

## **Initiative No. 154**

### A LAW PROPOSED BY INITIATIVE PETITION

Current law allows state and local governments to take or damage private property for public use, on payment of just compensation. First, this initiative requires governments to waive any new regulation that reduces property values, unless they compensate owners for the reduced value. This requirement does not apply to public health and safety.

Second, this initiative prohibits governments from taking private property if they intend to transfer an interest in the taken property to another private party. This prohibition does not apply to private utility, water, transportation, and mining projects currently defined as public uses.

This initiative requires significant state and local government expenditures to respond to additional property owner claims. Further expenditures to pay property owner claims will depend on future policy choices, and whether state and local governments decide to waive regulations instead of paying claims.

- ☐ FOR requiring governments to waive regulations that reduce property values unless they compensate owners, and prohibiting takings intended to transfer property to private parties.
- ☐ AGAINST requiring governments to waive regulations that reduce property values unless they compensate owners, and prohibiting takings intended to transfer property to private parties.

*The PROPONENT argument and rebuttal for this measure were prepared by State Senator Joe Balyeat, CPA; and the Honorable Ken Miller, former State Senator.*

*The OPPONENT argument and rebuttal for this measure were prepared by the Honorable Dorothy Bradley, former State Representative; the Honorable Charles Tooley, former Billings Mayor; County Commissioner Connie Eissinger; County Commissioner Doug Kaercher; and the Honorable Ron Erickson, former State Representative.*

## **THE COMPLETE TEXT OF INITIATIVE NO. 154 (I-154)**

**WHEREAS**, Article II, section 29, of the Constitution of the State of Montana declares in no uncertain terms that private property shall not be taken or damaged for public use without just compensation to the full extent of the loss; and

**WHEREAS**, Article II, section 3, provides, within its provisions, the inalienable rights of all Montana citizens the right to pursue life's basic necessities including defending liberties, acquiring, possessing and protecting property; and

**WHEREAS**, Article II, section 17, provides that no person shall be deprived of life, liberty, or property without due process of law; and

**WHEREAS**, despite these Constitutional protections, in government actions, the rights of private property owners are often ignored and the compensation provided is not just compensation in that property owners do not appear to be compensated for property taken or damaged for public use to the full extent of the loss.

**NOW THEREFORE**, as these rights clearly exist and with an intent to protect private property from the state to the full extent of a loss due to state action resulting in private property being taken or damaged.

### **BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:**

**Section 1.** Section 70-30-101, MCA, is amended to read:

**“70-30-101. Definitions ~~Eminent domain defined.~~** (1) Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

(2) (a) Damages to property occur when government regulations enacted after acquisition of an ownership interest in real property result in diminished value or economic loss to the private property subject to the government regulation.

(b) Damages do not occur when government regulations, including court orders, are enacted for protection of public health and safety including fire and building codes, health and sanitary regulation, solid or hazardous waste regulations, housing of dangerous felons or sexual offenders, commonly and historically recognized nuisances under common law prohibiting or eradicating blight, obscenity, nude dancing, junk or abandoned vehicles or any property used in connection with any criminal activity.

(3) Just compensation is:

(a) in the case of the taking of property the current fair market value for the property and improvement sought to be taken plus costs, interest and attorney fees as well as diminished value resulting from costs or losses incurred with respect to relocation or closing of a business;

(b) if the property taken is an individual's principal residence just compensation is 125% of the fair market value, plus costs, interest, and attorney fees; or

(c) in the case of damages to property that is damaged, the depreciation in the current fair market value, plus costs, interest and attorney fees as well as diminished value resulting from costs or losses incurred with respect to relocation or closing of a business.

**Section 2.** 70-30-301, MCA, is amended to read:

**“70-30-301. Hearing -- judge to preside -- determinations by condemnation commissioners.**

(1) The condemnation commissioners shall meet at the time and place stated in the order appointing them. The meeting time may not be more than 10 days after the order of appointment. The commissioners shall examine the ~~lands~~ property sought to be taken. At a time appointed by the judge and within the 10-day period, the commissioners shall hear the allegations and evidence of all persons interested in ~~each parcel of land~~ the property sought to be taken.

(2) The hearing must be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) (a) At the conclusion of the hearing, the judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon their examination of ~~lands~~ property, the evidence produced at the hearing or hearings, and the instructions of the court, the appropriate findings provided for in subsections (3)(b) through (3)(d).

