

Amendment 74 – Too Costly For Colorado

Amendment 74, “Just Compensation for Reduction in Fair Market Value by Government Law or Regulations,” from the Colorado Farm Bureau, is an *overreaction* to Proposition 112

Legal Analysis Shows Why Amendment 74 is the Wrong idea for Colorado:

TOO MANY UNINTENDED CONSEQUENCES

1) 74 is Overbroad and Not Limited to Land Use Laws So it Could:

- **Jeopardize the health, safety, and welfare of Coloradans**
 - The broad language could apply to all government regulations and laws with no exceptions for protection of public health and safety such as: fire codes, building codes, pollution control, location of hazardous waste and public nuisances
- **Overturn CO and US takings legal case law**
 - 74 would essentially eliminate the U.S. Supreme Court legal cases that give the “police power” authority to local governments enabling them to regulate for the health, safety and welfare of their citizens
- **Produce a “REGULATORY CHILL” in municipal government**
 - State or local governments could choose not to enact or enforce public health, safety and welfare regulations out of fear of being sued for compensation. And that weakens protections for communities.
 - Even normal land use decisions such as permits or zoning changes that are used to approve affordable housing projects would be at risk

2) 74 Burdens Colorado taxpayers

- a. Cost of defending lawsuits or of paying out claims would ultimately be borne by taxpayers because local governments cannot afford to pay them

3) Unlike Other States 74 is a Constitutional Amendment NOT Statutory

- a. It would be more difficult to amend when there are problems
 - 74 Restricts how local governments can manage the implementation of laws and regulations that may cause a decrease in property value because it precludes waivers as a tool for local governments to deal with potential compensation claims because you can’t waive constitutional rights.
- b. Change requirements: Amendments to the Colorado Constitution require 2/3 of all members of each house of the General Assembly and approval by 55% of CO voters.

4) 74 Raises Implementation Questions and Creates Uncertainty Because It Doesn't Follow Best Practices of Other States For Property Rights Measures

- a. **Other States Received Input from All Stakeholders as Legislation Rather Than A Constitutional Amendment**
- b. **Is it Retroactive ???**
 - 74 does not specify if it only applies to laws or regulations enacted or enforced after the date the law would become effective or is limited to laws or regulations enacted after an owner acquires the property.
- c. **What is "Fair Market Value" ???**
 - 74 Doesn't define "fair market value", or answer how we should calculate reduction in property value, or when you measure the factors that could impact fair market value to isolate the effect of the regulation
- d. **What Types of Government Action Are Compensable ???**
 - 74 opens the door for litigation to determine what types of actions are compensable
 - 74 also doesn't clarify if this applies to Real or Personal Property and How we should quantify any damages to property
 - 74 doesn't include any procedures that a landowner must follow in order to make a claim; there is nothing that would prevent a landowner from making a claim even if the landowner has not pursued administrative relief from the law or regulation in question.

MOST EXTREME VERSION COMPARED TO OTHER STATES

	ARIZONA	FLORIDA	OREGON	COLORADO
Type of Law	Statutory	Statutory	Statutory	Constitutional
Compensation Paid and Litigation	A few 12 legal rulings	Over 100 in 1 FL city in 2 years 65 legal rulings	At least \$17 Billion 416 lawsuits	Without limiting factors could be billions
Retroactive	No	No	No	Unclear
Limitations on Claims and Exclusions for Any Government Actions	Yes, only claims within 3 years and exclusions for some gov't actions	Yes, only claims within 1 year to law, and exclusions for some gov't actions	Yes, only claims within 5 years and exclusions for some gov't actions	No limitations at all