



# REFERENDUM MEASURE 48

PASSED BY THE LEGISLATURE AND ORDERED  
REFERRED BY PETITION  
CHAPTER 98, LAWS OF 1995

**Note:** The ballot title was written by the court. The explanatory statement was written by the Attorney General as required by law. The complete text of Referendum Measure 48 begins on page 20.

**Vote cast by the 1995 Legislature on final passage:**

HOUSE: Yeas, 69; Nays 27; Absent, 0; Excused, 2.

SENATE: Yeas, 28; Nays, 20; Absent 0; Excused, 1.

## Statement for

Excessive government regulations cost each taxpayer more than \$6,000 each year. You can help change that by approving Referendum 48 which makes government weigh the cost before passing new regulations.

Your vote to approve Referendum 48 means that local and state government will be limited in their ability to take private property away from individuals.

This law requires government to: (1) State the reason they want to take private property; (2) Determine the cost of new regulations; (3) Identify alternatives to achieving the regulatory goal; (4) Take the least burdensome alternative; and, (5) If government takes land and sets it aside for public use (such as to protect wetlands, wildlife habitat or buffer zones), it requires them to follow the Constitution and compensate landowners for land that is taken.

### **PROPERTY OWNERS HAVE A RIGHT TO FAIR COMPENSATION WHEN GOVERNMENT REGULATIONS REDUCE THE VALUE OF THEIR PROPERTY.**

Opponents of Referendum 48 want to repeal Washington State's existing private property rights law. The state Legislature held a public hearing on this law, thoroughly debated it and passed it overwhelmingly in both houses with the strong support of both Democrats and Republicans. This legislation is clearly in step with the public's desire to limit runaway government regulations.

### **WHEN ENVIRONMENTAL PROTECTION IS NEEDED, EVERYONE SHOULD PAY FOR IT, NOT JUST THE FAMILY WHO OWNS THE LAND.**

Your vote to approve Referendum 48 means that you support balance and fairness and oppose burdensome

## Official Ballot Title:

The Washington State Legislature has passed a law that restricts land-use regulations and expands governments' liability to pay for reduced property values of land or improvements thereon caused by certain regulations for public benefit. Should this law be APPROVED or REJECTED?

government regulations that unfairly reduce the value of private property. Your vote upholds our country's constitutional principles.

## Rebuttal of Statement against

Opponents claim to support private property rights, but for years they — and the environmental community — have stopped the legislature from fairly balancing property rights against land use restrictions.

R-48 will not increase litigation, or prove costly, unless regulatory agencies pass new regulations to take even more private property for public benefits, i.e., wetlands, wildlife habitat and buffer zones. R-48 does not impact local zoning.

Approve Referendum 48 and protect your private property and water rights.

## Voters Pamphlet Statement Prepared by:

DAN WOOD, Democratic Party Leader, Public Involvement Activist, Hoquiam; DAN SWECKER, Republican State Senator, Fish Farmer, Centralia; STEVE APPEL, Washington State Farm Bureau President, Farmer, Dusty.

Advisory Committee: BERTHA GRONBERG, retired Public School Teacher, Small Tree Farmer, Montesano; JIM CROSBY, Labor Union Leader, Pulp and Paper Workers, Tacoma; DALE FOREMAN, House Majority Leader, Orchardist, Attorney, Wenatchee; ELAINE EDWARDS, Small Business Owner, NFIB Member, Spokane; SID SNYDER, Senator, Democratic Caucus Chair, Long Beach.

## The law as it now exists:

Both the federal and state constitutions require state and local governments to pay just compensation if they take private property for public use. Currently the government is required to compensate a property owner in two situations. First, when a government seeks to use private property for a public building, highway, or some other purpose, it must pay the property owner the value of the property taken. Second, when government regulations deprive a private property owner of fundamental property rights, the courts will find that a "taking" has occurred and will require compensation. Fundamental property rights include the right to possess the property and exclude other people from it, the right to dispose of the property, and the right to some reasonable use.

Under current law, governments may regulate the uses of private property for the public health, safety, and welfare. Such regulations do not constitute "takings" or require compensation unless they deprive property owners of fundamental rights. Courts may invalidate unduly oppressive

regulations which are found to be unreasonable or not to further a legitimate governmental purpose. Courts have not required compensation where government regulations limit some uses of a property, or restrict development on a portion of the property, but leave the owner with economically productive uses for the remainder. Compensation may be required if a government imposes conditions on property development if the conditions are not roughly proportional to the impact created by the proposed development.

State and local governments are required to evaluate their proposed administrative actions to avoid unconstitutional "takings," but are not currently required to produce a formal written analysis of the effect of a proposed regulation on private property.

