

Election November 2010: Proposition 101 and Amendments 60 and 61

February 5, 2010

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on LAW & POLICY

Proposition 101, formerly Initiative 10

*Would Reduce Vehicle, Income Tax and
Telecommunication Revenues*

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Provisions of Proposition 101

- Reduces various motor vehicle fees and taxes.
- Reduces the State income tax.
- Reduces fees on telecommunication services.

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Vehicle Fees and Taxes under Proposition 101

(would start January 1, 2011)

- Specific ownership taxes must decrease in four equal yearly steps to reach \$2 for new vehicles and \$1 for old vehicles.
- All registration, license, and title charges combined shall total \$10 yearly per vehicle.
- There will be no State or local taxes on vehicle rentals or leases.

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Vehicle Fees and Taxes under Proposition 101

(cont'd)

- There will be no State or local taxes on the first \$10,000 of value of vehicle sales prices (this would be phased in over four yearly equal steps).
- All other State and local charges on vehicles and vehicle uses must cease (except for the charges listed above and tax, fine, toll, parking, seizure, inspection, and new-plate charges).
- Any new charges would be deemed to be taxes, apparently invoking the voting requirements of the Constitution.

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Telecommunication Fees Under Proposition 101

(starting January 1, 2011)

- No charge by, or aiding programs of, the State or local governments shall apply to telephone, pager, cable, television, radio, internet, computer, satellite, or other telecommunication service customer accounts.
- Any new charges would be deemed tax increases, apparently invoking the voting requirements of the Constitution.
- Emergency 911 fees permitted to continue at 2009 rates.

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Income Tax under Proposition 101

(would start in 2011)

- The income tax rate would be 4.5 percent (down from the current rate of 4.63 percent).
- Later rates would decrease 0.1 percent yearly, in each of the first ten years that yearly income tax revenue net growth exceeds 6 percent, until the rate reaches 3.5 percent.

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Other Provisions of Proposition 101

- “This voter-approved revenue change shall be strictly enforced to reduce government revenue.”
 - The phrase “voter-approved revenue change” seems to refer to Article X, Section 20 of the Constitution (TABOR).
 - The drafters may intend, with this proposal, to reduce the TABOR permitted revenue limits.
 - This may apply to governments that have had revenue change (i.e., debrucing) elections.

Other Provisions of Proposition 101

(cont'd)

- Self-executing, severable, and a matter of statewide concern that overrides conflicting statutes and local laws.
- Prevailing plaintiffs (but not defendants) must have their legal fees and court costs repaid.
- The State must audit yearly compliance “to reduce unfair, complex charges on common basic needs.”

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Amendment 60, formerly Initiative 12

Would Limit Property Taxes

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Amendment 60

- Would add a new section (Section 10) to the Taxpayers Bill of Rights, or TABOR.
- Proponents say the goal of this amendment is to protect your home from abusive property taxes.
- All provisions of Amendment 60 would begin in 2011.

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Primary Provisions of Amendment 60

- *Electors may vote on property taxes where they own property.*
 - Persons who own a property in a jurisdiction but don't live there can vote on property tax measures.
 - It is not clear what is meant by electors.
 - Only Colorado residents?
 - Out-of-state (or out-of-country) residents?
 - Corporations or partnerships?
 - Proponents say their intent is to allow natural persons who are residents of Colorado to vote anywhere in the state where they own property, such as a cabin, condominium, lot or office.

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Primary Provisions of Amendment 60

(cont'd)

- *All districts must allow petitions from citizens to propose property tax reductions.*
 - Citizens can already initiate petitions for most municipalities, but not with many other local governments.
 - Would give citizens of school districts, counties and special districts the ability to initiate petitions to reduce property taxes.
 - Change applies to “districts” as defined in TABOR.

