

# 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 #110, concerning just compensation for damage due to 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #108 to #113. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #108 to #109 and #111 to #113, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## **Purposes**

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

1. To define "damaged" as used in section 15 of article II of the Colorado constitution to include a situation where a government law or regulation reduces a property's fair market value by prohibiting or restricting uses that were allowed at the time the owner acquired title to it, thereby requiring compensation under that section.
2. To define the measure of compensation in such cases as the difference between the fair market value before and after implementation of the law or regulation.

## **Substantive Comments and Questions**

The substantive comments and questions raised in the memoranda for proposed initiatives 2017-2018 #108 through #109 are incorporated by reference. The proposed initiative raises the following additional comments and questions:

1. What would be an example of a government law or regulation that restricts a use allowable at the time the owner acquired title to the property?
2. What proof would be required for a property owner to establish that a prohibition or restriction on a specific use caused a reduction in fair market value?
3. Does the phrase "uses allowable at the time the owner acquired title" include all possible uses, including those not actually in effect or contemplated by the owner prior to the implementation of the law or regulation?
4. How do you define "implementation" of a law or regulation in order to determine when the "before" and "after" time periods begin and end for the purposes of establishing damages? Is this the same as the date the proposed initiative takes effect?
5. What type of interest or ownership is required to establish who an owner is and when they acquired title? For example, does the holder of a mortgage have an interest under this section? If a property has multiple owners who were added to the deed or title at different times, how does that affect the determination of whether the property was damaged and who is entitled to compensation?

6. Does the proposed measure of compensation alter existing law defining compensation under section 15 of article II of the Colorado constitution?
7. Is there any restriction on a previously allowable use that would not result in a damaged determination and, therefore, a taking under the proposed initiative? Under the proposed initiative, does any restriction on a previously allowable use that reduced a property's fair market value constitute a compensable taking?

## **Technical Comments**

The technical comments set forth in the review and comment memorandum on proposed initiative 2017-2018 #108 are applicable to proposed initiative 2017-2018 #110 and, as such, will not be repeated. No new technical comments or questions were raised by this proposed initiative.