

Washington Research Council

Public Policy Brief

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Governance and Fiscal Effects of I-547

This November voters will be asked to participate directly in one of the most complex issues ever placed before Washington voters. In a lengthy and complex initiative, Initiative 547 (I-547) asks voters to replace the recently enacted Growth Management Act passed by the 1990 legislature. The effect would be sweeping changes in how growth and development occur throughout the state of Washington.

Fiscal and governance provisions in the initiative effectively create a superlayer of government unprecedented in Washington State. These provisions inhibit customary processes of legislative budget oversight; give appointed growth panels authority over local planning and oversight over any local government or state agency land use action; challenge the governor's authority to speak for the state on issues of conservation and development; and provide little means for public accountability.

The following discussion explores the governance and fiscal implications of I-547

Appointed Panels to Govern Land Use

Although I-547 proposes to leave the responsibility for "initiating and administering" land-use planning and regulatory programs with local government (Section 1), broad authority for approving local plans throughout the state is given to two regional growth management review panels appointed by the governor (Section 14).

Local plans are not valid until approved twice — once by the appropriate regional panel to determine whether portions dealing with local and regional issues are in compliance, and once by the panels sitting jointly to determine compliance with the measure's state goals (Section 14).

This, said Growth Strategies Commission (GSC) Chairman Dick Ford, a lawyer with the Seattle firm of Preston, Thorgrimson, Shaidler, Gates & Ellis, is a clear deviation from current practice, which maintains strong control at the local level. The GSC was assigned responsibility to conduct further study necessary on the more complex land use issues of the 1990 Growth Management Act, which seeks to put the brakes on growth-related problems in the state's fastest-growing counties.

Because of the significant effects of and public interest in I-547, this paper is offered to help understand the governance and fiscal implications of this complex measure. Relevant sections of the initiative are cited for those wishing to refer to the precise language of the initiative.

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The recently released GSC report continues the presumption of the validity of local plans upon local adoption. And, it supports voluntary regional approaches that ensure local government participation.

Initiative 547 provisions preempting local authority "go against the democratic process of appeal, especially in this state, where people are used to being able to appeal before a board," Gov. Booth Gardner said of the panels. "If you can appeal and are turned down, at least you have been heard. But under the (I-547) regional panels, there is no way to

appeal to an independent arbiter."

Provisions in the initiative effectively create a superlayer of government unprecedented in Washington State.

Panels Lack Broad Representation

Prospective panel members must have a "demonstrated commitment to preserving and enhancing the environmental heritage of Washington" (Section 4).

Seattle Planning Commission member and lawyer Margaret Pageler, an initiative backer, told the *Puget Sound Business Journal* that appropriate demonstrations of commitment would include membership in such groups as an open space committee or the Sierra Club.

More recently, David Bricklin, co-chairman of the initiative campaign, told the Research Council, "You don't have to be a member of the Sierra Club. (The provision) just gives the (Senate) committee confirming board members a basis to ask questions on."

The initiative itself is silent on precisely how this language should be defined. However, it is clear about those characteristics which will disqualify individuals from serving.

Under the proposal, several groups of people would be ineligible to serve on the panels, including all elected officials. No more than two of the 16 members may receive any substantial part of his or her regular income from sale or development of real property, "whether the income is in the form of salaries or return on investment ..." Income from a spouse, children or parents used to pay for the living expenses of the member is considered income for the purposes of panel eligibility (Section 4).

By comparison, the seven members of the Puget Sound Water Quality Authority represent "the variety of interested parties concerned about Puget Sound water quality" (RCW 90.70.011). The authority and its advisory committees include representation from local governments, environmental and health agencies, business, labor, citizens' groups, agricultural and fisheries interests.

In an unusual feature of I-547, each panel member is allowed to hire an individual staff person using public funds authorized in the proposal (Section 5).

Steve Hodes of the governor's policy staff said that while it is not uncommon for state boards and commissions to have shared staff, it is unusual for individual members to have their own staff.

The sidebar on the right summarizes the key features of panel member selection, compensation and staffing.

Who Represents State on Conservation, Development?

According to the initiative proposal, the appointed state panels would represent the state of Washington "before any agency of this state, any other state, or the United States with respect to land conservation and development" within Washington (Section 6).

Hodes said that although a similar provision may exist somewhere in the body of State law, he's never seen it and that it appears to contradict RCW 43.06.010, which states, "The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States."

Governance by the Courts

The ease of legal appeal, together with the broad and conflicting goals outlined in the initiative, will result in the courts being the de facto governing body for growth management in Washington, according to land-use and environmental lawyer John Hempelmann of the Seattle firm, Cairncross, Ragen and Hempelmann.

The initiative, due to "poorly drafted and conflicting provi-

Regional Growth Panels: Selection, Compensation and Staffing

Appointment — By governor, subject to Senate confirmation.

Term of Appointment — Four years. Two-term limit.

Geographic Representation — Two regional panels, one each for western (12 members) and eastern (4 members) Washington. Two members from each U.S. Congressional District, with no more than three members coming from the same county.

Qualifications — "Demonstrated commitment to preserving and enhancing Washington's environmental heritage."

Disqualifications — No more than two of the 16 members may receive substantial regular income (salary or investments) from sale or development of real property. To the extent that an individual's living expenses are paid for by a spouse, child or parent, his or her income is also subject to the same restrictions.