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Primary Provisions of Amendment 60

(cont'd)

- *All property tax elections must be in November.*
 - Change from current law, which allows property tax elections to be held at other times, depending upon the type of government involved.
- *Property tax increases must be voted separately from related debt questions.*
 - Overrules TABOR case law which has allowed debt and related tax increases to pay the debt to be voted in a single question.
 - Could result in a local government receiving voter approval to incur a debt, but not receiving voter approval to increase taxes to pay for the debt.



Primary Provisions of Amendment 60

(cont'd)

- *Property tax bills may list only property taxes and late charges.*
 - Current law allows for delinquent utility fees and charges and for special assessments to be collected on the property tax bill.

Primary Provisions of Amendment 60

(cont'd)

- *Enterprises and authorities must pay property taxes. Since this will result in an increase in revenue to the taxing entities, the tax rates must be lowered to avoid windfall revenues.*
 - Intends to require government-owned businesses such as water and sewer utilities, public recreation facilities and public hospitals, and authorities such as housing authorities, urban renewal authorities and water authorities to pay property taxes.
 - Entities would likely need to raise their rates and fees to do so, meaning that users would pay higher fees for services like water and sewer utilities (which are not deductible for federal income tax purposes) and lower property taxes (which are deductible).



Primary Provisions of Amendment 60

(cont'd)

- *Enterprises and unelected boards may not levy mandatory fees or taxes on properties.*
 - This appears to be addressed in part at stormwater enterprises.
- *Any future property tax increase may only be for 10 years.*
 - It is unclear whether the 10-year period begins on the date of voter approval or on the date the tax increase is imposed.

Primary Provisions of Amendment 60

(cont'd)

- *Extension of an expiring tax is a tax increase.*
 - This overrules TABOR case law. It also means that in the future such tax extensions will have to comply with TABOR's more restrictive election rules applicable to tax increases.
- *Prior revenue change (i.e., debrucing) elections allowing property tax revenues to be retained are of no force and effect. Future debrucings expire in four years.*
 - With the expiration of the debrucings, governments may have to recalculate permitted revenue increases pursuant to TABOR's formula from the date TABOR became effective.



Primary Provisions of Amendment 60

(cont'd)

- *By 2020, school districts must phase out one-half of their 2011 tax rates (excluding debt service levies). The State must backfill the lost revenues.*
 - It is unclear how this would be accomplished, but the proponents have suggested that school districts should first calculate how much of their 2011 mill levy is for purposes other than debt. Then they should divide that rate by half, then divide that result by 10 years, and then reduce their mill levy each year by that amount.
 - The intent seems to be to finance much more local education through the state government and not through local property taxes.

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Primary Provisions of Amendment 60

(cont'd)

- *Nothing in Amendment 60 is to limit to the payment of bonds issued before 2011.*

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Additional Provisions of Amendment 60

- *Property taxes exceeding state laws and tax policies, or limits violated, changed, or weakened without state voter approval are terminated. Those laws, policies, and limits, including debt limits, are restored.*
 - This provision seems to overturn case law upholding the legislature's mill levy freeze for school districts.
 - Also would reinstate any debt limits that were weakened or removed by the legislature since 1992.

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Additional Provisions of Amendment 60

(cont'd)

- *Taxes that exceed the one annual fixed, final, numerical dollar amount first listed in their tax increase ballot title, as stated in (3)(c) of TABOR, are invalid.*
 - Requires that a tax increase be stated as a specific dollar amount that cannot be exceeded without further voter approval.
 - For example, a ballot question that authorized a tax increase of \$100,000 in the first year and then whatever amounts are raised annually by a specified tax rate in subsequent years would, under this provision, only authorize a maximum collection of \$100,000.

Additional Provisions of Amendment 60

(cont'd)

- *Those property tax rates imposed after 1992, without voter approval of a ballot item as stated in (3)(c) of TABOR, are terminated.*
 - This provision overturns case law that an expiring tax could be extended without using TABOR's mandatory ballot formulation for tax increases.
- *The state must conduct annual audits of TABOR and enforce "strict compliance" with its provisions. Any person may file suit to enforce it.*
 - The purpose appears to be to overrule court cases which have stated a "substantial compliance" standard for TABOR.

