CHAPTER 5: COUNTY FINANCES AND BUDGETING

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CHAPTER 5: COUNTY FINANCE AND BUDGETING

County finance and budgeting issues have become increasingly complex over time, especially in light of the 1992 Taxpayer's Bill of Rights (TABOR) constitutional amendment. Some aspects of county financial administration are mandated by law while others are left up to the BOCC to adopt and enforce. All counties, except the City and County of Denver and the City and County of Broomfield, are required to follow the Local Government Budget Law (C.R.S. §29-1-101 et seq.), the Local Government Uniform Accounting Law (C.R.S. §29-1-501 et seq.) and the Local Government Audit Law (C.R.S. §29-1-601 et seq.).

In this chapter we outline the general budgetary, accounting and audit laws local governments must follow. We will also discuss the federal, state, and local revenue sources counties depend on and the various financing mechanisms available to counties. Finally, two substantive outlines on the TABOR amendment are included to orient commissioners to the requirements of this constitutional provision.

LOCAL GOVERNMENT AUDIT LAW

Audit Procedures and Requirements

The board must provide an annual audit of financial statements for each fiscal year, or more frequent audits as desired. Audits must be conducted according to generally accepted accounting and auditing standards by a certified public accountant, registered accountant or partnership licensed for Colorado accountancy practice. C.R.S. §§29-1-603, 29-1-605.

Each audit shall be completed, and the audit report submitted by the auditor to the local government within six months following the close of the fiscal year (see Local Government Budget Calendar below). One copy must be kept by the local government as a public record. The local government shall forward a copy of the audit report to the state auditor within 30 days of the receipt of the report. The state auditor shall keep a copy of the report as a public record where it shall be available for public inspection. C.R.S. §29-1-606.

A local government whose revenues or expenditures do not exceed $750,000 in any fiscal year may, upon approval of the state auditor, be exempt from audit requirements. C.R.S. §29-1-604(2).

Local Government Budget Calendar

The following calendar, prepared by the Division of Local Government, is a listing of the deadlines for the budget, for a local government audit and for the property tax certification process. Some deadlines are not statutory but reflect good budgeting practices. For details on the applicable statutes listed below, please refer to the noted Colorado Revised Statutes reference in the table.

DATE	EVENT/ACTIVITY
January 1	Start of Fiscal Year; begin planning for the budget of the next year.
January 10	Deadline for assessor to deliver tax warrant to county treasurer (C.R.S 39-5-129.)
January 31	A certified copy of the adopted budget must be filed with the Division. (C.R.S 29-1-113(1)). If a budget is not filed, the county treasurer may be authorized to withhold the local government's tax revenues.
February 10	The Division sends notification to local governments whose budgets have not been filed with the Division.
March 1	The U.S. Bureau of Labor Statistics releases the Consumer Price Index (the "CPI") for the Denver/Boulder area. This annual percent change is used with "local growth" to calculate "fiscal year spending" and property tax revenue limitations of TABOR. (Article X, Sec. 20, Colo. Const.)
March 15	The Division will authorize the county treasurer to withhold tax revenues until a certified copy of the budget is filed with the Division.
March 31	Deadline to request exemption from audit. (C.R.S 29-1-604(3)) Contact the Local Government Audit Division, Office of the State Auditor, (303) 869-2870. The Division notifies local governments of its determination that the entity has exceeded the statutory property tax revenue limit (the "5.5%" limit).
June 30	Deadline for auditor to submit audit report to local government governing body. (C.R.S 29-1-606(a)(1))
July 31	Deadline for submitting annual audit report to the Office of the State Auditor. (C.R.S 29-1-606(3)) Deadline for request for extension of audit. (C.R.S 29-1-606(4)) If an audit is required but has not been filed, the county treasurer may be authorized to withhold the local government's tax revenue
August 25	Assessors certify to all taxing entities and to the Division of Local Government the total new assessed and actual values (for real and personal property) used to compute the statutory and TABOR property tax revenue limits. (C.R.S 39-5-121 (2)(b) and 39-5-128,.) If applicable, upon receipt of the Certification of Valuation, submit to the Division certifications of service impact from increased mining production and/or from increased valuation due to previously exempt federal property which has become taxable. Certifications of impact are required if the value is to be excluded from the tax revenue limit. If applicable, apply to the Division for authorization to exclude from the limit the assessed valuation attributed to new primary oil or gas production from any producing land or leaseholds.

