

Short Ballot Title

An initiative to restrict changes in zoning, land use or other restrictions on the use of private property.

Long Ballot Title

An initiative related to private property zoning; amending Title 67, Chapter 65, Idaho Code, to restrict changes in zoning, land use, and other new restrictions on the use of private property, unless the owner is harming one or more people or there is an unusually compelling public benefit to such restrictions; in such case full compensation should be made, and nullifying federal law.

Text of Initiative

SECTION 1. PURPOSE. (1) The people of the state of Idaho find the preservation of private property rights to be the most significant function of civil government, and arbitrary restrictions on the use of such property severely infringe upon these rights. The main purpose of this act to protect private property by regulatory takings accomplished through changes of zoning, land use, and other restrictions on the lawful use of private property.

(2) If some person has been successfully using his land in a lawful manner for years, causing no harm to other natural persons or their property, there should be no reason for the government to come in and restrict what he or she has been safely and lawfully doing for years. Such restrictions can significantly lower the value of the land and prevent it from being used for the purposes for which it was purchased. As a result, changes in zoning, land use, and other new restrictions on the use of private property should be strictly prohibited unless the owner is harming one or more people or there is an unusually compelling public benefit to such restrictions, and in such case full compensation should be made for loss of the highest and best use of the property. The private property owner should not be forced to bear the brunt of the burden for a public benefit from restricting the use of his or her property, and if there is a truly worthy public need, then the public should not object to fully compensating the owner for his or her loss.

(3) The limitations on land use changes enumerated in this act do not infringe upon the state's ability to exercise its eminent domain authority as codified in Article I, Section 14 of the Idaho state constitution, as the restrictions established by this act with regards to land use policy do not apply to direct takings by the state government which are already required to be accompanied by just compensation of the real property owner; these restrictions just prevent the state from using land use regulations as a stealthy indirect method of exercising eminent domain without adequately compensating the citizens as required by that same section of the state constitution stating that such takings shall occur "not until just compensation, to be ascertained in the manner prescribed by law."

(4) The people of Idaho expect that the effect of this act will dramatically reduce arbitrary changes in land use restrictions that do not truly reflect a substantial public good which would justify such regulatory taking (otherwise payment to the owners could be truly justified). It also should prevent developers from using influence with local officials tasked with zoning

changes to change the zoning of a piece of property that the developers wish to acquire, yet the owner is unwilling to sell, in a manner that effectively forces such owner to sell to the developer at terms otherwise not agreeable to the seller. It should also prevent many land use changes that are being used to implement United Nations Agenda 21, a plan to undermine the sovereignty of the United States and infringe upon the natural rights of United States citizens in the name of more "sustainable" development.

(5) Nothing in this act shall be construed to reduce or mitigate the existing protections of real property owners from eminent domain claims against their property.

(6) It is not the intent of this particular act to change any existing zoning or land use regulations except existing restrictions on private property which were implemented for the sole purpose of protecting one or more non-human species or their habitat, many of which have been implemented under the auspices of federal laws such as the Endangered Species Act which are blatantly unconstitutional as there is no enumerated power which would cover protecting endangered species.

SECTION 2. That Section 67-6502, Idaho Code, be, and the same is hereby amended to read as follows:

67-6502.PURPOSE. The purpose of this act shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks. The people of Idaho recognize that the regulation of a private land use is a regulatory taking and any public use valuable enough to merit such taking of private land should also merit just compensation of the victim of the regulatory taking as provided by 67-8003, Idaho Code.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife, and recreation resources on public lands to the extent that such does not infringe on the private property rights of others.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

SECTION 3. That Section 67-6509, Idaho Code, be, and the same is hereby amended to read as follows:

67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF

THE PLAN. (a) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(b) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following consideration by the governing board, if the governing board makes a material change the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the governing board adopts, amends or repeals the plan.

(c) No plan shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.

(d) Any person may petition the commission or, in absence of a commission, the governing board, for a plan amendment at any time. The commission may recommend amendments to the land use map component of the comprehensive plan to the governing board not more frequently than once every six (6) months. The commission may recommend amendments to the text of the comprehensive plan and to other ordinances authorized by this chapter to the governing board at any time.

(e) No plan that violates the provisions of 67-8003, Idaho Code, shall be effective.

SECTION 4. That Section 67-6521, Idaho Code, be, and the same is hereby amended to read as follows:

67-6521. ACTIONS BY AFFECTED PERSONS.

(1)(a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the

development.

(b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(i) Grant or deny a permit; or

(ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.

(d) An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.

(2)(a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

(b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a specific zoning action or permitting action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain and the conditions on land use policies, zoning restrictions and other forms of regulatory takings set forth in chapter 80, title 67, Idaho Code. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide "just compensation" under the provisions of section 14, article I, of the constitution of the state of Idaho, ~~and~~ chapter 7, title 7, Idaho Code, and chapter 80, title 67, Idaho Code.

SECTION 5. That Section 67-8002, Idaho Code, be, and the same is hereby amended to read as follows:

67-8002. DEFINITIONS. As used in this chapter:

(1) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence.