Additional Provisions of Amendment 60

(cont'd)

- *Successful plaintiffs are always awarded costs and attorney fees; district receive neither.*
- *The Amendment supersedes all conflicting laws, opinions and constitutional provisions, and shall always be strictly interpreted to favor taxpayers.*

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Amendment 60, formerly Initiative 12

Would Limit Property Taxes

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Amendment 61

*Would Limit State
and Local Government Debt*

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General Provisions of Amendment 61

- Amends Article X, Section 20 of the Colorado Constitution (“TABOR”) to add a new section to prohibit State debt and limit local government financings, in addition to all other provisions of TABOR.
- Amends certain sections of Article XI of the Colorado Constitution to also prohibit State debt and limit local government financings.
- Applies after 2010.

General Provisions of Amendment 61 (cont'd)

- Redefines the obligations that will be considered “debts” of the state and local governments.
- Applies to “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.”



General Provisions of Amendment 61 (cont'd)

- Traditional lease-purchase and lease-leaseback financings would now be considered debt.
- It is unclear how far the new definition of “debt” will reach.
 - Traditional property or equipment leases?
 - Economic development agreements?
 - Employment contracts?

State Borrowing Prohibition

- The State and its enterprises, authorities and other political entities are prohibited from borrowing, directly or indirectly, money or other items of value for any reason or for any period of time.
- Would prohibit authorities such as the Colorado Housing and Finance Authority and the Colorado Educational and Cultural Facilities Authority from issuing bonds.
- Would prohibit the State's annual General Fund Tax and Revenue Anticipation Note cash-flow borrowings and Building Excellent Schools Today (BEST) and other lease-purchase financings.

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Local Government Borrowing

- Local governments and their enterprises, authorities and other local political entities may borrow money, but only after a November vote.
- Will add a new voter approval requirement for transactions such as:
 - Enterprise borrowings
 - Refinancings at a lower interest rate
 - Borrowings by Urban Renewal Authorities
 - Cash flow borrowings lasting less than one year

Local Government Debt Limits

- For local governments other than enterprises, there will be a debt limit of 10 percent of the assessed taxable value of the real property in the jurisdiction.
 - This excludes personal property.
- This limit applies to all financings combined, including general obligation, revenue, lease-purchase, and other obligations.

Local Government Debt Limits (cont'd)

- This would be a significant decline from existing law, even for entities that primarily use general obligation debt.
 - School districts have a debt limit which is generally 20 percent of the assessed value of all taxable property.
 - Most special districts have a debt limit of 50 percent of the assessed value of all taxable property, which is subject to certain exceptions that would also be repealed.



Limits on Borrowings

- May only be in the form of bonded debt.
- Must be subject to prepayment without penalty at any time.
 - This is not common in the current municipal marketplace, and will likely increase interest costs for issuers.
- Must mature within 10 years.
 - Current borrowings often last 20 or 30 years. This will increase the annual repayment costs of borrowing, which may force local governments to downsize projects.



Limits on Borrowings (cont'd)

- “No borrowing may continue past its original term.”
- “All current borrowings shall be paid.”
 - Meaning of this provision unclear. Proponents argue that this prohibits local governments from choosing to terminate their financings that are currently subject to annual appropriation.

Other Provisions of Amendment 61

- Except for enterprise borrowings, when a borrowing is repaid, tax rates must decline in an amount equal to its planned average repayment, even if the debt is not repaid from taxes.
 - The proponents intend this to include when a current lease purchase or other non-debt transaction is repaid.