DATE	EVENT/ACTIVITY
October 15	Budget officer must submit proposed budget to the governing body. (C.R.S. §29-1-105) Governing body must publish "Notice of Budget" upon receiving proposed budget. (C.R.S. §29-1-106(1)).
November 1	Deadline for submitting applications to the Division for an increased levy pursuant to C.R.S. §29-1-302 and applications for exclusion of assessed valuation attributable to new primary oil or gas production from the 5.5% limit pursuant to C.R.S. §29-1-301 (1)(b).
December 10	Assessors' changes in assessed valuation will be made only once by a single notification (re-certification) to the county commissioners or other body authorized by law to levy property tax, and to the DLG. (C.R.S. §39-1-111(5)).
December 15	Deadline for certification of mill levy to county commissioners (C.R.S 39-5-128(1)). Local governments levying property tax must adopt their budgets before certifying the levy to the county. If the budget is not adopted by certification deadline, then **90 percent** of the amounts appropriated in the current year for operations and maintenance expenses shall be deemed re-appropriated for the purposes specified in such last appropriation. (C.R.S. §29-1-108(2) and (3)).
December 22	Deadline for county commissioners to levy taxes and to certify the levies to the assessor. Counties may delegate the certification duty to staff, and may certify the levies via written approval as opposed to formal resolution. (C.R.S. §39-1-111(1-3)).
December 31	Local governments not levying a property tax must adopt the budget on or before this date; governing body must enact a resolution or ordinance to appropriate funds for the ensuing fiscal year. If the budget is not adopted by certification deadline, then **90 percent** of the amounts appropriated in the current year for operations and maintenance expenses shall be deemed re-appropriated for the budget year. (C.R.S §29-1-108(4)).

LOCAL GOVERNMENT BUDGET LAW

The county fiscal year commences January 1 and runs through December 31 of each year. C.R.S. §29-1-102(9). The county budget process for the next fiscal year commences with preparation of the budget and is completed by the passage of a resolution adopting the budget and making appropriations on or before the mill levies certification deadline, December 22. C.R.S. §§§29-1-108, 39-1-111, 39-5-128 (1). See the Budget Calendar on page 5-2 and 5-3.

Appointment of a Budget Officer
The board shall appoint a person to prepare and submit the county budget to the board. C.R.S. §29-1-104.

Final Budget Authority
The board has exclusive and final power to prepare and adopt the budget and appropriation for all offices, departments, boards, commissions, and other agencies financed in whole, or in part, by county monies. C.R.S. §30-11-107(2). This provision also applies to district attorney's offices. Beacom v. Board of County Commissioners, 657 P.2d 440 (Colo. 1983).

Budget Officer to Prepare Budget
By a date determined by the board, each spending agency in a county is required annually to submit to a person designated by the board, such as the county budget officer, its expenditure and revenue estimates for the next fiscal year. Actual figures (e.g., audited figures) from the prior fiscal year and the estimated projected figures through the end of the current fiscal year must also be submitted. An explanatory schedule or statement classifying the expenditures by object and the revenues by sources shall also be included. C.R.S. §29-1-105. A separate preparation and submission of a supplemental schedule of information relating to outstanding lease-purchase agreements is also required. C.R.S. §29-1-103(3).

No later than October 15, the person appointed to prepare the budget is required to submit the proposed budget to the board. C.R.S. §29-1-105.

Notice of Budget
Upon receipt of the proposed budget, the board shall publish a notice containing the following information:

- The date and time of the hearing at which the proposed budget will be considered for adoption;
- The location of the public office where the proposed budget is available for public inspection; and
- A statement that any interested elector of the county may file objections to the proposed budget at any time prior to adoption of the budget.

If the board intends to request permission to exceed the 5.5% property tax revenue limit as provided in C.R.S. §29-1-302, notice must also be given of the amount of increased property tax revenues involved in the request.

For counties whose budget is over $50,000, notice is provided by publication in a newspaper having general circulation in the county. For counties whose budget is $50,000 or less, posting in three public places provides notice. C.R.S. §29-1-106.

Budget Adoption Required
Upon conducting a public hearing, which is frequently continued throughout the budget process in order to elicit public input, the board is responsible for adopting the ensuing year's budget. C.R.S. §29-1-103.