## The effect of Referendum Measure 48, if approved into law:

The measure is intended to provide remedies to property owners in addition to any existing constitutional rights.

(continued on page 14)

## Statement against

If Referendum 48 passes, taxes will go up, government will grow, red tape will increase and there will be years of costly court battles.

That's why thousands of concerned Washingtonians, including the League of Women Voters, People for Fair Taxes, seniors and conservationists urge you to vote "NO" on Referendum 48, the "Takings" Initiative.

### "TAKINGS" MEANS TAXPAYERS GET TAKEN

Experts and newspaper editors across the state say the "Takings" Initiative could cost Washington's taxpayers billions of dollars in studies, bureaucracy and lawsuits.

### "TAKINGS" WILL CREATE NEW GOVERNMENT RED TAPE AND BUREAUCRACY

48 mandates new exhaustive, expensive government studies for every existing and future rule and safeguard at the local and state level that affects land use.

### "TAKINGS" WILL CREATE ENDLESS, COSTLY COURT BATTLES

The "Takings" Initiative will result in years of expensive lawsuits and litigation.

### READ REFERENDUM 48

Its backers downplay its cost to taxpayers, but the "Takings" Initiative speaks for itself: • You, the taxpayer, would be *required to pay* for costly, time consuming studies and new government red tape *whenever* a local community limits land use in the public interest (Section 3). • You, the taxpayer, would be *required* to pay developers and others *anytime* the public regulates land use that

results in any devaluation, even for basic zoning and building codes (Section 4).

"Takings" not only makes taxpayers pay for common-sense restraints on land, but on water as well—jeopardizing safe, quality communities.

**We support our constitutionally guaranteed property rights.** But everyone's against wasteful government, endless litigation and taxpayer payoffs to developers. This extreme "Takings" Initiative doesn't solve problems. It creates them.

**Reject 48.** It's the developer's dream. It's the taxpayer's nightmare.

For more information, call (206) 223-3728.

## Rebuttal of Statement for

Don't be misled. Trust your own reading of Referendum 48. It won't solve a thing. Instead: • Taxpayers would pay for new, expensive government bureaucracy. • Taxpayers pay for years of costly lawsuits. • Taxpayers pay for huge payoffs to developers. • Taxpayers pay for reduced quality of life in our communities. 48 means developers profit. Taxpayers lose.

Existing law says our property rights are constitutionally guaranteed. *You* must protect your pocketbook and Washington's quality of life. **Reject 48.**

### Voters Pamphlet Statement Prepared by:

KAREN VERRILL, President, League of Women Voters of Washington; MARY MARGARET HAUGEN, State Senator, Camano Island; EARL TILLY, Mayor, City of Wenatchee.

Advisory Committee: MICHAEL McGOVERN, President, Washington State Council of Fire Fighters; RICK BENDER, President, Washington State Labor Council; KATHY FLETCHER, Executive Director, People for Puget Sound; LIZ PIRIENI, People for Fair Taxes; GENE LUX, Puget Sound Council of Senior Citizens.



## INITIATIVE MEASURE 651

### **The effect of Initiative Measure 651, if approved into law (cont.):**

subject to ratification by any tribe which has not negotiated a compact by November 7, 1995. Tribes which are currently operating under more limited tribal-state compacts would continue to do so until their current compacts expire, or are otherwise terminated.

Under the proposed standard compact, Indian gaming will be regulated by the tribal governments. The state may conduct background checks on primary management officials and key employees and have limited rights to inspect Indian gaming facilities. The state may provide other investigative and consulting services to tribes at their request. The proposed standard compact would provide for mediation of disputes between the state and any tribe, and for judicial review in federal courts. The state and tribes would consent to suit in federal court on compact-related matters, provided that all other remedies have been exhausted.

The compact would provide that tribes ratifying it make a monthly payment of ten percent of net gaming revenues from the utilization of slot machines and other "player-activated electromechanical gambling devices" into a fund created and managed under tribal authority. The State Auditor and two other persons who are not tribal members would serve on the fund's board of directors. The revenue in the fund would be distributed annually to all registered voters who voted in the most recent statewide election. At the voter's option, a voter's portion of the distribution could be donated to a qualifying charity. Tribes would be excused from making these payments of the state authorized slot machines or similar devices on non-tribal land in the state.



## REFERENDUM MEASURE 48

### **The effect of Referendum Measure 48, if approved into law (cont.):**

If a state or local government regulates or imposes a restraint on a portion or parcel of private property for public benefit (including wetlands, fish and wildlife habitat, buffer zones or other public benefit designation), the government would be required to pay full compensation to the owner of the property for any reduction in the property's value. The governmental entity would not have to pay compensation if, absent the regulation, a public nuisance would result. If a government did not pay compensation as required by the measure, the use of the land could not be restricted.