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Questions & Answers

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Financial Implications of Prop 101, Amendment 60 and 61

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Analysis Background

- Analysis utilizes interpretations of intent.
- Special thanks to the Bell Policy Center for their analysis (<http://www.thebell.org/node/1231>).
- Much of the analysis is based on state averages.
- The data is the most recent available for all areas-- often FY 2007-08.
- Still exploring local impact and refining analysis.

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Analysis Background

- Each of the proposals contains provisions that would significantly reduce revenue available to various levels of government to support provision of public services.
- Historically, Colorado has invested relatively small amounts of resources in public services so the **effects** of these additional constraints will be magnified.
- The most significant impact of these measures is found in their combined effect.

Structure of Presentation

- Anticipated fiscal impact of each proposal.
- Discussion of current spending context.
- Specific impact on School Finance.
- Impact on state non school funding.

Prop 101 Impact on State Revenue

\$1.7 Billion Annually

FASTER Fee	\$179 million
Registration, title, license fees to \$10	\$164 m
Exempting 1 st \$10,000 in value from sales tax	\$100 m
Exempting rental cars from sales taxes	\$22 m
Eliminating telecommunications fees	\$4.5m*
Phase out of 1.13% of State Income Tax	\$1.2B

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Prop 101 Impact on Local Governments

\$622 Million Annually

Specific ownership taxes \$500 million

\$2 per new,\$1 per used vehicle

Exempting 1st \$10,000 in value from sales tax \$100 m

(based on an average 3 percent sales tax rate for local governments)

Exempting rental cars from sales taxes \$22 m

(based on an average 3 percent sales tax rate for local governments)

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Example of County Analysis by The Bell Douglas Co—Specific Ownership

In simple terms, these are property taxes paid on vehicles. Douglas County schools and the county are the primary beneficiaries, but the money also goes to the sheriff's department and police forces, as well as dozens of recreation, water and sanitation and other special districts.

Under Prop 101, funding would be cut by 99.2 percent

	2009	Prop 101
Douglas County schools*	\$16.3 million	\$125,737
Districts, subdivisions	\$10.3 million	\$79,269
Douglas County	\$7.4 million	\$45,403
County law enforcement	\$1.4 million	\$10,363

** Per-pupil share of ownership taxes would drop from \$327 to \$2.53*

www.thebell.org

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Amendment 60 Fiscal Impact on Local Government

- Property taxes for schools will fall about \$1.87 billion annually when all impacts fully phased in.
 - Re-Brucing provisions — \$549 million
 - Mill levy reductions due to 50% reduction — \$1.2 billion
 - Mill levy stabilization law repealed — \$118 m
- Mill levy reductions due to the 50% reduction are to be replaced by state funds. Amendment 23 basically requires that all lost local funds are replaced by state dollars.
- Data is for FY 2008, dollar amounts will change with changes in appropriations and assessed values.

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Amendment 60 Fiscal Impact on Local Government

- Enterprises and authorities will now have property tax liability — any increased collections is to be offset by lower rates.
- Property taxes for counties — 46 counties have broad tax overrides that includes property taxes. Those overrides will be rolled back.
- Amount of “taxes” exceeding the published amount in any voter approved tax increase will be eliminated.
- Costs and attorneys fees if sued will have to be paid for local government.

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Amendment 61 Fiscal Impact on State Government

- Current state COP balances of \$2 billion —
 - Leases for State Fleet
 - Fitzsimmons
 - Parking structure
 - BEST
 - Judicial Center
- Hard to identify financial impact of “Pay as you go” policies but “saving” for capital investments means reductions in operating budgets. Currently, bonding is an option by voters.
- Borrowing from cash funds prohibited — primary tool for dealing with economic downturns.

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Amendment 61 Fiscal Impact on Local Government

- Impact of borrowing limits.
- Tax reductions after repayment of borrowing for locals.
 - Mill levy reductions due to debt repayment for schools--\$735 million annual
 - Other debt

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Current Revenue Situation

- Taxes in Colorado are relatively low.
- Spending by the public sector is relatively low.
- Borrowing is also relatively low.