Prohibition on Deficit Spending
No budget shall provide for expenditures in excess of available revenues and beginning fund balances. C.R.S. §29-1-103(2).

Filing a certified copy of budget
A certified copy of the budget must be filed with the Division of Local Government by January 30. C.R.S. §29-1-113. A budget must be adopted by December 22nd if the county certified a levy, otherwise the budget must be adopted by December 31. C.R.S. §29-1-108(2).

Appropriations
Before the county mill levy is certified, the board must enact a resolution adopting the next year's budget. In a separate appropriating resolution, the amounts appropriated shall not exceed the expenditures specified in the budget. Appropriations are a separate spending limit made by fund or by department, as determined by the board. C.R.S. §29-1-108(2).

Should the board fail to adopt a budget before mill levy certification, then 90 percent of the amount appropriated in the current fiscal year for operations and maintenance shall be deemed reappropriated for the ensuing budget year. Should the board fail to make appropriations for the ensuing year by December 31, then 90 percent of the amount appropriated in the current year for operations and maintenance shall be deemed appropriated for the new budget year. C.R.S. §29-1-108 (3) & (4).

In summary, there are three separate and essential phases to county budgeting and spending: 1) adoption of the next year's budget; 2) appropriation to spend; and 3) certification of a mill levy to raise revenue. The last two phases are dependent upon the budget, and all phases must be completed in a timely manner.

A fourth requirement also must be met. A certified copy of the budget must be filed with the Division of Local Government within 30 days following the beginning of the fiscal year (by January 30). Failure to do so empowers the Division of Local Government to authorize the county treasurer to prohibit release of monies until the filing with the Division is complete. C.R.S. §29-1-113(3).

Changes to Budget, Supplemental Appropriations, Transfers
The board may transfer appropriated monies within and between funds and from one spending agency to another. Supplemental appropriations may be enacted in the event a county receives unanticipated revenues or revenues not assured at the time the budget was adopted. The board may revise a budget downward in the event revenues are lower than first anticipated. But in each case the notice and hearing requirements of C.R.S. §29-1-106 must be followed, which is the

same procedure followed during the adoption of the original budget. Copies of the authorizing ordinances or resolutions of supplementals or transfers are to be filed with the Division of Local Government.

Contingencies
County officers, employees, and spending agencies are prohibited from spending, or contracting to spend, more for any purpose than is provided for in the appropriations resolution. C.R.S. §29-1-110. However, the law does allow expenditures for contingencies, limited to those necessary to meet emergencies that could not have been reasonably foreseen at the time the budget was adopted. Many counties establish a separate Contingency Fund, or line item, for such emergencies. C.R.S. §29-1-111.

Under C.R.S. §29-1-111, the board must first pass a resolution setting forth the facts concerning the emergency, which must be recorded in the minutes of the meeting at which the resolution is adopted. A copy must be filed with the Division of Local Government.

Should an emergency occur for which there are insufficient funds, the board may expend money by obtaining a temporary loan, so long as the loan made thereby does not exceed a requirement of two mills for its repayment. C.R.S. §29-1-112.

No Liability Beyond Appropriation
Neither the board, nor any county officer, may contract, nor create any liability, unless a previously adopted appropriation provides for that expense. The board or any officer so doing shall be personally liable for any such excess indebtedness. C.R.S. §30-25-103.

No Exceeding Appropriation
Neither the board, nor any officer or employee of the county, shall make or contract to make county expenditures in any one year, anything over and above the amounts appropriated for the year, except that multiple year contracts may be entered into if otherwise lawful or if subject to annual appropriation. Contracts made in violation of these provisions are void. C.R.S. §29-1-110.

COUNTY ACCOUNTING LAW AND ACCOUNTING FUNDS

County Accounting Law
The "Colorado Local Government Uniform Accounting Law" charges the auditor of the state with development and publication of a "classification of accounts" for use by local governments. The state auditor is also required to provide assistance to all local governments in the installation of the uniform "classification of accounts" system. However, local governments are responsible for travel and subsistence expenses of the auditor's staff assigned to such ventures. C.R.S. §29-1-501 -- 505.

Annual Inventories Required
Real and personal property above a certain cost amount threshold must be inventoried. The local governing body is authorized to set the threshold, as long as it does not exceed the $5,000 amount set forth by the state controller. C.R.S. §29-1-506.

