

**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 his or her 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. Procedures in law exist to evaluate and challenge government decisions that
8 lead to takings or cause damages, including asking for public and property owner input
9 and establishing the amount of compensation owed.

10 **Takings and damages.** There are three primary ways that the state or a local
11 government can take or damage private property. Governments in Colorado are
12 generally required to compensate a property owner in these cases. The first type of
13 taking is called “eminent domain.” A government may take land from a private property
14 owner for a public use or benefit. For example, a government may take land from a
15 property owner to expand a highway. The second type of taking occurs if a government
16 causes damage to private property, whether intentional or accidental. For example, a
17 government may build a road that limits access to an individual’s property. The third
18 type of taking is a “regulatory taking,” which occurs when a government enacts a law or
19 regulation that deprives a property owner of the use or value of his or her property, even
20 though he or she usually maintains ownership of the property. For example, a
21 government may prohibit a property owner from constructing buildings on his or her
22 property, leaving the property 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, a law or regulation that results in any
26 decrease in the fair market value of a property, as opposed to the current standard of an
27 almost total loss in value or use, becomes a regulatory taking. For example, if a
28 government limits natural gas development, the owner of the mineral rights could file a
29 claim for the reduced value of his or her property.

*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) Amendment ? ensures that when a property's value is harmed by government
3 action, the owner of that property is fairly compensated for the loss. For many
4 Coloradans, property is the most significant asset they own. If a law or regulation
5 causes any loss of value, it is only right that the property owner be fairly
6 compensated by the state or a local government. However, current law does not
7 require a government to compensate an owner unless the loss in value to the
8 property is near total.

9 **Argument Against**

10 1) Amendment ? has potentially far-reaching and costly consequences for
11 taxpayers and governments. Under the measure, taxpayers will be responsible
12 for payments to property owners for any loss in property value resulting from a
13 change in law or regulation, regardless of whether the property retains a
14 profitable use or the owner has been paid for prior claims of lost value. The
15 potential liability for large payouts to private property owners may discourage
16 governments from making decisions that benefit communities and protect vital
17 public resources, such as water, air, and infrastructure.

18 **Estimate of Fiscal Impact**

19 The measure requires that the state or a local government compensate property
20 owners any time a law or regulation reduces the fair market value of private property.
21 The measure will increase state and local expenditures to compensate private property
22 owners as a result of regulatory or legislative action.