGULATES PRIVATE PROPERTY BY REQUIRING  
CONSIDERATION OF IMPACTS BEFORE TAKING ACTION**

NEW SECTION. **Sec. 2.** A new section is added to chapter 64.40 RCW to read as follows:

**(1) To avoid damaging the use or value of private property, prior to enacting or adopting any ordinance, regulation, or rule which may damage the use or value of private property, an agency must consider and document:**

- (a) The private property that will be affected by the action;
- (b) The existence and extent of any legitimate governmental purpose for the action;
- (c) The existence and extent of any nexus or link between any legitimate government interest and the action;
- (d) The extent to which the regulation's restrictions are proportional to any impact of a particular property on any legitimate government interest, in light of the impact of other properties on the same governmental interests;
- (e) The extent to which the action deprives property owners of economically viable uses of the property;
- (f) The extent to which the action derogates or takes away a fundamental attribute of property ownership, including, but not limited to, the right to exclude others, to possess, to beneficial use, to enjoyment, or to dispose of property;
- (g) The extent to which the action enhances or creates a publicly owned right in property;
- (h) Estimated compensation that may need to be paid under this act; and
- (i) Alternative means which are less restrictive on private property and which may accomplish the legitimate governmental purpose for the regulation, including, but not limited to, voluntary conservation or cooperative programs with willing property owners, or other nonregulatory actions.

**(2) For purposes of this act, the following definitions apply:**

(a) **"Private property"** includes all real and personal property interests protected by the fifth amendment to the United States Constitution or Article I, section 16 of the state Constitution owned by a nongovernmental entity, including, but not limited to, any interest in land, buildings, crops, livestock, and mineral and water rights.

(b) **"Damaging the use or value"** means to prohibit or restrict the use of private property to obtain benefit to the public the cost of which in all fairness and justice should be borne by the public as a whole, and includes, but is not limited to:

(i) Prohibiting or restricting any use or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996;

(ii) Prohibiting the continued operation, maintenance, replacement, or repair of existing tidegates, bulkheads, revetments, or other infrastructure reasonably necessary for the protection of the use or value of private property;

(iii) Prohibiting or restricting operations and maintenance of structures necessary for the operation of irrigation facilities, including, but not limited to, diversions, operation structures, canals, drainage ditches, flumes, or delivery systems;

(iv) Prohibiting actions by a private property owner reasonably necessary to prevent or mitigate harm from fire, flooding, erosion, or other natural disasters or conditions that would impair the use or value of private property;

(v) Requiring a portion of property to be left in its natural state or without beneficial use to its owner, unless necessary to prevent immediate harm to human health and safety; or

(vi) Prohibiting maintenance or removal of trees or vegetation.

**(c) "Damaging the use or value" does not include restrictions that apply equally to all property subject to the agency's jurisdiction, including:**

(i) Restricting the use of property when necessary to prevent an immediate threat to human health and safety;

(ii) Requiring compliance with structural standards for buildings in building or fire codes to prevent harm from earthquakes, flooding, fire, or other natural disasters;

(iii) Limiting the location or operation of sex offender housing or adult entertainment;

(iv) Requiring adherence to chemical use restrictions that have been adopted by the United States environmental protection agency;

(v) Requiring compliance with worker health and safety laws or regulations;

(vi) Requiring compliance with wage and hour laws;

(vii) Requiring compliance with dairy nutrient management restrictions or regulations in chapter 90.64 RCW; or

(viii) Requiring compliance with local ordinances establishing setbacks from property lines, provided the setbacks were established prior to January 1, 1996.

This subsection (2)(c) shall be construed narrowly to effectuate the purposes of this act.

**(d) "Compensation" means remuneration equal to the amount the fair market value of the affected property has been decreased by the application or enforcement of the ordinance, regulation, or rule.** To the extent any action requires any portion of property to be left in its natural state or without beneficial use by its owner, "compensation" means the fair market value of that portion of property required to be left in its natural state or without beneficial use. "Compensation" also includes any costs and attorneys' fees reasonably incurred by the property owner in seeking to enforce this act.

## FAIRNESS WHEN GOVERNMENT DIRECTLY REGULATES PRIVATE PROPERTY

NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW to read as follows:

**An agency that decides to enforce or apply any ordinance, regulation, or rule to private property that would result in damaging the use or value of private property shall first pay the property owner compensation as defined in section 2 of this act. This section shall not be construed to limit agencies' ability to waive, or issue variances from, other legal requirements. An agency that chooses not to take action which will damage the use or value of private property is not liable for paying remuneration under this section.**

NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW to read as follows:

An agency may not charge any fee for considering whether to waive or grant a variance from an ordinance, regulation, or rule in order to avoid responsibility for paying compensation as provided in section 3 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW to read as follows:

Development regulations adopted under this chapter shall not prohibit uses legally existing on any parcel prior to their adoption. Nothing in this chapter shall be construed to authorize an interference with the duties in chapter 64.40 RCW.

## MISCELLANEOUS

NEW SECTION. **Sec. 6.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purpose of this act to protect private property owners.

NEW SECTION. **Sec. 7.** Nothing in this act shall diminish any other remedy provided under the United States Constitution or state Constitution, or federal or state law, and this act is not intended to modify or replace any such remedy.

NEW SECTION. **Sec. 8.** Subheadings used in this act are not any part of the law.

NEW SECTION. **Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 10.** This act shall be known as the property fairness act.