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**Proposition 101 and Amendments 60 and 61: A detailed summary**  
*A report adapted from materials prepared by Sherman & Howard L.L.C.*

Three 2010 ballot initiatives aimed at limiting state and local government funding mechanisms have raised serious concern in an already strained government fiscal climate. Proposition 101, Amendment 60, and Amendment 61, have been nicknamed the “Bad Three” by many in the state because of their potentially disastrous effects on state and local government operations. Each initiative focuses on a distinct set of government funding systems, obligations and sources. Proposition 101 targets fees and the state income tax. Amendment 60 restructures large portions of Colorado’s property tax system. Amendment 61 severely limits public borrowing.

**Proposition 101: Income tax, vehicle and telecommunications fees**

Proposition 101 reduces the Colorado state income tax by roughly one-quarter and eliminates most vehicle and telecommunications fees. These changes would substantially reduce state funding, primarily because of the reduction in the income tax, which generates more than half of state revenues.<sup>1</sup>

*State income tax*

Proposition 101’s most prominent action is a reduction of the Colorado state income tax rate. Under the initiative, the state income tax rate moves to 4.5 percent (down from the current rate of 4.63 percent) on Jan. 1, 2011. After this initial decrease, the income tax rate follows a formulaic reduction of 0.1 percentage point every year income tax revenue grows by more than 6 percent. This ratcheting down ceases after 10 such decreases, ultimately leaving the state income tax rate at 3.5 percent.

*Vehicle fees*

Proposition 101 eliminates or significantly reduces taxes and fees on vehicles with five provisions. All changes begin Jan. 1, 2011. First, specific ownership taxes are decreased to \$2 for new vehicles and \$1 for old vehicles. This reduction occurs in four equal yearly steps. Second, all registration, license and title charges combined are reduced to total \$10 yearly per vehicle. Third, a prohibition on state and local taxes on vehicle rentals or leases is established. Fourth, state or local taxes on the first \$10,000 of value of vehicle sales prices are eliminated over four yearly equal steps. Fifth, except for the charges listed above and tax, fine, toll, parking, seizure, inspection and new-plate charges, all other state and local charges on vehicles and vehicle uses are terminated.

To ensure vehicle tax rates are not raised by some new means, Proposition 101 ends with the stipulation that any new vehicle charges are to be deemed taxes, apparently invoking the voting requirements of the state Constitution.

### *Telecommunications fees*

Proposition 101 also eliminates telecommunications fees. Under the measure, beginning Jan. 1, 2011, the state and local governments are banned from applying fees to telephones, pagers, television service, radio, Internet, satellite, or any other telecommunications service customer accounts. However, emergency 911 fees would be permitted to continue at 2009 rates.

To ensure no new telecommunications fees are imposed without voter approval, Proposition 101 also stipulates any new telecommunications charges would be deemed tax increases.

### *Other provisions*

Proposition 101 contains an assortment of provisions concerning its enforcement. The measure asserts it ought to be strictly enforced to reduce government revenue. It mandates yearly compliance audits by the state, “to reduce unfair, complex charges on common basic needs” and encourages legal challenges of compliance by stipulating that prevailing plaintiffs — but not defendants — must have their legal fees and court costs repaid in such lawsuits. To secure its place in the Constitution, the provision identifies itself as self-executing, severable, and a matter of statewide concern that overrides conflicting statutes and local laws.

## **Amendment 60: Property taxes**

Amendment 60 changes many aspects of Colorado property taxes. Most notably, the measure overturns two decades of voter-approved property tax changes and halves school district property tax rates. Its lasting effect would be a large-scale reduction of property tax revenues and an enormous strain on state resources.

The state does not have a property tax, but counties, municipalities, school districts and special districts all use property taxes to fund services they provide. The biggest beneficiary of local property tax revenue is Colorado’s kindergarten through 12<sup>th</sup>-grade education system, which is funded by property taxes imposed by school districts. By overturning a large body of voter-approved property tax changes and substantially reducing property tax rates while requiring state government to make up for the lost revenue, the amendment would jeopardize K-12 education. It would place a huge strain on Colorado’s already troubled budget, where K-12 education already makes up more than two-fifths of general fund expenditures.<sup>ii</sup>

Amendment 60 adds a new section to the Taxpayer’s Bill of Rights, or TABOR (Article X, Section 20 of the Colorado Constitution). All provisions in the proposed amendment would begin Jan. 1, 2011.

### *Property tax voting procedures*

Amendment 60 imposes a number of procedural changes to Colorado’s system of voting on property taxes. First, the measure stipulates electors may vote on property taxes where they own property. Second, all districts must allow petitions from citizens to propose property tax reductions, substantially broadening the scope for such petitions. Third, all property tax elections must be in November, and property tax increases must always be voted separately from related debt questions.

### *Property tax rates and retention*

Amendment 60 makes dramatic changes to property taxes. Most prominently, it requires that school districts phase out one-half of their 2011 tax rates, excluding debt service levies, by 2020. The state must backfill the lost revenues.

