

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Michelle Smith and Chad Vorthmann
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 19, 2018
SUBJECT: Proposed initiative measure 2017-2018 #108, concerning just compensation for reduction in fair market value by government law or regulation

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To require compensation to a private property owner when a government law or regulation reduces the fair market value of the property.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. Is the proposed initiative intended to supersede or overturn specific case law addressing when property is damaged or taken within the meaning of section 15 of the Colorado constitution, and if so, which cases?
5. Would the proposed initiative affect or interact with the laws governing the exercise of eminent domain? If so, what is the intended effect?
6. Would a claim for compensation under this language be brought in the same way and be subject to the same requirements as current inverse condemnation claims? Would a claim be subject to the other elements that currently apply to inverse condemnation claims under section 15 of the Colorado constitution?
7. Have you considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments in the state?
8. What proof would be required for a property owner to establish:
 - a. A reduction in fair market value?
 - b. That the reduction was caused by a government law or regulation?
9. Under this language, is any reduction in market value, no matter how slight, subject to compensation by the government?
10. What does the term "government law" mean? How does the term differ from "regulation"?
11. How do the proponents define "fair market value" for purposes of the proposed initiative?

12. Does the word "government" include counties, special districts, and statutory and home rule municipalities?
13. What is the effect of the additional "or" that is added prior to the phrase "for public or private use"?
14. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. No technical comments or questions were raised by this proposed initiative.