

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Kevin Grantham and Cheri Jahn
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 3, 2024
SUBJECT: Proposed initiative measure #293, concerning Local Control Over Land Use.

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 2023-2024 #291 and #292. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #291 and #292, 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. Only new comments and questions are included in this memorandum.

Purposes

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

1. To give a local government's land use regulations and decisions primacy and presumptive effect over any state government entity's conflicting land use law, rule, approval, permit or determination and prohibit state statutes, regulations, and decisions from taking precedence over any local land use regulations or decisions;
2. To provide plenary and exclusive control to local governments over land use regulations or decisions within their jurisdictions;
3. To prohibit the state government from withholding other permits or approvals necessary for development if a local government approves a land use decision applicable to specific parcels of property; and
4. To prohibit the state government from taking adverse action against a local government in response to a local government's decision or authority to regulate land use.

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. Subsection (2)(c) of the proposed initiative provides that that a "land use regulation or decision" does not include any state government statute, regulation, or decision impacting local governments "made for the purpose of implementing federal laws or regulations."
 - a. May the state government enact any statute or regulation or make any decision about a local government land use issue if the state government is implementing federal law or regulations?
 - b. What does "impacting local governments" mean?
 - c. If the state receives federal money for a project, is that project subject to state land use statutes, regulations, or decisions?

- d. Does it matter if the use of such federal money is discretionary?
- e. If the state is implementing federal law through a land use regulation, is the activity also subject to local government regulations?

Technical Comments

There are no new technical comments.