(b) The commissioners shall determine the current fair market value of the real property sought to be taken and all improvements pertaining to the real property and of each separate estate and interest in the real property and improvements. If the real property consists of different parcels, the current fair market value of each parcel and each estate or interest in the real property must be separately assessed.

(c) (i) If the property sought to be taken constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value that will accrue to the remaining parcel by reason of the condemnation and any improvements made to the affected property ~~and the construction of the improvements in the manner proposed by the condemnor.~~

~~—(ii) The commissioners shall also determine how much the remaining parcel and each estate or interest in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the condemnor. If the benefit is equal to the amount assessed under subsection (3)(c)(i), the compensation to the condemnee is limited to the value of the portion taken. However, if the benefit is less than the amount assessed under subsection (3)(c)(i), the benefit to the condemnee must be deducted from the amount assessed under subsection (3)(c)(i) and the remainder is the only amount allowed in addition to the current fair market value.~~

(d) If the property sought to be taken is for a railroad, the commissioners shall also determine the cost of good and sufficient fences along the line of the railroad and the cost of cattle guards where fences may cross the line of the railroad.

(e) Through examination of the property, the commissioners shall determine the appropriate payment for damages to the property taken, as well as to any remaining parcel of property that may be adversely impacted by the project, to assist the court in making a final determination pursuant to 70-30-309.

(4) When there are two or more estates or divided interests in property sought to be taken, the condemnor is entitled to have the amount of the award for the property first determined as between the condemnor and all condemnees claiming any interest in the property. In the same proceeding, the respective rights of each of the condemnees in and to the total award must be determined by the

commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly.”

**Section 3.** 70-30-304, MCA, is amended to read:

**“70-30-304. Appeal to district court from assessment of condemnation commissioners.** (1)

Any party may appeal from any assessment made by the condemnation commissioners in the court in which the report of the commissioners is filed. The appeal must be taken within 30 days after the service upon the parties of the notice of the filing of the award. The appealing party shall serve notice of the appeal upon the opposing party or the opposing party's attorney and shall file the notice of appeal in the district court in which the action is pending. The appeal must be tried upon the same notice and in the same manner as other civil actions. Unless a jury is waived by the consent of all parties to the appeal, the appeal must be tried by a jury. The amount to which the condemnee may be entitled, by reason of the taking of the condemnee's property, must be reassessed as prescribed in this part for the assessment of that amount by the commissioners.

(2) Upon any verdict or assessment by the commissioners becoming final, judgment must be entered declaring that upon payment of the amount of the verdict or assessment, together with the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the public use project and to take the property described in the verdict or assessment for the use and purposes for which the property has been taken. The rights granted in the verdict or assessment remain in the condemnor and the condemnor's heirs, successors, or assigns forever.

(3) If the party appealing from the award of the commissioners does not succeed in changing to the appellant's advantage the amount finally awarded in the proceeding, the appellant may not recover the costs of the appeal, ~~but all the costs of the appellee in the appeal must be taxed against and recovered from the appellant.~~ However, upon the trial of the appeal, the appellant may contest the right of any party to any of the property mentioned and set forth or involved in the appeal that was located after the preliminary survey of any highway or railroad, seeking to condemn a right-of-way pursuant to the provisions of this chapter if the condemnation proceedings are begun within 1 year after the preliminary survey.”

**Section 4.** 70-30-322, MCA, is amended to read:

**“70-30-322. Option of original owner or successor in interest to purchase at sale price.** (1)

Except as provided in subsections (2) and (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, must be notified by the seller by certified mail and has a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale. ~~If more than one person claims an equal entitlement, the option may not be exercised.~~

(2) In any case where the seller is a government entity or the intended use by a purchaser, other than the optionholder, is different from the purpose for which the property was condemned, the optionholder may purchase the interest by offering an amount equal to the lesser of :

(a) the highest bid received; or

(b) the price paid to the original owner at the time of condemnation excluding costs and fees.

(3) Except as provided in subsection (4), if bids are not received by the seller and the optionholder indicates in writing to the seller that the optionholder wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(4) If bids are not received and the seller is a government entity the optionholder may purchase the interest by offering an amount equal to the lesser of:

(a) the appraised value; or

(b) the price paid to the original owner at the time of condemnation excluding costs and fees.