Accounting Funds

General Funds

The general fund is the major depository for monies to meet the operating requirements of the county government including those of the assessor, treasurer, clerk and recorder, sheriff, coroner, district attorney, county attorney and all other general governmental offices. Expenditures for welfare, roads and bridges, debt service, capital construction, contingencies and certain other items are from separate statutory funds and may not be made from the county general fund. County mill levies not directed to other special funds are credited to the general fund. All revenues received by the county not specifically allocated by law to other county "funds" must be deposited in this fund. C.R.S. §30-25-105 -- 106.

Airport Fund

The board is empowered, either for its own county, exclusively, or in company with any other city, county, or city and county in Colorado, to acquire, construct, improve, operate, and maintain a county airport and appurtenances. Appropriations for this purpose are to be made from the county airport fund which consists of monies appropriated thereto from the county general fund, plus registration fees and other monies from state, federal and local sources. Bonds for acquisition, construction or improvement of airports may be issued as other county bonds. The board may submit the question of indebtedness for an airport to the voters at a special election. C.R.S. §41-4-101 et seq. (esp. 41-4-113).

Bond Redemption Fund

The board may impose property taxes sufficient to pay annual debt service requirements. On and after the 10th year in the life of outstanding bonds, the board must annually levy a tax creating a fund equal to 10 percent of the whole amount of bonds issued. Tax revenues allocable to the payment of debt service on bonds are maintained in a "bond redemption" fund. C.R.S. §30-26-105.

Capital Expenditures Fund

The board may create this fund and deposit into it monies for expenditure for long-term additions, betterments, acquisitions, development, construction, etc., from any source (except monies received for bond redemption purposes and monies restricted to or required to be expended from the county road and bridge fund) unless otherwise prohibited by law. The board may levy a property tax to generate monies for this fund. Monies in this fund cannot revert or be transferred to any other fund. C.R.S. §30-25-202.

Capital Improvement Fund- Sales and Use Tax

This type of fund is created when sales and use tax revenues are to be pledged to the financing of a capital improvement. It operates like a capital expenditures fund in that moneys in the fund may be used only for capital purposes and may not be pledged or expended for any other purposes. C.R.S. §§29-2-11, 29-2-112.

Capital Improvement Trust Fund

The board has the authority to finance the acquisition, construction and improvement of public buildings and facilities through a "Capital Improvement Trust Fund." The board prepares guidelines for projects that can be funded through the trust fund. The board may appropriate monies for county projects; allocate to any political subdivision in the

county portions of the fund to assist in capital improvements; issue revenue bonds; and pledge trust fund monies to the payment of principal and interest on any bonds issued pursuant to these provisions. C.R.S. §30-26-501 et seq.

Conservation Trust Fund/Lottery Monies
Each county may create a "Conservation Trust Fund" which shall share in the proceeds of the state's conservation trust fund. A county must have such a fund in order to share state conservation trust monies currently derived from lottery revenues.

The Division of Local Government shall annually determine counties eligible for participation in proceeds from the state conservation trust fund and make distributions to them. If a city's share from the fund is less than $20, that share shall be credited to the county and used by it for the benefit of the city as determined by the BOCC. All monies received from the state fund shall be credited to the local government's conservation trust fund and may be used only for acquisition, development, and maintenance of new conservation sites, or for capital improvements or maintenance for recreational purposes on any public site. No other money, besides conservation trust fund monies and its associated earned interest shall be deposited in the fund. Participating local governments may contract with other governmental or political subdivisions in expending monies available for these purposes. The Division of Local Government shall supply forms on which the county and other eligible governments shall annually report the amount of state monies in their conservation trust funds, and all expenditures and encumbrances there from, since the previous report. C.R.S. §29-21-101.

Contingent Fund
The board may create a contingent fund and make an annual tax levy to finance a reserve to meet costs resulting from circumstances that could not have been foreseen at the time the budget was adopted. C.R.S. §§30-25-107, 29-1-111 -- 112.

County Hospital Fund
The board of a county of at least 3,000 population may establish a public hospital and levy up to three mills for the acquisition and maintenance of a county hospital, upon a vote of the electorate favorable to such an action. Counties of less than 3,000 population may levy up to five mills and apply 5 percent of their General Fund budget to hospital purposes. Boards are empowered to issue bonds for acquisition of hospital facilities, or for their construction or maintenance. Governance of such hospitals is by the board of public hospital trustees. C.R.S. §25-3-301 et seq.

