

STATE OF COLORADO

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MEMORANDUM

May 2, 2003

TO: Freda Poundstone and Charles Ford

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #39, concerning Property Owners' Rights

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 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 appear to be:

1. To amend article XVIII of the Colorado constitution to include a new section.
2. To prohibit any law other than a reasonable statute of limitation or repose from limiting or impairing the right of private property owners to recover actual or consequential damages arising from the

failure to construct an improvement to real property in a good and workmanlike manner.

3. To define the phrase "construction in a good and workmanlike manner" to include, without limitation, construction so that the improvement to real property is reasonably suitable for its intended purposes.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. To conform to standard drafting practices in Colorado, would the proponents be willing to:
 - a. Modify the amending clause of the proposed amendment to read: "Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:" so that the fact that appropriate notice is given that the proposed amendment would add an entirely new section to the Colorado constitution?
 - b. Show the substantive text of the proposed amendment (the language beginning with the word "Except", in "LARGE AND SMALL CAPITAL LETTERS" to indicate the the text is all new language?
 - c. Modify the section heading "Property Owners' Right to Recover Damages" to read **"Section 15. Property owners' right to recover damages."** so that:
 - i. Only the first word, "Property", begins with a capital letter?
 - ii. The section heading is preceded by a section number ("Section 15" would insert the proposed amendment at the end of article XVIII of the Colorado constitution) to indicate where the proponents want the proposed amendment placed within article XVIII?

Substantive questions:

1. Section 1 of article V of the Colorado constitution requires that an initiative contain no more than one subject, which must be clearly expressed in its title. What do the proponents intend to be the single subject of the proposed amendment?
2. What is the meaning of the phrase "reasonable statutes of limitation or repose"? Do the proponents consider the current statute of limitations of two years for a construction defect claim reasonable for purposes of the proposed amendment? Would the proposed amendment prohibit the general

assembly from shortening existing statutes of limitation or repose by law? Who decides whether or not the a statute of limitation or repose is reasonable?

3. What is the meaning of the phrase "actual or consequential damages"? How are actual damages different from consequential damages? Would the proposed amendment limit the power of the General Assembly to define "actual damages" and "consequential damages"?
4. Would the proposed amendment conflict with, supersede, or require changes to be made to any existing state statutes or other provisions that govern civil actions in Colorado? Specifically:
 - a. Would the proposed amendment supersede the provisions of the "Construction Defect Action Reform Act", part 8 of article 20 of title 13, or any other existing statutory provisions that may cap the amount of damages recoverable in actions that arise out of faulty construction of an improvement to real property? Would the proposed amendment supersede section 13-21-111, C.R.S., which requires civil damages awarded for claims based on negligence to be reduced, or in some cases barred if the plaintiff's own negligence contributed to the damages incurred?
 - b. Would the proposed amendment supersede any existing judicial rules that may indirectly limit a plaintiff's ability to recover damages, such as rules of evidence that may require the exclusion of certain evidence or expert witness testimony?
5. What is the meaning of the phrase "reasonably suitable for its intended purposes"? If an improvement is made to real property and the use subsequently changes, are the intended purposes the original purpose or subsequent purpose? Do the proponents intend that the General Assembly define this phrase? Would it be up to the courts to determine the phrase's meaning?