Where We Rank In State Taxes

(Legislative Council January 2009)

Colorado's Rank in Selected State Taxes				
per \$1,000 income, FY 2007-08				
	Colorado		National	
Tax	Rank	Tax	High	Low
Total Taxes	48	\$48.25	\$308.91	\$41.20
Individual Income	29	\$25.41	\$40.59	\$0.00
Sales and Use	44	\$11.59	\$52.26	\$0.00
Corporate Income	41	\$2.55	\$35.99	\$0.00
Motor Fuels	31	\$3.19	\$7.60	\$0.59

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Where We Rank In State and Local Taxes

(Legislative Council January 2009)

Combined State and Local Tax Collections		
per \$1,000 Income, FY 2005-06		
State	Rank	Tax
Wyoming*	1	\$165.92
U.S. Average	n/a	\$116.22
Colorado	46	\$98.01
South Dakota	50	\$91.03

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State Spending in Colorado

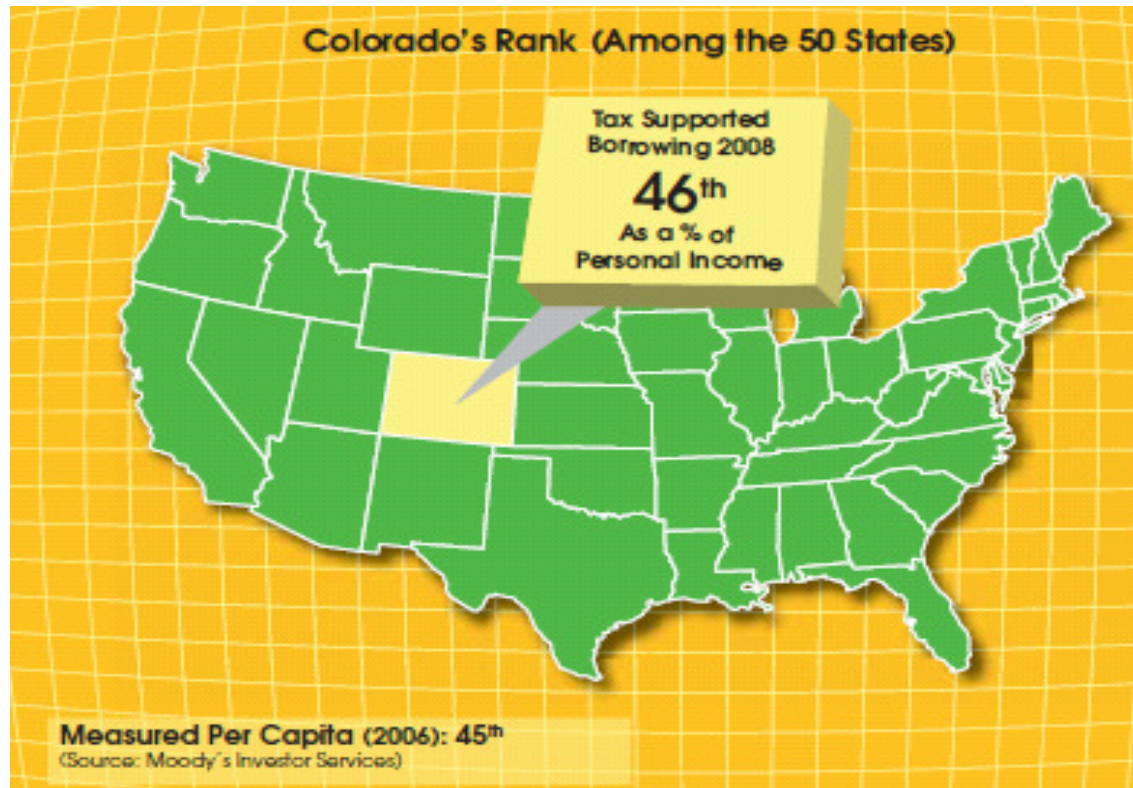
	State Ranking
• Total Expenditures	
– per \$1000 of income	47
– per capita	44
• K-12 education	
– per \$1000 of income	48
– per capita	32
• Medicaid	
– per \$1000 of income	49
– per capita	49
• Higher Education	
– per \$1000 of income	48
– per capita	48
• Highways	
– per \$1000 of income	48
– per capita	48
• PRE-RECESSION RANKINGS 2007	