"Private property" would be defined to include land and interests in land or improvements on land, proprietary water rights, and any crops, forest products or resources capable of being harvested or extracted and protected by the state or federal constitutions. "Restraint of land use" would be defined as any action, requirement, or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development of private property.

The state would be responsible for the compensation liability of other governmental entities for any action which restricts the use of property when such action is mandated by state law or any state agency.

Before adopting any regulation of private property or restraint of land use, a governmental entity would be required to prepare a statement containing a full analysis of the total economic impact on private property of such regulation or restraint. The statement must be made available to the public at least 30 days before the adoption of the regulation or imposition of the restriction. The governmental entity would be required, if it chose to enact the regulation or restriction, to adopt the alternative which had the least possible impact on private property and still accomplished the necessary public purpose.

Governments would be prohibited from requiring any private property owner to provide or pay for any studies, maps, plans, or reports used in decisions to consider restricting the use of private property for public use.

Any private property owner could seek to enforce this measure in the courts, and any prevailing plaintiff would be entitled to recover the costs of litigation, including reasonable attorney's fees.



## COMPLETE TEXT OF Initiative Measure 651 (cont.)

disputes arise from this compact that cannot be resolved by negotiated resolution or mediation, tribe and state agree to submit the issues to federal court for determination.

(a) **Tribe's Limited Waiver of Sovereign Immunity.** By this agreement, the tribe does not waive, limit, or modify its sovereign immunity from suit except as provided in this section. The tribe expressly waives in a limited manner its immunity from suit and consents to be sued in the United States District Court for either district of Washington, or in the District Court for the District of Columbia. The state must exhaust the remedies under this Part V before pursuing any action in federal court. This waiver is expressly limited to permit judgments or awards only to the extent of prospective equitable relief that the tribe comply with the court's interpretation of the compact.

(b) **State's Limited Waiver of Sovereign Immunity.** By this agreement, the state does not waive, limit, or modify its sovereign immunity from suit except as provided in this section. State expressly waives in a limited manner its immunity from suit, including any immunity protected by the Eleventh Amendment to the Constitution of the United States, and consents to be sued in the United States District Court for either district of Washington, or for the District Court for the District of Columbia. The tribe must exhaust the remedies under this Part V before pursuing any action in federal court.

### PART VI. MISCELLANEOUS

(1). **Complete Agreement.** This compact is the entire agreement between the governments and supersedes all prior agreements, whether written or oral, with respect to the subject matter of this compact.

(2). **Severability.** In the event that any section or provision of this compact is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining sections or provisions of this compact continue in full force and effect. If the Department of Interior, on behalf of the United States, determines that changes in this compact are necessary to be consistent with federal law, this Compact is deemed modified to the extent necessary to conform to federal law.

(3). **Jurisdiction.** Nothing in this compact may be interpreted to alter jurisdiction that the state might currently have on Indian lands of a Washington tribe. This compact may not be interpreted to preclude a subsequent retrocession agreement, crossdeputization agreement, or other intergovernmental agreement affecting jurisdiction.

### PLEASE NOTE

In the preceding and following measures, all words in double parentheses with a line through them are in the State Law at the present time and are being taken out by the measure. All words underlined do not appear in the State Law as it is now written but will be put in if the measure is adopted.

To obtain a copy of the texts of these state measures in larger print, call the Secretary of State's toll-free hotline -- 1-800-448-4881.



## COMPLETE TEXT OF Referendum Measure 48

AN ACT Relating to regulation of private property; adding a new chapter to Title 64 RCW.

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

**NEW SECTION. Sec. 1.** This act is intended to provide remedies to property owners in addition to any constitutional rights under the state and/or federal constitutions and is not intended to restrict or replace any constitutional rights.

**NEW SECTION. Sec. 2.** This act shall be known as the private property regulatory fairness act.

**NEW SECTION. Sec. 3.** A regulation of private property or restraint of land use by a governmental entity is prohibited unless a statement containing a full analysis of the total economic impact in private property of such regulation or restraint is prepared by the entity and made available to the public at least thirty days prior to adoption of the regulation or imposition of the restraint. Such statement shall identify the manner in which the proposed action will substantially advance the purpose of protecting public health and safety against identified public health or safety risks created by the use of private property, and analyze the economic impact of all reasonable alternatives to the regulation or restraint. Should the governmental entity choose to adopt a proposed regulation or restraint on the use private property, the governmental entity shall adopt the regulation or restraint that has the least possible impact on private property and still accomplishes the necessary public purpose.

