

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Michelle Smith and Chad Vorthmann  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** January 19, 2018  
**SUBJECT:** Proposed initiative measure 2017-2018 #111, concerning taking property for public 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 2017-2018 #108 to #113. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #108 to #110 and #112 to #113, 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.

## **Purposes**

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

1. To define as a taking a situation in which the state or a political subdivision implements a regulatory program in a way that reduces the fair market value of real property with regard to uses allowable at the time the owner acquired title, thereby requiring compensation.

## **Substantive Comments and Questions**

The substantive comments and questions raised in the memoranda for proposed initiatives 2017-2018 #108 through #110 are incorporated by reference. The proposed initiative raises the following additional comments and questions:

1. What does the phrase "regulatory program" mean, and how does it differ from a law or regulation? What if the regulatory program was generated by the federal government?
2. What proof would be required for a property owner to establish that the market value of the property for a particular use was reduced, and that the reduction was caused by the implementation of a regulatory program?
3. How would the effect of this language differ from that of proposed initiative #110? What is the significance of deeming the property "taken" instead of "damaged"?
4. What do the proponents mean by a "political subdivision" for purposes of the proposed initiative? Does the term include home rule cities?

## **Technical Comments**

The technical comments set forth in the review and comment memorandum on proposed initiative 2017-2018 #108 are applicable to proposed initiative 2017-2018 #111 and, as such, will not be repeated. No new technical comments or questions were raised by this proposed initiative.