Equally notable is the amendment's invalidation of past local voter-approved retentions of property tax revenue in excess of TABOR limits, or "de-Brucing" measures. Under the amendment, prior elections allowing property tax revenues above the TABOR limit to be retained are deemed of no force and effect. Thus localities that have received voter approval to keep property tax revenue in excess of the TABOR limit would see this directive from voters categorically invalidated, and would be forced to reduce collections. Future de-Brucings are still permitted by the amendment, but automatically expire after four years.

Along with de-Brucing, Amendment 60 seeks to overturn any other property tax changes established without voter approval since TABOR including the mill levy stabilization legislation adopted by the General Assembly in 2008. To this end, property taxes exceeding state laws and tax policies, or limits violated, changed, or weakened without state voter approval are terminated, and those laws, policies, and limits, including debt limits, are restored. Also, if voter approved taxes exceed the one numerical dollar amount first listed in their tax increase ballot title, as stated in (3)(c) of TABOR, they cannot be kept by the local until of government. Should property taxes be raised by a vote of the people, the amendment also stipulates any future property tax increase may only be for 10 years, and the extension of an expiring tax is a tax increase, presumably requiring a vote of the people.

### *Miscellaneous provisions*

In addition to its changes regarding property tax voting, rates, and retention, Amendment 60 makes a handful of other changes. First, it stipulates enterprises and authorities must pay property taxes. Since this will result in an increase in revenue to the taxing entities, the measure adds that relevant tax rates must be lowered to avoid windfall revenues. Furthermore, under the amendment, enterprises and unelected boards may not levy mandatory fees or taxes on properties. Lastly, the amendment requires that property tax bills may list only property taxes and late charges.

### *Enforcement*

Amendment 60 contains a set of clauses concerning its enforcement. First, it guards against potential fears regarding debt abrogation, by asserting "nothing in Amendment 60 is to limit to the payment of bonds issued before 2011." Second, like Proposition 101, Amendment 60 encourages lawsuits to ensure compliance. Under the measure, the state must conduct annual audits of TABOR and enforce "strict compliance" with its provisions. Any person may file suit to challenge this compliance, and in such suits successful plaintiffs are always awarded costs and attorney fees, while districts may receive neither. Finally, the amendment is declared to supersede all conflicting laws, opinions and constitutional provisions. It must be, "always strictly interpreted to favor taxpayers."

## **Amendment 61: State and local debt**

Amendment 61 prohibits state debt and seriously curtails local debt, and severs the related payment streams by lowering taxes. These actions would force Colorado state government and many local governments to fund public construction projects "out of pocket" —

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effectively precluding most government construction projects. The accompanying reduction of tax collections would further limit such projects by diminishing the revenue streams available to fund projects in this “pay-as-you-go” manner.

Procedurally, Amendment 61 adds a new section to Article X, Section 20 (TABOR) of the Colorado Constitution and amends certain sections of Article XI. All provisions in the proposed amendment are effective Jan. 1, 2011.

#### *Debt redefined*

Amendment 61 redefines the obligations considered debts of the state and local governments. Falling under the new definition is, “any loan, whether or not it lasts more than one year; may default; is subject to annual appropriation or discretion; is called a certificate of participation, lease-purchase, lease-back, emergency, contingency, property lien, special fund, dedicated revenue bond, or any other name; or offers any other excuse, exception, or form.”

#### *State debt*

The amendment uses its broad definition of debt to prohibit borrowing of any kind at the state level. Specifically, Amendment 61 prohibits the state and its enterprises, authorities and other political entities from borrowing directly or indirectly, money or other items of value for any reason or for any period of time.

#### *Local government debt*

Under the new rules, local governments and their enterprises, authorities and other local political entities may borrow money, but only after a November vote. Furthermore, for all local governments except enterprises, a debt limit of 10 percent of the assessed taxable value of the real property in the jurisdiction is imposed. This permitted debt may only be in the form of bonded debt, must be subject to prepayment without penalty at any time, and must mature within 10 years.

#### *Tax decline*

Amendment 61 finishes its curtailment of state and local borrowing by severing the revenue streams used to fund now-prohibited debt. It stipulates that except for enterprise borrowings, when a borrowing is repaid, the relevant tax rates must decline in an amount equal to its planned average repayment, even if the debt is not repaid from taxes.

#### *Miscellaneous provisions*

The amendment has two miscellaneous provisions. First, it stipulates no borrowing may continue past its original term. Next, it declares all current borrowings shall be paid, presumably an assurance to current creditors.

### **The Bad Three**

These ballot initiatives threaten to seriously impair state and local government in Colorado by severely restricting state revenue, restructuring and increasing state funding obligations, and overriding crucial state and local borrowing and taxing privileges. Taken on their own, each initiative would deal a serious blow to Colorado’s ability to provide essential public services. Taken together, this package threatens to cripple state and local services like K-12 and higher education, health care, public construction projects, and others as it destroys the operational foundations of government.

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<sup>i</sup> Colorado Department of Revenue, *2009 Annual Report* (DR 4000, 2010), 4.

<sup>ii</sup> Colorado Joint Budget Committee, *Summary of FY2010-11 Joint Budget Committee Budget Briefings*, (January, 2010), 1.