Judgment Levy Fund
Judgments against the county or any of its officers acting in their official capacity shall be paid from monies available, and not otherwise encumbered, within an appropriate fund of the county treasury. Should available resources be inadequate, execution of the judgment shall await the imposition of a levy, not to exceed 10 mills for all judgments ordered, against all property within the county. Collection of up to 10 percent more than the judgment does not invalidate such levies. C.R.S. §30-25-104.

Public Library Fund

With voter approval, the board may make a levy for the establishment and maintenance of a county or regional library system and deposit the proceeds in a public library fund. If the levy for a library district is greater than 2.5 mills, upon reassessment the mill levy shall be reduced to prevent raising revenue in excess of that allowed by C.R.S. §29-1-301. C.R.S. §24-90-112.

Road and Bridge Fund
Please see the section below on Road and Bridge Finance Issues.

Social Services Fund
The board shall maintain the county social services fund, and levy taxes on property to defray its share of the administrative costs of the state welfare program. The board is limited to maximum levies, in accordance with per capita valuation for taxation, as follows:

Per Capita Assessed Value	Presumed Maximum Welfare Levy
1,400 - 1,600	4 mills
1,600 - 2,000	3.5 mills
2,000 - 2,600	3 mills
2,600 +	2.5 mills

While statutes appear to limit county social services levies to the levels shown, judicial opinion requires the board to impose nearly unlimited excess property tax levies to make up any deficit in the county's share of program costs. Colorado State Board of Social Services v. Billings, 487 P.2d. 1110 (1971).

Nevertheless, statutes limit county liability to 20 percent of total local welfare costs. The board may also seek approval of the Division of Local Government for levies in excess of the maximums noted above. C.R.S. §26-1-122 et seq.

Solid Waste Fund
The board may establish a solid waste disposal fund to finance the operation of a solid waste disposal district created under C.R.S. §30-20-201 et seq., and may assess up to .5 mills on property therein to raise revenues. C.R.S. §30-20-203.

Expenditure of Funds

Presentation and Approval by Board
Claims must be presented for audit and approval by the board. If allowed, they are paid by warrant drawn on the county treasury. C.R.S. §30-25-110.

Appeal of Disallowance – Procedure
A claim, either wholly or partly disallowed by the board, may be appealed to the district court having jurisdiction, by service of a notice of such appeal on the clerk to the board within 30 days after denial. The appellant must file a bond with the clerk, with adequate security, to assure payment of all costs adjudged against the appellant. C.R.S. §30-25-112.

The clerk, on receipt of notice of appeal, shall notify the chair of the board and file the board's decision, together with all papers and the required appeal bond, with the clerk of the district court for docketing and trial. C.R.S. §30-25-113.

Method of Payment
Claims presented and approved by the board, shall be paid by a county warrant or order drawn by the board on the county treasury. It is the responsibility of the board to ensure such warrants or orders are drawn upon the proper fund and that there are sufficient funds in the account from which monies are withdrawn to pay such warrants. The warrant or order must identify the fund on which it is drawn and the amount of the claim. The warrant or order must also bear the signature of the chair of the board and be attested by the county clerk. Warrants must be dated and serially numbered according to their date of issue. The board may direct the treasurer to pay claims against the county by electronic transfer. C.R.S. §30-25-110.

Publication of Claims, Financial Statement and Salaries
The board must publish in a legal newspaper in the county a report of each claim and expenditure allowed and paid each month. The board also must publish the semi-annual financial statement furnished to the board by the treasurer showing each beginning fund balance, collections from current taxes, delinquent taxes, miscellaneous collections and transfers, withdrawals, transfers and treasurer's fees and the ending balance. Publication must be within 60 days at the end of the months of June and December. Lastly, the board must publish the salaries and titles of all county employees twice annually in a legal newspaper. The county clerk, or the county accounting agency, shall furnish all information required for the published reports. C.R.S. §30-25-111.

