

PETITION TO PLACE INITIATIVE NO. 162 ON THE ELECTION BALLOT

If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is 24,337, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the November 2, 2010, general election ballot:

Statement of Purpose

The Montana Constitution allows state and local governments to take or damage private property for public use if compensation is paid. I-162 provides a new definition of taking or damaging that includes government actions that affect the use of property and reduce its value by 25% or more. It applies to all forms of property, including land, physical objects, obligations, statutory rights, businesses, licenses, and water rights. It allows the owner to sue to invalidate the government action or recover compensation. I-162 exempts some government actions, including actions strictly necessary to respond to public health, safety, and welfare threats.

Fiscal Statement

I-162 costs state and local governments an estimated \$600 million over six years to respond to new claims of taking or damaging private property, based on the actual and estimated costs resulting from similar proposals in other states. Those costs include compensation, legal defense expenses, attorneys' fees, and court costs.

- FOR allowing invalidation of, or compensation for, government actions that affect the use of property and reduce its value by 25% or more.
- AGAINST allowing invalidation of, or compensation for, government actions that affect the use of property and reduce its value by 25% or more.

Voters are urged to read the complete text of the initiative, which appears with this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both. Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number.

Signature	Date Signed	Residence Address <u>or</u> Post-Office Address <u>or</u> Home Telephone #	Printed Last Name and First and Middle Initials	Legis. Rep. Dist. Number	For Office Use Only
1.					
2.					
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IMPORTANT INSTRUCTIONS TO PETITION SIGNATURE GATHERERS: (1) please collect voters' signatures from only one county per sheet; (2) only the signatures of registered voters qualify; (3) check for legibility and that signers place information in the correct column; (4) sign, notarize and attach an affidavit of signature gatherer to the petitions (up to 25 petition sheets, from the same county, can be attached to one affidavit), count the number of signatures, and hand in original petition to county election office; (5) send to: Save Ranching, PO Box 1743, Helena MT 59624, a copy of signed petitions and the total number of signatures handed in.

COUNTY _____

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Signature	Date Signed	Residence Address <u>or</u> Post-Office Address <u>or</u> Home Telephone #	Printed Last Name and First and Middle Initials	Legis. Rep. Dist. Number	For Office Use Only
16.					
17.					
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COUNTY _____

COMPLETE TEXT:

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

NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the “Private Property Rights Preservation Act”.

NEW SECTION. Section 2. Definitions. As used in [Sections 1 through 8], the following definitions apply:

(1) "Fair market value" means the price a willing buyer would pay a willing seller after considering all factors in the marketplace that influence the price of private property.

(2) “Governmental entity” means:

(a) the state of Montana, any branch or department of state government, including any state agency as provided in 2-4-102(2)(a), and any state board, commission, committee, or council that is created under the authority of the state constitution, statute, or regulation; and

(b) any political subdivision of the State of Montana, including without limitation any local government unit, including any incorporated city or town, any county or consolidated city-county local government, and any branch, department, office, board, commission, committee, council, or other district or special taxing unit of a local government unit.

(3) "Owner" means an individual or private nongovernmental entity that possesses legal or equitable title to private property at the time governmental action takes or damages the private property.

(4) "Private property" means any interest in private property recognized by statute or common law that is owned by a person or other private legal entity and is not owned by a governmental entity. The types of private property protected by [sections 1 through 8] expressly include, but are not limited to:

(a) all inanimate things that are capable of appropriation or of manual delivery;

(b) all domestic animals;

(c) all obligations,;

(d) all products of labor or skill, such as the composition of an author, the goodwill of a business, trademarks, copyrights, and patents;

(e) rights created or granted by statute;

(f) the value of a lawful business, including inventory;

(g) a license to pursue a business or livelihood, including state licenses that have been approved and issued and for which the holder has a legally recognized claim of entitlement, and the property interests associated with the license, including any authorized ability to freely transfer or dispose of the license;

(h) real property, including appurtenances and fixtures;

(i) personal property, tangible and intangible; and

(j) ground water or surface water rights of any kind, and beneficial water use permits or authorizations.

(5) "Taking or damaging" means action by a governmental entity that:

(a) causes or permits the public appropriation, occupation, possession or use of private property; or

(b)(i) affects an owner's private property, in whole or in part, temporarily or permanently, in a manner that restricts or interferes with the owner's right to possess, use, modify, sell, or otherwise freely transfer the property; and

(ii) is a substantial factor causing a reduction of at least 25 percent in the fair market value of the affected private property, determined by comparing the fair market value of the property before and after the governmental action.

NEW SECTION. Section 3. Applicability. [Sections 1 through 8] apply to all actions of governmental entities, except:

(1) a lawful forfeiture or seizure of illegal contraband as defined by state or federal law;

(2) a lawful seizure of property as evidence of a crime or violation of law;

(3) any action that is reasonably taken to fulfill an obligation mandated by federal law;

(4) an action taken to prohibit or restrict a condition or use of private property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state existing prior to the enactment of [sections 1 through 8];

(5) a formal exercise of the power of eminent domain;

(6) the appraisal of property for purposes of taxation;

(7) an action that:

(i) is taken in response to a real and substantial threat to public health, safety or welfare; and

(ii) is demonstrably proven by clear and convincing evidence to significantly advance the public health, safety or welfare; and

(iii) is narrowly tailored and does not impose a greater burden on private property than is strictly necessary to achieve the public health, safety or welfare purpose.

NEW SECTION. Section 4. Cumulative remedies. The provisions of [Sections 1 through 8] are not exclusive. The remedies provided by [sections 1 through 8] are in addition to other remedies and procedures available under Montana law.

NEW SECTION. Section 5. Suit against a governmental entity. (1) An owner may commence an action under [sections 1 through 8] to determine whether a governmental entity’s action was a substantial factor causing the taking or damaging of private property.

(2) A suit filed under [sections 1 through 8] must be filed in a district court in the county in which the private property owner's affected property is located. If the affected private property is located in more than one county, the owner may file suit in any county in which the affected property is located.

(3) A suit filed under [sections 1 through 8] must be filed within 2 years after date of the governmental entity's action or when the cause of action accrued through an attempt to enforce the government action, whichever is later.

NEW SECTION. Section 6. Remedies. (1) Whether a governmental entity's action takes or damages private property is a question of fact to be determined by a jury, or, upon agreement of the parties, by the district court sitting without a jury.

(2) If the trier of fact in an action filed under [sections 1 through 8] finds that a governmental entity's action was a substantial factor causing a taking or damaging of private property, the owner is entitled to judgment that either invalidates and quashes the governmental entity's action, or awards the owner monetary damages equivalent to the diminution in the private property's fair market value.

NEW SECTION. Section 7. Appeal. If an owner prevails in an action under the provisions of [sections 1 through 8] and the governmental entity appeals, the court shall enjoin the governmental entity from undertaking or carrying out the governmental action or the part of the governmental action resulting in the taking or damaging of the owner's property, pending a final determination of the appeal.

NEW SECTION. Section 8. Fees and costs. (1) The court shall award reasonable attorney fees and court costs to an owner who prevails in an action filed under the provisions of [sections 1 through 8]. The attorney fees must be based on a statewide standard of reasonableness and must not be limited to consideration of prevailing attorney rates of a particular community.

(2) A governmental entity that is the prevailing party in an action filed under the provisions of sections [1 through 8] is entitled to recover its court costs, but is not entitled to recover attorney fees.

NEW SECTION. Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 70, Chapter 1, and the provisions of Title 70, chapter 1, apply to [sections 1 through 8].

NEW SECTION. Section 10. 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.

NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval by the electorate.