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Colorado Does Have Much Debt



2009 STAR Report, State Treasurer Cary Kennedy

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School Finance Impact

- Details on current school funding situation.
- Net out all reductions and shifts due to Prop 101, Amendments 60 and 61.

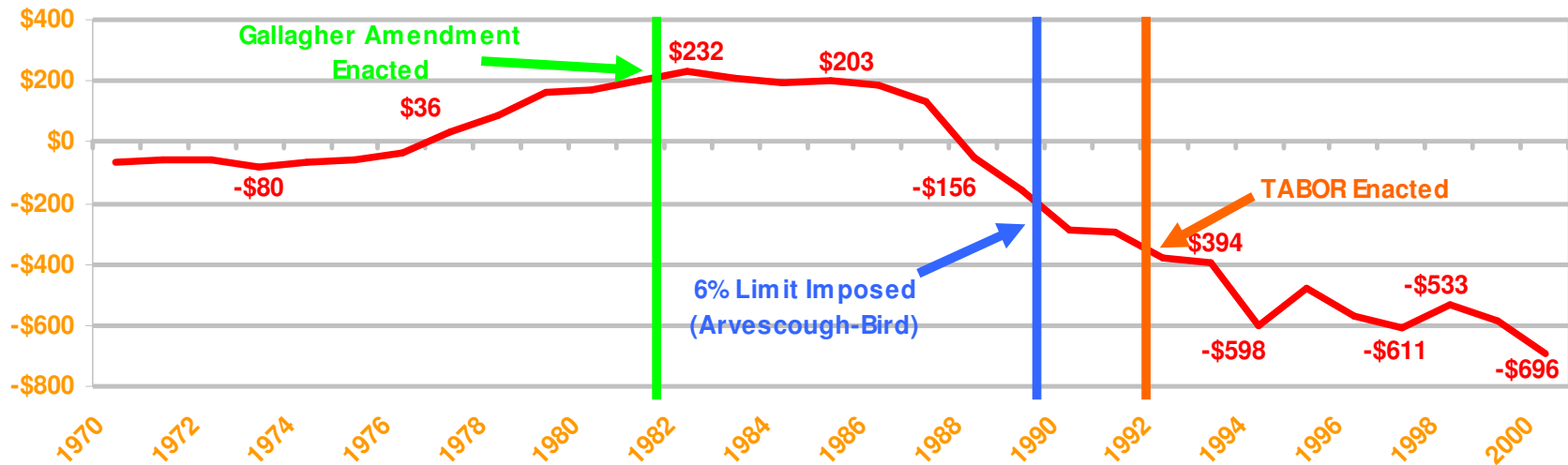
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Investment Falling Compared to Other States

K-12 Per-Pupil Funding: Colorado vs. National Average

Source: National Center for Education Statistics



Per pupil spending compared to U.S. Average:

2008: \$1,034 below the national average

2009: \$1,449 below the national average

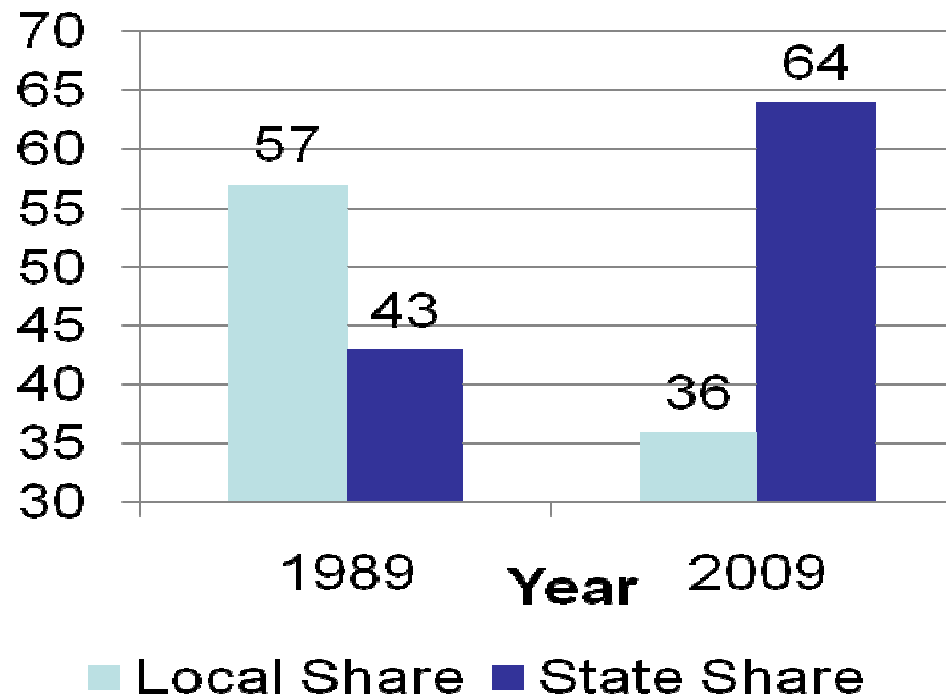
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K-12 Financing – Shifting to the State

K-12 State and Local Percentage Shares



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State General Fund Spending

K-12 % Increasing

	<u>1999-00</u>	<u>2009-10</u>
Healthcare/Human Service	27.5%	30.2%
K-12 Education	40%	43.3%
Higher Education	14.1%	8.8%
Corrections/Judiciary	11.4%	13.6%
Other	7.0%	4.1%

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Impact on School Finance

- School Districts
 - Local property tax impact \$2.1 billion.
 - Specific ownership tax impact \$242 million.
- State
 - Responsible for growth at least at inflation—picking up much larger share since local revenue is decreased.
 - Revenue available for supporting education reduced \$1.2 billion including effect on State Education Fund.

Impact on State Funding for Non K-12 Services

- General Fund reductions of over \$3.5 billion not including inability to borrow from cash funds during economic downturns.
- FY 2010-11 General Fund spending estimated at \$7.1 billion.
- Total reductions to non-school budget almost 49%.
- Total State General Fund budget equal to what is spent on HE and K-12 today.
- Not counting costs associated with no borrowing; increased costs for audits.

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Disclosure Issues and the 2010 Initiatives

*Prop 101, Amendment 60 and Amendment
61 – What to Say and When to Say It*

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Where To Start

- As always, disclosure is governed by the anti-fraud provisions of the federal securities laws; specifically, Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 - and Rule 10b-5
 - Prevent any person from “making any untrue statement of a material fact or omitting any material fact required to be stated or necessary to make the statements made, in light of the circumstances under which they were made, not misleading”
 - “Substantial likelihood that a ‘reasonable investor’ would consider the fact important in making an investment decision.”
- Governed by the “facts and circumstances” of each transaction



Disclosure Impacted by the Initiatives

- Security for the Bonds/COPS
- Ongoing operations/finances of the issuer
- Different considerations will apply for the type of security and the type of issuer
 - There is no “one size fits all” disclosure of the impacts of the Initiatives
 - Disclose only what applies to the specific security/issuer

