

Colorado Legislative Council Staff
FISCAL IMPACT STATEMENT

Date: September 7, 2004

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BALLOT TITLE: AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING RECOVERY OF DAMAGES RELATING TO CONSTRUCTION OF REAL PROPERTY IMPROVEMENTS, AND IN CONNECTION THEREWITH, PROHIBITING LAWS THAT LIMIT OR IMPAIR A PROPERTY OWNER'S RIGHT TO RECOVER DAMAGES CAUSED BY A FAILURE TO CONSTRUCT AN IMPROVEMENT IN A GOOD AND WORKMANLIKE MANNER; DEFINING "GOOD AND WORKMANLIKE MANNER" TO INCLUDE CONSTRUCTION THAT IS SUITABLE FOR ITS INTENDED PURPOSES; AND PERMITTING EXCEPTIONS FOR LAWS THAT LIMIT PUNITIVE DAMAGES, AFFORD GOVERNMENTAL IMMUNITY, OR IMPOSE TIME LIMITS OF SPECIFIED MINIMUM LENGTHS ON FILING LAWSUITS.

Fiscal Impact Summary	FY 2004/2005	FY 2005/2006
State Revenues General Fund		
State Expenditures General Fund*		
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None.		
Effective Date: Upon voter approval.		
Appropriation Summary for FY 2004/2005: None Identified		
Local Government Impact: None.		

* This proposal may increase or decrease the time devoted to construction-related cases by Colorado courts, depending upon the number of claims filed, the portion of those claims settled out of court, and the time devoted to each case that goes to trial.

Summary of Initiated Measure

This proposed amendment to the Colorado Constitution removes limitations on the amount of money a property owner can collect in damages, except for punitive damages and lawsuits against governments. It also sets in the state constitution the current time frames for filing a lawsuit. Finally, the proposal could eliminate the current requirement that a property owner and construction professional try to resolve the problem before bringing a lawsuit. In addition, the proposal affects the types of laws the General Assembly can pass in the future concerning construction problems.

Background

State law establishes a procedure to recover damages from a construction professional when construction is deemed to be defective. Under this law, a property owner may sue the responsible construction professional after giving notice and providing an opportunity to fix the defect. Construction professionals include architects, contractors, developers, and others involved in the construction business. If an agreement to fix the defect is not reached within 75 days in the case of residential property, or 90 days in the case of commercial property, the property owner may sue the construction professional responsible for the defect.

A property owner who sues, and wins, may be reimbursed for the lesser of the following three dollar amounts: 1) the value of the property without the defect, 2) the cost to replace the property, or 3) the reasonable cost to repair the defect. Medical expenses resulting from an injury are fully reimbursable. Awards for "pain and suffering" for bodily and personal injury are capped at \$250,000; and a property owner cannot be awarded money due to the loss of use of property. In addition, if the owner can show that the construction professional knowingly violated the law that protects consumers from fraud, he or she may be awarded up to an additional \$250,000. Damage awards may also include the costs associated with moving, interest, or legal fees. Under this law, a lawsuit must be filed within two years from the date of discovering the defect or six years from the date the construction occurred.

State Expenditures

This proposal may affect the time devoted to construction-related cases by Colorado courts, although the impact is difficult to quantify. If the proposal increases the incentive for property owners to pursue claims, the caseload and the time spent per case may increase. On the other hand, if it increases the incentive for construction professionals to either increase construction quality or settle claims out of court, the time devoted to construction-related cases may decrease. Ultimately, the effect of the proposal on the courts will depend on the number of claims filed, the portion of those claims settled out of court, and the time devoted to each case that goes to trial.