**NEW SECTION. Sec. 4.** (1) A portion or parcel of private property shall be considered to have been taken for general public use when:

(a) a governmental entity regulates or imposes a restraint of land use on such portion or parcel of property for public benefit including wetlands, fish or wildlife habitat, buffer zone, or other public benefit designations; and

(b) no public nuisance will be created absent the regulation; and

(2) When private property is taken for general public use, the regulating agency or jurisdiction shall pay full compensation of reduction in value to the owner, or the use of the land by the owner may not be restricted because of the regulation or restraint. The jurisdiction may not require waiving this compensation as a condition of approval of use or another permit, nor as a condition for subdivision of land.

(3) Compensation must be paid to the owner of a private property within three months of the adoption of a regulation or restraint which results in a taking for general public use.

(4) A governmental entity may not deflate the value of property by suggesting or threatening a designation to avoid full compensation to the owner.

(5) A governmental entity that places restrictions on the use of public or private property which deprive a landowner of access to his or her property must also provide alternative access to the property at the governmental entity's expense, or purchase the inaccessible property.

(6) The assessor shall adjust property valuation for tax purposes and notify the owner of the new tax valuation, which must be reflected and identified in the next tax assessment notice.



**COMPLETE TEXT OF  
Referendum Measure 48  
(cont.)**

(7) The state is responsible for the compensation liability of other governmental entities for any action which restricts the use of property when such action is mandated by state law or any state agency.

(8) Claims for compensation as a result of a taking of private property under this act must be brought within the time period specified in RCW 4.16.020.

**NEW SECTION. Sec. 6.** No governmental entity may require any private property owner to provide or pay for any studies, maps, plans, or reports used in decisions to consider restricting the use of private property for public use.

**NEW SECTION. Sec. 7.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Full compensation" means the reduction in the fair market value of the portion or parcel of property taken for general public use which is attributable to the regulation or restraint. Such reduction shall be measured as of the date of adoption of the regulation or imposition of restraint on the use of private property.

(2) "Governmental entity" means Washington state, state agencies, agencies and commissions funded fully or partially by the state, counties, cities, and other political subdivisions.

(3) "Private property" means -

- (a) land;
- (b) any interest in land or improvements thereon;
- (c) any proprietary water right;
- (d) Any crops, forest products, or resources capable of

being harvested or extracted that is owned by a non-governmental entity and is protected by either the Fifth or Fourteenth Amendments to the U.S. Constitution or the Washington State Constitution.

(4) "Restraint of land use" means any action, requirement, or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development or private property.

**NEW SECTION. Sec. 8** This act may be enforced in Superior Court against any governmental entity which fails to comply with the provisions of this act by any owner of property subject to the jurisdiction of such entity. Any prevailing plaintiff is entitled to recover the costs of litigation, including reasonable attorney's fees.

**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.** Sections 1 through 8 of this act shall constitute a new chapter in Title 64 RCW.



**COMPLETE TEXT OF  
Referendum Bill 45**

AN ACT Relating to the role of the state commission on fish and wildlife as recommended by the commission on fish and wildlife; amending RCW 77.04.040, 77.04.055, 77.04.080, 75.08.011, 75.08.025, 75.08.055, 75.08.058, 75.08.070, 75.08.080, 75.08.090, 75.08.110, 75.08.120, 75.08.274, 75.08.285, 75.08.295, 75.08.460, 75.40.020, 75.40.040, 75.40.060, 75.08.014, 75.08.040, 75.08.045, 75.12.010, 75.12.015, 75.20.110, 75.24.030, 75.24.100, 75.24.130, 75.25.095, 75.30.060, 75.50.010, 75.50.020, 75.50.030, 75.50.040, 75.50.050, 75.50.070, 75.50.110, 75.50.130, 75.52.050, and 77.16.135; reenacting and amending RCW 43.17.020 and 75.50.100; creating new sections; providing an effective date; and providing for submission of this act to a vote of the people.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**NEW SECTION. Sec. 1.** The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for the department, and to select commission staff and the director of the department.

The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision-making.

**Sec. 2.** RCW 43.17.020 and 1993 sp.s. c 2 s 17, 1993 c 472 s 18, and 1993 c 280 s 19 are each reenacted and amended to read as follows:

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of community, trade, and economic development, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, and (14) the secretary of health, and (15) the director of financial institutions.

Such officers, except the secretary of transportation and the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The secretary of transportation shall be appointed by the transportation commission as prescribed by RCW 47.01.041. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055.

**Sec. 3.** RCW 77.04.040 and 1993 sp.s. c 2 s 61 are each amended to read as follows:

Persons eligible for appointment as members of the commission