

Initiative #108
Compensation for Reduction in Fair Market Value by Government Law or Regulation

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2 ♦ require the state or a local government to compensate a property owner if a law
3 or regulation reduces the fair market value of property.

4 **Summary and Analysis**

5 **Background.** Both the Colorado Constitution and state law specify that a
6 government may not take or damage private property without providing compensation to
7 the owner. There are procedures in law to evaluate and challenge government decisions
8 that lead to takings or cause damages, including asking for public and property owner
9 input and establishing the amount of compensation owed.

10 **Takings and damages.** There are three ways that the state or a local government
11 can take or damage private property. Governments in Colorado are generally required
12 to compensate a property owner in these cases. The first type of taking is called
13 “eminent domain.” A government may take land from a private property owner for a
14 public use or benefit. For example, a government may take land from a property owner
15 to expand a highway. The second type of taking occurs if a government causes damage
16 to private property, whether intentional or accidental. For example, a government may
17 build a road that limits access to an individual’s property. The third type of taking is a
18 “regulatory taking,” which occurs when a government enacts a law or regulation that
19 deprives a property owner of the use or value of his or her property, even though he or
20 she maintains ownership of the property. For example, a government may prohibit a
21 property owner from constructing buildings on his or her property, leaving the property
22 with almost no value.

23 **Changes under Amendment ?.** Amendment ? expands the circumstances under
24 which the state or a local government is required to provide compensation to a property
25 owner for a regulatory taking. Under this measure, any law or regulation that results in a
26 decrease in the fair market value of a property becomes a regulatory taking.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 6, 2018**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

1 **Argument For**

2 1) Coloradans deserve to be treated fairly when a government decision reduces the
3 value of their property. Because current law is not clear, a government can enact
4 regulations that affect how property is used, reducing the property's value without
5 having to pay for it. For instance, if a government authorizes the construction of
6 a new parking garage, the surrounding home values may be decreased because
7 the garage blocks scenic views and increases noise and traffic congestion. For
8 many Coloradans, property is the most significant asset they own. If a new law
9 or regulation reduces its value, it is only right that the owner be fairly
10 compensated by the state or a local government.

11 **Argument Against**

12 1) Proposition ? may discourage governments from enacting regulations that benefit
13 the public good or protect public health and safety. It requires that a government
14 compensate property owners for any loss of value that results from a public
15 health, zoning, or land decision that a property owner disagrees with, now and
16 into the future. The measure opens the door for anyone to make an argument
17 that there has been some reduction in property value because of a government
18 law or regulation, leading to the use of public money to defend against frivolous
19 claims or to provide payouts. It unfairly advantages property owners, and
20 governments that fear lawsuits from private property owners may be reluctant to
21 enact any regulations, even those that provide critical protections to air quality,
22 water, or other community resources.

23 **Estimate of Fiscal Impact**

24 *(Please note: A summary of the fiscal impact will be included in this space in the*
25 *second draft of the analysis. A final fiscal impact statement will be prepared and placed*
26 *on the General Assembly's website when the final blue book is sent to voters.)*