(2) "Harm" means any bodily injury or property damage sustained by a person.

(3) "Just compensation" means the compensation due from a state agency to the owner of a piece of real property for the loss of the owner's property rights resulting from a regulatory taking. Such loss shall be calculated by an independent appraiser. The state agency shall pay for the services of the appraiser. The loss of land use shall be calculated to be the difference between the highest and best use of the property before and after the potential imposition of the regulations. The governmental agency shall pay the owner 100% of the value for the loss of land use plus any expenses such owner would need to incur directly resulting from the change in land use policy.

~~(4)~~(4) "Local government" means any city, county, taxing district or other political subdivision of state government with a governing body.

~~(2)~~(5) "Private property" means all property protected by the constitution of the United States of the constitution the state of Idaho.

(6) "Property damage" means injury or destruction to tangible property caused by an occurrence.

~~(3)~~(7) "State agency" means the state of Idaho and any officer, agency, board, commission, department or similar body of the executive branch of the state government.

(4)(8) "Regulatory taking" means a regulatory or administrative action resulting in deprivation of private property that is the subject of such action, whether such deprivation is total or partial, permanent or temporary, in violation of the state or federal constitution. Any regulatory or administrative action which changes the land use policies affecting a parcel of private property and would further restrict the use of the land shall be considered a regulatory taking in violation of the state and federal constitution unless:

(a) Just compensation is paid to the owner;

(b) The owner has consented in writing to the regulations or administrative actions pursuant to subsection (2) of 67-8003, Idaho Code;

(c) Absent the regulatory or administrative actions restricting land use for a particular property, a definite, provable harm will result to one or more natural persons and that such actions are consistent with 67-8003, Idaho Code; or

(d) The regulatory or administrative actions were implemented prior to November 30, 2010 and were otherwise consistent with Idaho state law existing at the time of implementation.

SECTION 6. That Section 67-8003, Idaho Code, be, and the same is hereby amended to read as follows:

67-8003. PROTECTION OF PRIVATE PROPERTY. (1) The attorney general shall establish, by October 1, 1994, an orderly, consistent process, including a checklist, that better enables a state agency or local government to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in law. All state agencies and local governments shall follow the guidelines of the attorney general.

~~(2) Upon the written request of an owner of real property that is the subject of such action, such request being filed with the clerk or the agency or entity undertaking the regulator or administrative action not more than twenty eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the real property owner no longer than forty two (42) days after the date filing the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this section shall be considered public information.~~

~~(3) A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. A private real property owner, whose property is the subject of governmental action, affected by a governmental action without the preparation of a requested taking analysis as required by this section may seek judicial determination of the validity of the governmental action by initiating a declaratory judgment action or other appropriate legal procedure. A suit seeking to invalidate a governmental action for~~

~~noncompliance with subsection (2) of this section must be filed in a district court in the county in which the private property owner's affected real property is located. If the affected property is located in more than one (1) county, the private property owner may file suit in any county in which he affected real property is located.~~

~~(4) During the preparation of the taking analysis, any time limitation relevant to the regulatory or administrative actions shall be tolled. Such tolling shall cease when the taking analysis has been provided to the property owner. Both the request for a taking analysis and the taking analysis shall be part of the official record regarding the regulatory or administrative action.~~

(2) Subsequent to November 30, 2010, any such proposed regulatory or administrative actions which are intended to be enforced under the authority of Chapter 65 Title 67, Idaho Code shall require the express written consent of all property owners affected except as allowed by (3) of this section. In the event that multiple persons hold title to the property, unanimous written consent must be acquired by the state agency seeking to restrict the land use for that piece of property.

(3) A state agency may change the land use policy, zoning, or make any new restrictions of the enjoyment of private property without the express written consent of the property owner if:

(a) Just compensation is paid to the owner as defined in 67-8002, Idaho Code;

(b) Absent the regulatory or administrative actions restricting land use for a particular property, a definite, provable harm will result to one or more natural persons and that such restrictions should be the minimum required to reasonably prevent the potential harm identified; or

(c) The restrictions were implemented prior to November 30, 2010 and were otherwise consistent with Idaho state law existing at the time of implementation.

(4) In no circumstances can land use or zoning be restricted solely to preserve a particular species of non-human life or its habitat without just compensation to the owner of the real property.

(5)(a) Land use policy is an area strictly delegated to the states by the tenth amendment to the United States Constitution. This prohibition on federal jurisdiction includes any attempted laws or mandates from the federal government on land use regarding endangered species or other such arbitrary restrictions which most definitely are not covered by Article I, Section 8 and its interstate commerce clause. The federal government shall not impose any restrictions on land use or make laws that would interfere with the enjoyment of real property except that such interference directly pertain to true interstate commerce (not indirect effects on interstate commerce), federal lands, or have been agreed to by the parcel owners. The provisions of this chapter shall explicitly apply to the federal government and any of its agencies.

(b) Any federal law, code, or mandate to the contrary of the provisions of this Section is null and void and of no force or effect in Idaho.

SECTION 7. SEVERABILITY. If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.