(5) When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.

(6) The rights of the optionholder with respect to subsections (2)(b) and (4)(b) of [this section] to purchasing the interest in the condemned property at the original price paid expire 15 years after the date of the condemnation.”

**NEW SECTION. Section 5. Limitation on public use.** (1) Notwithstanding 70-30-102, MCA, government entities may not exercise the power of eminent domain with an intention to directly or indirectly transfer a possessory interest in the property taken to another private party, except where:

(a) the purpose of the condemnation relates to improved or unimproved property that constitutes a danger to the safety and health of the community by reason of dilapidation, lack of ventilation, light and sanitary facilities, deleterious land use or any combination of these factors as determined by:

(i) clear and convincing evidence; and

(ii) in a manner that separately accounts for each parcel or property interest sought to be taken;

(b) the property is necessary for transportation or utility facilities or transmission or pipeline systems or as enumerated as a public use in 70-30-102, MCA; or

(c) the condemnation involves the conveyances of interests lesser than fee title to a privately owned business to provide incidental retail services in a public facility designed primarily to serve the patrons of the facility.

(2) For the purposes of [this section], granting a mortgage or other security interests in the property to be taken for the purpose of financing the project for which the condemned property is to be used does not constitute an intention to directly or indirectly transfer a possessory interest in the property to another private party.

**NEW SECTION. Section 6. Just Compensation for damaged property.** (1) The current owner of private real property is entitled to just compensation when property is damaged by the enactment or enforcement of government regulations.

(2) If the right to use, divide, possess, sell or improve real property is directly impaired by a government regulation after the effective date of [this Act] the owner of the property shall be entitled to just compensation. Prior to filing a claim for just compensation under [this section], a property owner shall not be required to pursue or exhaust administrative remedies but must make a written demand to the government body that enacts or enforces the damaging regulation. Such demand may be submitted at any time from the enactment, up through a two year period from the initial enforcement of a damaging regulation, seeking just compensation, a permanent waiver from the regulation or a retraction of the regulation by the government body that enacted the regulation.

(3) A government body receiving a written demand pursuant to [subsection (2)] must, within a 90 day period following the date of receipt of the written demand and without requiring that the property owner participate in any administrative proceedings, take final action to permanently waive the regulation as applied to the affected parcel, retract the regulation or pay just compensation. If the government body does not satisfy the written demand by providing the amount demanded for just compensation or permanently removing the effect of the regulation within the 90 days from the filing of the demand, a prevailing owner shall have a cause of action for just compensation and shall be entitled to attorney fees, costs, and expenses incurred in pursuing the action. The government may, at any time prior to final proceedings on the disposition of the property owner's claim, take final action to permanently waive the regulation as applied to the affected parcel, retract the regulation or pay just compensation in satisfaction of the claim, but the government shall also pay actual attorney fees, costs, and expenses incurred in pursuing the action.

(4) An owner of real property affected by enforcement of a government regulation may apply to use or develop the affected property in a manner consistent with the permissible uses of the property in existence after the effective date of [this Act] or the date upon which the owner acquired record title in the property, whichever is later. If a permissible use under [this section] is not granted by the governing body within 120 days following the application for permit, the owner shall have a claim for just compensation and shall, if the owner prevails, be entitled to attorney fees, costs, and expenses incurred in pursuing the action.

(5) For purposes of [this section] the date upon which the owner acquires record title in the property, in the case of property held by lineal descendants of a property owner and acquired by such descendants through devise or gift shall be the date their predecessor in interest acquired title to the property. This subsection [subsection 5] applies to all interests acquired in the transfer of legal title and not just instances where the interest acquired is the same.

(6) This section [section 6] shall not apply to government regulations enforced pursuant to [section 1, subsection (2)(b)] of [this Act].

**NEW SECTION. Section 7. Codification instruction.** [Sections 5 and 6] are intended to be codified as an integral part of Title 70, chapter 30, part 2, and the provisions of Title 70, chapter 30, part 2 apply to [sections 5 and 6].

**NEW SECTION. Section 8. Severability.** If part of [this Act] is invalid all valid parts remain in effect. If 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.

**NEW SECTION. Section 9. Saving clause.** [This Act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of [this Act].

**NEW SECTION. Section 10. Applicability.** [This Act] applies to government actions, condemnations, and the sale of previously condemned property, occurring after the effective date of [this Act].

