

STATE OF COLORADO

Colorado General Assembly

Charles S. Brown, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Douglas G. Brown, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

September 16, 2003

TO: Freda Poundstone and Representative Jerry Frangas

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #66, 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.

Earlier versions of this initiative were the subject of memoranda dated May 2, 2003 and May 13, 2003. Proposal 2003 -2004 # 39 was discussed at a hearing on May 7, 2003, proposal 2003-2004 # 44 was discussed at a hearing on May 15, 2003, and proposal 2003-04 # 65 was discussed at a hearing on September 4, 2003. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

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 state that no law shall limit or impair a public or private property owner's right to recover damages, other than punitive damages, caused by the failure to construct an improvement to real property in a good and workmanlike manner, except that statutes of limitation of not less than two years and statutes of repose of not less than six years, as well as statutes affording governmental immunity shall be permitted.
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 suitable for its intended purposes.
4. To require that the proposed amendment be strictly enforced.

Comments and Questions

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

Substantive questions:

1. In contrast to the last prior version of the proposed initiative, which permitted all statutes of limitations and repose, the current version of the proposed initiative permits only "statutes of limitations of not less than two years and statutes of repose of not less than six years." What is the proponents' intent in only allowing statutes of limitations and statutes of repose that meet these minimum length criteria?