



KOEGEN EDWARDS LLP

ATTORNEYS AT LAW

MEMORANDUM

TO: Friends and Clients of Koege Edwards LLP

RE: **Initiative 747**

On November 8, 2007, a majority of the Washington Supreme Court ruled that Initiative 747 (“I-747”), the voter-approved initiative that limited nonvoted increases of state and local property tax collections to one percent per year, is unconstitutional. The majority of the Court summarized the decision as follows:

I-747’s challengers argue that the initiative failed to accurately set forth the law that it sought to amend in violation of article II, section 37 [of the Washington Constitution] because the text of the initiative claimed to reduce the general property tax levy limit from two percent to one percent, but in reality it reduced the limit from six percent to one percent. We agree.

The facts leading up to the decision are summarized as follows. Prior to 1997, under former chapter 84.55 RCW, a taxing district could, without a vote, increase general property taxes up to six percent of the amount levied by such district in the highest of the three most recent years. In 1997, voters approved Referendum 47, which amended former chapter 84.55 RCW by generally allowing for a non-voted increase in property taxes amounting to the lesser of inflation or six percent in most taxing districts. On November 7, 2000, voters approved Initiative 722 (“I-722”), which purported to amend the efforts of Referendum 47 by replacing all references to “six percent increase limit” with “two percent increase limit.” A little over three weeks later, on November 30, 2000, several municipal corporations, cities, counties, and nonprofit corporations challenged the constitutionality of I-722. On September 20, 2001, the Washington Supreme Court determined that I-722 was unconstitutional because it embodied two unrelated subjects in violation of Article II, Section 19 of the Washington Constitution. Slightly more than two weeks later, on November 6, 2001, the voters passed I-747, the text of which asserted an intent to reduce I-722’s general two percent limit to one percent, which had never taken effect based on the Court’s earlier September ruling.

In January 2005, several nonprofit groups and Whitman County challenged the constitutionality of I-747 in King County Superior Court. The Superior Court held that I-747 was unconstitutional, explaining that it violated Article II, Section 37 of the Washington Constitution because the text of I-747 told voters they were reducing the general property tax levy increase cap from two percent to one percent, rather than from six percent to one percent.



The Washington Supreme Court affirmed the decision striking down the constitutionality of I-747. The basis for the decision is found in Article II, Section 37 of the Washington Constitution, which requires that initiatives that amend existing laws include the full text of the law that is being amended. The Court explained the purpose of this constitutional provision is to “*avoid amendatory legislation that merely substituted one phrase for another, without examination of the original statute, such that the amendatory statute, standing alone, conveyed no meaning at all.*” The Court further explained the intent of the constitutional provision is to “*ensure disclosure of the general effect of the new legislation and to show its specific impact on existing laws in order to avoid fraud or deception*” and “*that those enacting an amendatory law are fully aware of the proposed law’s impact on existing law.*” As a result, because I-747 was drafted before I-722 was ruled unconstitutional, I-747 sought to amend the two percent limit required by I-722. However, because I-722 and the two percent limit were ruled unconstitutional and were not the law at the time of the 2001 election, I-747 did not accurately reflect the legislative revisions to Washington property tax law and the actual reduction in property tax increases from six percent to one percent. The Court concluded:

A voter reading the text of the initiative could believe that he or she was voting to reduce the property tax limit by one percent instead of by five percent, a substantially different impact on the public coffers, as well as the perceived benefit to the individual voter’s purse.

While the Court did not expressly address the issue, the logical effect of this ruling is to reinstate the pre I-722 and pre I-747 property tax laws as they existed in 1997, which provide:

Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one hundred six percent or less. In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only.

The opinion does not address whether it can be applied retroactively to allow for the collection of property taxes that I-747 prevented from being collected or the use of unused property-taxing authority that the taxing district could have otherwise “banked” absent I-747.

Governor Gregoire issued a news release the day of the decision where she asked “*state, counties, cities and all other taxing districts to assure me that they will not increase property tax levies for their upcoming budgets as a result of the court decision.*” The Governor further stated that in January she will ask the Washington State Legislature “*to thoughtfully reinstate a property tax cap.*” Likewise, while addressing other elements of the decision, the Court also acknowledged that initiative proponents can file a “*new version of an initiative under a different number*” and “*gather signatures on only their preferred version of the proposed initiative.*” Legislators echoed the Governor’s statements. If the executive and legislative branches do not take action, it would not be surprising to see another attempt to limit property tax increases by amending chapter 84.55 RCW.