**NEW SECTION. Section 11. Effective date.** [This Act] is effective upon approval by the electorate.

## **Argument For I-154**

I-154 is the **Protect Our Homes** initiative. It guards your home, business, and private property against abusive practices by over-ambitious politicians and special interests.

- Last year, the U.S. Supreme Court's *Kelo* decision ruled that **government could use eminent domain to seize your property and re-transfer it to a mall developer**. You could have a big box store where your living room once was. The only justification needed for bulldozing your home is government's desire to collect higher taxes from a commercial development.
- The Court ruled this broader eminent domain interpretation would apply **unless your state passes a law like I-154, that prohibits this abuse**.
- **Since Kelo, eminent domain abuse has skyrocketed** – nationwide, nearly 6000 properties either threatened or taken – working class homes, businesses, elderly widows' houses, even churches. No one is safe. For many families, the American Dream of home ownership is being destroyed by an unholy alliance of ambitious politicians and commercial interests.
- **I-154 says "Not in Montana."** It preserves the historical purpose of eminent domain – your property could only be taken for true public purposes – highways, utilities, etc.
- *Kelo*'s eminent domain bulldozer is government theft – plain and simple. That's why **laws similar to I-154's eminent domain restriction are already enacted or currently progressing in 35 states**.
- **I-154 protects your property from excessive and abusive regulations** that reduce the value of your land and restrict your ability to use it as you would like. Under I-154, you'd have an avenue of legal relief by filing protest within two years. If you're successful, regulators would have three choices:
  - A) Exempt you from the unnecessary regulation, **or**
  - B) Repeal the unnecessary regulation entirely, **or**
  - C) Compensate you for your property value loss.

Only if option C is chosen, would government costs result.

- **I-154 is balanced. It only targets abusive property regulations** – it doesn't apply to any already existing zoning or regulation, new health and safety regulations, or privately imposed subdivision covenants. I-154 includes numerous reasonable exemptions – allowing new regulations for sanitation, fire and building codes, solid waste, hazardous waste, common nuisances, blight, obscenity, junk vehicles, dangerous felons, sexual offenders, and property used in connection with criminal activity.
- The uninformed try telling us that eminent domain abuses "can't happen in Montana." They rely on a **1995 Montana court decision that is no longer relevant, now that federal law has changed under Kelo**. The only way to safeguard our homes from the tax-seeking Bulldozer is to pass I-154.

I-154 protects our freedom by limiting the power of government over our property, establishing a fair playing field for appealing regulatory abuses, and ensuring that no commercial interest can use eminent domain to rob us of our property for personal gain. If you believe in limiting government power, if you believe in fundamental private property rights, if you believe in reasonable compensation when government reduces your property value, if you want to protect YOUR home –

✓ **Vote YES on I-154.**

## **Argument Against I-154**

### **I-154 means higher taxes for Montana families and big breaks for special interests.**

Out-of-state special interests are pushing a classic bait-and-switch on Montana voters. They want you to believe I-154 is about stopping abuses of eminent domain. But in fact, the fine print creates *massive new loopholes for irresponsible development* — at huge cost for taxpayers.

**I-154 is unfair.** I-154 allows irresponsible developers and special interests to **dodge basic rules that benefit everyone.** Montana communities put these laws on the books to protect our kids, the value of our homes, clean water, water rights, and neighborhoods. These local, democratic laws will be tossed out *unless we pay special interests to follow them.*

**Here's how I-154 would work:** I-154 creates a radical, expensive new “pay or waive” system. Imagine a developer wants to put a gravel pit next to your home or an adult bookstore near a daycare. Under I-154, you and your neighbors cannot regulate these activities — unless you pay the developer. In other words, taxpayers must pay special interests to follow the rules. Montana taxpayers would have to pay — even if a proposed development would damage our own property values.

That's backwards. That's not the Montana way.

**Who pays? Your pocketbook and your community.** Local taxpayers will be forced to pay millions to developers just to enforce existing laws. As a result, cities and counties will be forced to cut services like fire and police protection or raise your taxes to keep your community safe. The governor's budget director said: “The impact ... is potentially tens of millions of dollars for claims and additional costs.” He added that families and business owners who pay local property taxes would bear the brunt. These dollars would go to special interests — with zero benefits for the average Montana family. The *only* other option would be to waive the rules that protect the things that belong to all of us — our natural beauty, clean water and friendly communities.

