**AMENDMENT 74**

**Just Compensation for Damage Due to Government Law or Regulation**

**Summary**

This constitutional amendment would greatly expand the definition surrounding a “regulatory taking.” Under the Colorado Constitution, the government isn’t allowed to damage or take property without just compensation. Under law, there are three ways a government can take property and owe compensation:

* **Eminent Domain:** The government can use some or all of one’s property for public good
* **Damage:** The government owes compensation to a property owner for any damage done, accidental or on purpose
* **Regulatory Taking:** The government owes compensation if some or all of one’s property is unusable due to regulation

This proposal would expand the last definition to include government compensation for any property value decrease caused by a government law or regulation put in place after the enactment of the measure. It could also apply to a standing regulation if a property owner sought to build a new property or apply for a new permit in certain circumstances. This would apply to both state and local governments and their laws and regulations. According to the proponents of the initiative, this is in direct response to Proposition 112, another initiative on Colorado’s November 2018 ballot, which would increase setback limits for oil and gas development.

**Research**

A similar measure was successful in the 2004 General Election in Oregon. [Measure 37](https://sos.oregon.gov/elections/Documents/pamphlet/pamphlet-11-2004a.pdf), as it is known, mandated the government must pay a landowner when a land-use regulation reduces the landowner’s property value or produces an individual exemption for said property. Claims filed in Portland, Oregon by December 4, 2006 totaled over $250 million, although the claims filed statewide totaled $17 billion. It was roundly criticized as a giveaway to large land developers.

In 2007, the Oregon legislature put a measure on the ballot to [significantly repeal](https://digital.osl.state.or.us/islandora/object/osl%3A387105) parts of Measure 37, focusing mostly on the ability to build homes on land where restrictions made that difficult after the measure’s passage. Measure 49, the response to Measure 37, passed overwhelmingly.

Research done by an Oregon State University economist following Measure 37’s passage showed the claims made by proponents of compensation for land-use regulation were largely false. In fact, his [research showed](https://pdfs.semanticscholar.org/cfe5/90607928beb1d05020ed3413bd7662d848f3.pdf) most of the regulations were net positives for landowners. As the economist, Professor Jaeger, wrote, “It has been assumed that land-use regulations invariably reduce property values when, in fact, they often have positive effects. … Positive amenity effects arise with other kinds of land-use regulations such as regulations to protect environmental amenities, open space and farmland, or to control objectionable conditions such as noise, congestion, and pollution.”

This measure will have unknown fiscal effects for both state and local governments, as any regulation seen as possibly decreasing property values could result in monetary damages for an individual directly from government coffers. The unique “damage” term in the Colorado Constitution has historically been interpreted to address physical impacts upon property resulting from government activities on adjacent or abutting property. This concept is abandoned by definition in the amendment and replaced with the generalized right to compensation for any regulatory intrusion upon prior allowed uses of the property.

This measure has unknown consequences due to the broad and vague nature of how it’s written. It’s possible business and zoning regulations will be an important aspect of any litigation under this measure, and not just limited to environmental regulation. It could cause local governments to stop all regulations to protect themselves from potential lawsuits and large payments from their budgets.

**Arguments For**

* Increased regulation can have a significant impact on property values. Mineral rights are factored in to the property value, and if owners of those rights are barred from allowing companies to extract the minerals, that would greatly decrease the property’s value. It’s only fair property owners recoup lost value due to decisions out of their control.
* Property owners shouldn’t have their assets’ values determined by the will of state and local governments. Property rights are sacrosanct and should be respected.

**Proponents**

This measure is supported by the Colorado Farm Bureau, with significant funding from Anadarko and Noble Energy.

**Arguments Against**

* Governments shouldn’t have to fear direct economic harm when enacting regulations to protect the public good. This measure would likely result in many frivolous lawsuits being filed against state and local governments, resulting in loss of time and money to defend against them.
* The expenditure by state and local governments under this proposal could be enormous due to the vagueness of the language and how much the proposal could encompass. This includes zoning, permitting, and other land-use regulations, as well as any safety or environmental ordinances put in place. Those types of decisions — or even non-decisions in some cases — could lead to countless lawsuits.
* Property owners would become extremely powerful and could extort the government from enacting regulations that protect the public good, such as clean air or water, because governments wouldn’t want to risk paying out large sums of money on these claims.

**Opponents**
The Colorado Municipal League, Club 20, the Denver Metro Chamber of Commerce, Governor John Hickenlooper, and Conservation Colorado are among the groups and individuals opposing the measure.

**Recommendation: Oppose**

**This proposal could discourage government agencies and officials from taking necessary actions and could increase spending on frivolous lawsuits. Revenue diverted to defending decisions around affordable housing, safety and environmental regulations, and other daily decisions made by government will hurt our state and local governments’ ability to put money toward education, health care, and other governmental priorities.**

**In many cases, local and state government’s decisions are made to help their constituents move up the economic ladder and create equal playing fields. However, if this amendment passes, governments will have to dole out money to defend lawsuits and operate without the ability to make consequential decisions for their constituents. Due to the vague and broad nature of this measure, it’s bad public policy with many unintended consequences.**