Voters Approved the Creation of the State's First Affordable Housing Fund: What's Next?

January 2023

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Proposition #123, "Dedicated State Income Tax Revenue for Affordable Housing Programs": An Overview

After garnering the support of 1,269,816 Coloradans, representing 52.47% of the vote, Proposition 123 is set to create the state's first dedicated funding stream for affordable housing. Annually, 1/10th of 1% of federal taxable income from the State's General Fund, or approximately $300 million in the first year, will be allotted to a myriad of affordable housing initiatives to include the development of multi-family rental units, down payment assistance for first-time homeowners, homelessness prevention programs such as legal assistance, emergency rental assistance funding, and supportive services for those experiencing homelessness. While the revenue comes from existing sources, in years with a projected TABOR surplus the revenue dedicated to affordable housing programs will come at the expense of TABOR refunds, and in years without a projected TABOR surplus, the legislature will have discretion over exactly how much gets allocated.

Colorado Legislative Council Staff Analysis of Prop 123 Programs and Estimated First Year Funding[i]	
Land Banking	$26.1 million - $43.5 million
Affordable Housing Equity	$69.6 million - $121.8 million
Concessionary Debt	$25.1 million - $60.9 million
Affordable Home Ownership	up to $58 million
Homelessness	up to $52.2 million
Local Government Capacity Building	up to $5.8 million

Proposition 123 has many laudable elements, but in order for the measure to succeed in accomplishing its purpose it must first be embraced by local governments, as the measure requires cities and counties to opt into the measure to gain access to the measure's funding. As detailed in CSI's September 2022 report on the proposition[ii], cities and counties must commit to two main provisions to apply for funds.

- Local jurisdictions must quantify and grow their baseline of existing affordable housing units, to include both rental and homeownership units.
    - Target a 3% annual growth rate in permitting new affordable housing units for each three-year commitment cycle.
    - The measure defines affordable housing for establishing the baseline using two factors: household income and housing costs, including utilities. It defines one approach as counting renters earning <60% of the Area Median Income (AMI), and homeowners earning <100% of the AMI.
    - Eligible projects can have different AMI requirements depending on the specific program it qualifies under. Often projects are required to have an average AMI ceiling across all units, and require the weighted average cost of all participating project units not to exceed 30% of the households' income, inclusive of incremental utility costs.

- Local jurisdictions must establish a "Fast-track approval process" for approving permits requested by projects that have over 50% residential units counted as affordable housing.

    - The expectation is that permits would be approved within 90 days of a complete application. Extensions may be possible under conditions such as at the request of the developer, or to allow for submission of additional information requested from the local government.

    - Local governments will have until the end of 2026 to fully implement a "Fast-track approval process" and may use funds related to local planning capacity development grants for adaptations.

    - Fund administrators at DOLA and OEDIT may prioritize applications that already have the "fast-track approval process" established prior to 2026.

What Proposition #123 is Not:

- This measure does not require local governments to participate - they can choose not to engage the fund if they so desire.
- This measure does not require that local governments change their current land use, planning and zoning policies.
- This measure is not a panacea and, won't on its own volition, solve the affordable housing unit shortfall impacting Colorado.

The most pressing question has been and remains – Can the measure maintain its value propositions to disrupt the status quo, and still attract entities to opt-in?

Staying True to Intent of the Measure - Key Considerations For State and Local Officials Through Implementation of Prop 123

The success of Proposition 123 was propelled by a swelling public discontent with the housing market status quo. The affordability of purchasing a home for many Coloradans has grown out of reach, and the current market dynamics are such that the creation of new housing units at the price households can afford is confronted by multiple barriers. The dedicated funding directed by Proposition 123 can certainly help address affordability for some projects, however much of the promise of the new law are with elements that have potential to impact housing development more broadly. To materially alter or eliminate one or more of these elements in rulemaking or legislatively would change the very intent and impact of the measure.

- A 3% annual affordable housing growth rate will be challenging to quantify and meet, however is an important benchmark for local governments to aspire to. Though the measure accommodates flexibility with how the unit target is estimated, a transparent and consistent process will help shed light on other systemic challenges driving the statewide housing unit shortfall.
- A 90-day permitting fast track can help to establish greater certainty for new development and lead directly to cost savings. Though challenges will arise for some jurisdictions, the existing text of the measure provides flexibility for how local agencies can establish their "fast track approval process."
- While the measure's housing baseline is focused on creating, preserving and serving Coloradans earning at or below 60% of AMI - often referred to as "deeply affordable housing," different funding program areas allow for different income requirements. The measure encourages mixed income, market rate units, as it generally allows for projects to average the income level across all proposed residential units. Most notably "Rural-Resort" Colorado communities, would be able to designate up to 50% of their units at market rate levels, as long as the average percent of AMI served across all units does not exceed 90%.
- The measure states that for projects to qualify for funding, they must be located within the boundaries of a local government that has opted in. Eliminating or circumventing this provision would remove the need for local governments to establish housing unit growth targets, and streamline their permitting process, thereby removing major aspects of the transformative potential of the measure.

Long-term Recommendations for the Legislature to Maximize the Measure's Impact

To address any potential unintended consequences that the measure presents, and to maximize its strengths, elected officials should consider the following recommendations for the long-term stability of the new program. More details regarding each recommendation can be found in the CSI 2022 analysis of the measure.

- Address the Potential of a Growing Fund Balance – Institute a ***Performance Based Cap.***
- Address the Risk of Reappropriation – ***"Re-Bruce" Any Reappropriated Funds***.
- Resist Hyper Localism – ***Incentivize Local Governments to Adopt Regional Fast Track Approval Policies.***
- Drive Continuous Improvement – Require a ***Periodic Fund Performance Analysis.***

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[i] https://leg.colorado.gov/sites/default/files/images/blue_book_2022_english_for_web.pdf

[ii] https://commonsenseinstituteco.org/proposition-123-affordable-housing/