Disclosure About Security

- With respect to outstanding bonds and those issued before 2011, IMPAIRMENT OF CONTRACT principles apply
 - Basically, the government (or the people acting as the government through use of the initiative power) cannot impair contracts already entered into
 - Applicable provisions of the initiatives are effective “starting January 1, 2011” or “after 2010”
 - Amendment 60 specifically also tries to deal with this by saying that property tax changes do not limit the payment of bonded debt issued before 2011

However:

- Certain provisions of the Initiatives may negatively impact certain pledged revenues, but still might not constitute an impairment of contract. These likely will need to be disclosed to investors.
- Example: Amendment 60 requirement that “enterprises and authorities” pay property taxes
 - Property taxes likely would be an expense. Pledged revenues would be reduced, but the rate maintenance covenants would kick in to protect bondholders
- Example: Prop 101-mandated Specific Ownership Tax reductions (or really, any revenue source not pledged at a specific rate)
 - Some special districts have specifically pledged SOT; an explanation of the proposed reduction and an analysis of its impact on revenues likely is necessary.

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But Watch Out!!

- COPS are a different story!
 - Since COPS are paid from “legally available revenues” and a source is not pledged, it is likely that no impairment of contract occurs
 - Analysis of material revenue streams expected to be used to pay Base Rentals should be analyzed and impact likely will need to be disclosed
 - For issuers with limited sources of revenue, this could be a real problem



Disclosure About Issuer Operations/Finances

- Issuers should analyze the revenue reductions/offsets contained in the Initiatives and determine whether there is a material impact on finances and/or operations
- If one or more of the Initiatives passes, this analysis/disclosure will be ongoing
- Risk of negative rating actions, even if security for the bonds is not directly impacted



Who is Affected by Prop 101?

- The State (with respect to State income tax, among other things)
- Entities with significant Specific Ownership Tax revenues (or which have pledged SOT to bonds)
 - State is required to backfill school districts on loss of SOT revenues - probably a disclosure item that State's revenues will be negatively impacted too
 - General Assembly could decide to change its SOT backfill policy
- Entities with significant sales tax revenues from car sales, rentals or leases
- Entities with significant revenue from vehicle registration, license and title charges
- Entities with significant revenues from taxes or fees on the listed telecommunication services

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Who is Affected by Amendment 60?

- School districts (and the State) – halving of school district operating tax rates by 2020 – State is required to backfill
- Enterprises and authorities – must pay property taxes
- Many entities:
 - “Expiration” of post-1992 property tax increase, extension and abatement rates, including property taxes approved pursuant to TABOR in which the current dollar amount collected exceeds the “initial” number stated in the ballot title
 - Expiration of existing “de-Brucing” elections
 - TABOR revenue bases will need to be calculated - could require expenditure reductions in many jurisdictions
 - Unclear what year would be used as the base year

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Most Entities Will be Affected by Amendment 61

- Imposes debt limit of 10% of assessed taxable value of real property. Going forward, that may limit borrowing for necessary projects
- Requires reduction in current tax rates as bonds or other borrowings are repaid, even if not paid from tax revenues
- Ten-year limit on future bonded debt – amortization on large borrowings will be compressed

Where Does This Disclosure Go?

- In the "INTRODUCTION" – Add or expand "Future Changes in Law" section of the Official Statement
- Possibly in the "RISK FACTORS" section of the Official Statement
- Possibly in the "SECURITY FOR THE BONDS" or the "REVENUES AVAILABLE FOR DEBT SERVICE" sections of the Official Statement
- Possibly in the "LEGAL MATTERS" section of the Official Statement, in a new subsection entitled "Proposed Fiscal Initiatives"

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What About Continuing Disclosure?

- Remember that material event notices are limited to the 11 specifically listed events
- Voluntary submissions are allowed, but must be accurate and complete
- May want to reconsider if one or more of the Initiatives pass
- Also, if a rating downgrade occurs, that is a listed material event and a notice must be filed with EMMA

Disclosure Issues and the 2010 Initiatives

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