**I-154 will trigger endless lawsuits.** The initiative is so poorly written, it leaves many important questions unanswered. This will lead to endless and expensive lawsuits. Who decides where and when it applies? How much will each case cost which taxpayers? What money will be left for schools and roads?

**I-154 destroys the existing balance.** In Montana, locally elected officials work hard to balance new development with the rights of existing neighbors and property owners. I-154 throws that balance into chaos. It puts *your* property rights — and your community — at risk.

All Montanans cherish property rights. However, the right to develop one's property does not include the right to damage the property — or the quality of life — on the other side of the fence. Montana's current system protects property rights on *both* sides of the fence. **I-154 is a radical, expensive, unnecessary measure that will cause major harm to families, communities, and businesses.**

**Say NO to the TAXPAYER TRAP. Vote NO on I-154.**

## Proponents' Rebuttal of Argument Against I-154

I-154 – written by Montanans, for Montanans.

**I-154 won't cause any of opponents' dire predictions because:**

- ✓ **It's not retroactive.** ALL existing land-use regulations and zoning remain effective. Opponents' claim that "taxpayers must pay developers ...to enforce existing laws" and "laws will be tossed out" is 100% false.
- ✓ **It exempts all new regulations for health/safety.** Claiming I-154 hampers "protecting our kids, clean water, and water rights..." is pure hokey.
- ✓ **It exempts all private subdivision covenants.** Neighborhoods will be destroyed? Baloney.
- ✓ **It keeps all existing ordinances, and permits *new* regulations** for sanitation, fire/building codes, solid/hazardous waste, common nuisances, blight, obscenity and other adult businesses, junk vehicles, criminals, etc. Claiming we couldn't regulate adult bookstores, gravel pits, and developers is false.
- ✓ **I-154 doesn't require spending ANY taxpayer dollars.** If a new excessive regulation doesn't fit one of I-154's many exceptions, the property owner could protest within 2 years. But even if successful, it doesn't mean he'll receive money. Officials can just exempt his property from new regulations. I-154 will cost taxpayers millions? Hogwash.
- ✓ **I-154 changes nothing respecting property rights disputes.** Courts will continue deciding cases as always.
- ✓ Claiming I-154's eminent domain protection is "bait-and-switch" is utterly false. I-154 is necessary because the federal *Kelo* decision trumped Montana's 1995 case. **Current Montana law specifies – condemnation is allowable for "all public uses authorized by the U.S. government."**
- ✓ Opponents' claim that I-154 creates "massive loopholes for developers" is malarkey. **I-154 restricts developers from using tax-hungry governments to confiscate your property.**

I-154 protects your home – **Vote YES.**

## Opponents' Rebuttal of Argument for Approval of I-154

**I-154 is bait-and-switch.** Reforming "eminent domain" is only bait. Beware of the "switch."

**Initiative-154 is a tax trap.** Supporters barely mention costs to taxpayers. No wonder, because costs are staggering. A similar law recently took effect in Oregon. Already, special interests there are demanding \$4 billion from taxpayers, according to the *Salem Statesman Journal*.

I-154 works by creating a sweeping, new "pay-or-waive" system that guts everyday rules we use to protect our homes, clean water, and property. That system forces taxpayers to pay irresponsible developers *just to follow the law like everyone else*. If a developer doesn't like a rule, he simply demands a payoff for alleged losses. I-154 hands a blank check to certain developers, which means more taxes for average Montanans.

Imagine the kind of irresponsible development that I-154 could unleash in your neighborhood: An adult bookstore? A high-density development? A motorcycle racetrack? A gravel pit? The choice would be to accept the degradation of your neighborhood and property, or pay the developer not to act. **I-154 actually harms your property rights.**

**Again, I-154 is NOT about eminent domain. Kelo isn't possible in Montana.** Even the National Association of Realtors, which defends property rights, reports Montana "explicitly prohibited the use of eminent domain to acquire property for economic development" because of our current laws and legal cases.

The loopholes are enormous. No wonder out-of-state developers are pushing I-154 on Montana — they will benefit at our expense. **Vote NO on the tax trap. Vote NO on I-154.**