Removal or Recall — Panel members may be removed by the governor only for cause. Recall petitions may also be initiated by any registered voter. Unlike existing recall petition requirements for public positions — for instance, recalls for members of college boards or the public disclosure commission — petitions recalling panel members cannot include a statement of cause or particular charges.

Panel Compensation — Panelists will be considered "chief executive officers" of the state, with salaries set by the governor. Travel, lodging and other expenses are included.

Panel Staff — Panels must hire enough staff to carry out their responsibilities.

Panel Member Staff — Each panel member may hire an individual staff person using public funds allocated to the panels.

sions ... will prompt numerous lawsuits by, between and against local governments, resulting in further uncertainty, delay, false starts and wasted resources," says Hempelmann.

Seattle lawyer and GSC member Judith Runstad agrees, giving examples of initiative sub-goals — of which there are more than 60 — that will trigger lawsuits. For example, she says, numerous references are made to protecting existing neighborhoods and limiting the rate and nature of change in those neighborhoods — "probably an impossible standard to meet," she said.

Other portions of the initiative's goals contradict these protective aspects by calling for "higher population density"

and a "fair share of affordable housing" — steps that would alter established neighborhoods.

While I-547's conflicting goals will prompt legal disputes, other initiative provisions ease court access, Hempelmann said. The initiative creates a new "cause of action" for court appeals and assures financial support to qualifying individuals and groups successful in their appeal.

Under the state's court system, creating a new cause of action in state statute paves the way for court challenges, according to Hempelmann. "By spelling it out in the initiative, there is never any question that you can get into court," he said.

In addition, individuals or organizations that make an appeal found to be "in the public interest" and who can prove that they have less than \$200,000 in net assets, may receive court costs and attorneys' fees (Section 25). Current state law makes no provisions for reimbursement of attorney's fees or court costs, Hempelmann said.

Bricklin said provisions like this one and another, which dedicates a \$400,000 per biennium in grant money to citizens or groups of citizens, allow them to participate "on a level playing field" with big developers able to hire consultants and land-use experts.

Said Ford, "(For) virtually anything that someone tries to do, anyone will be able to argue that it doesn't meet one of the 62 sub-goals and it can be challenged in court. It's that kind of drafting that is going to bring needless conflict in an already difficult time."

Growth Control Costs

The initiative calls specifically for up to \$173.1 million in state general funds to implement its provisions between now and June 30, 1999.

By comparison, the 1990 supplemental budget (state general fund) provided \$9.8 million for grants, technical assistance and other services necessary for the remainder of the 1989-91 biennium to begin implementing the Growth Management Act. In addition, the GSC, based on cost estimates prepared by the state Department of Community Development, recommends that between \$74 million and \$87 million be appropriated by the state over the course of the next five years to pay for the Act's implementation.

Both of these funding levels seem difficult to achieve at a time when the economy is slowing down and the state is already estimating a budget shortfall of \$550 million to \$1 billion. However, the initiative further inhibits legislative funding discretion by requiring that up to \$40 million be deducted

off the top of available revenue each biennium, over the next eight years, regardless of other budget priorities. Although the growth panel must receive a legislative appropriation in order to spend funds in its account, the only other state spending obligation that is treated in this manner are the payments necessary to retire the state debt.

Broad Local Taxing Authorities Undefined

At the local government level, the initiative would give cities and counties unprecedented taxing authority and require that they use these authorities.

Under current law local government can impose developer impact fees. In addition cities and counties planning under the Growth Management Act must use revenue from an existing local-option 0.25 percent real estate excise tax primarily for projects identified in their capital improvement plans or to assist with low-income housing relocation. Local governments may impose an additional 0.25 percent real estate excise tax to pay for projects identified in their capital improvement plans.

The initiative would add excise taxes on development activity and "on the privilege of engaging in business that constitutes development" to local government taxing authorities. These additional taxes would have none of customary limitations placed on state and local taxes. Revenues could be used to pay for housing relocation or public facilities affected by development (Section 30). And under Section 9 of the initiative, local government would be required either to impose these taxes or to revise their land use map in order "to ensure the level of service standards will be met..."

Panels Could Freeze Local Revenues, Impose Moratoria

On the revenue of the local fiscal picture, the initiative outlines specific sanctions to be placed on any county, city or town in the state whose plans are found by the panels to be inadequate. These sanctions would be initiated by the appropriate panel ordering the state treasurer to withhold local sales and use and motor vehicle excise tax revenue until the panel certifies the jurisdiction's compliance (Section 19).

Local sales and use taxes alone represented about 19 percent of average city revenue and 11 percent of average county revenue in 1988, according to the Washington Research Council.

After five years, continued failure to produce an acceptable comprehensive plan would require the appropriate panel to place a moratorium on all development activity within the non-complying jurisdiction (Section 19).

The only other state spending obligation that is (deducted off the top of available revenue) are the payments necessary to retire the state debt.

"The monies withheld could ... cut deeply into police, fire protection and other vital municipal functions," according to the Economic Development Alliance for Washington. "What is perhaps most alarming is how little discretion the review panels have (under I-547) to delay or soften such onerous penalties."

While the GSC proposes similar sanctions for non-compliance, the Growth Management Act presumes local plans to be valid upon local adoption unless they are later challenged

and found lacking.

If I-547 passes, it will replace the 1990 Growth Management Act.

If the initiative is defeated, the legislature will move on to the second phase of the process and consider recommendations recently released by the GSC. The GSC was charged by the legislature to evaluate and make recommendations on funding, enforcement, environmental protection and dispute resolution associated with the Act.

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