COUNTY REVENUE SOURCES AND FINANCING METHODS

Local Revenue Sources

Property Tax
Property taxes are the primary source of revenue for county government in Colorado. Property taxes are determined in each county based on the mill levies set forth by various taxing entities (the county, school districts, special districts, etc.). A mill levy is a rate at which property is taxed. One mill generates one dollar in taxes for every $1,000 in assessed valuation. (NOTE: Section 3.5 of Article X of the Colorado Constitution gives an exemption for qualifying senior citizens and disabled veterans. The exemption also applies to a surviving spouse who takes possession of a qualifying residence of a deceased disabled veteran and the owner or a surviving spouse who is displaced by a natural disaster that destroys their qualifying residence. C.R.S. §39-3-201 et seq.)

In Colorado, there are currently two existing property classes – non-residential and residential. 'Non-residential' includes agricultural, industrial, oil & gas, commercial and vacant lands. 'Residential' includes multi family housing and all other residential properties.

In 2021, SB21-293 created subclasses within these two classes. The creation of subclasses allowed the legislature to grant temporary assessment rate reductions that will be in effect for two years. Local mill levies are then applied to each properties' taxable value to determine taxes owed.

Type of Property		Assessment Rates – for 2022 & 2023	Assessment Rates – 2024 & thereafter
Non-residential	Hotels, motels and B &Bs – 'lodging properties'	29%	29%
	Renewable Energy Production	26.4%	29%
	Agricultural Property	26.4%	29%
	Commercial, Vacant, Industry	29%	29%
	Oil & Gas	87.5%	29%
Residential	Multi-family housing (i.e. apartments)	6.80%	7.15%
	All other residential property	6.95%	7.15%

No later than December 15, all taxing entities except the county shall certify their levies to the board, unless an election to increase the property tax is being held, pursuant to C.R.S. §29-1-302. No later than December 22, the board (or their authorized designee) shall certify the levies for all taxing entities in the county's jurisdiction and shall levy all taxes. C.R.S. §39-1-111(1). As noted, the board must have adopted the budget prior to certifying the levy pursuant to C.R.S. §29-1-108. C.R.S. §§§29-1-302, 39-1-111 and 39-5-128.

Valuation figures (including the actual value of new construction and destroyed improvements, as well as additions to and deletions from taxable property) are certified to the county and other property taxing entities within the county by the assessor each year. C.R.S. §§39-5-121 (2), 39-5-128. The assessor is required to notify the county commissioners of any changes in valuation for assessment or total actual value within the county in a single notice prior to December 10. Upon receipt of this notification, the commissioners are required to make appropriate adjustments to the county's tax levies in order to ensure there is no violation of the 5.5 percent limit (discussed below).

County property tax levies are restricted by several limitations, each independent of the others. In the absence of any specific statutory or judicial direction, the common practice is to calculate all three, and lower levies to stay within the limitation that derives the least revenue (i.e., is most restrictive).

1. **TABOR Mill Levy Rate Limit** – A provision in the Taxpayer's Bill of Rights (TABOR) amendment (CO Const. art. X, §20(4)(a)) dictates that this year's levy cannot exceed last year's levy without first having held an election. The result of this in counties where assessed values are declining and there has been no election authorizing a mill levy increase, is that

revenues decline as well. For more information on TABOR, please turn to the end of this chapter.

2. **TABOR Property Tax Revenue Limit** – TABOR also features a property tax revenue limit (CO Const. art. X, §20(7)(c))limiting the percentage increase in revenue from a county's mill levy to **inflation** plus **local growth.** "Inflation" is defined as the percentage change in the Denver-Boulder Consumer Price Index of the previous year, a number that is defined by the U.S. Bureau of Labor Statistics in March.

   "Local Growth" is the percentage change in actual value of all real property from construction of taxable real property improvements, minus destruction of similar improvements, plus additions to and minus deletions from taxable real property. As noted above, all of these figures are certified to the county by the assessor each year and the last update must occur by December 10.

3. **5.5 Percent Limit** – The 5.5 percent property tax revenue limitation has been in state statute for many years. C.R.S. §29-1-301 -- 302. It limits the annual growth of revenue from the mill levy to a 5.5 percent increase over the previous year. This limit allows for an additional amount for growth, such as new construction, and in certain cases tax-exempt federal property that has become taxable. Increases in production of oil and gas properties and producing mines are also considered. The Division of Local Government is responsible for monitoring compliance with this limitation and sends each county their calculation of the limit each year. The Division also sends each county a calculation of the 5.5 percent limit for each taxing jurisdiction within the county, so that those counties who wish to can monitor their own municipalities and districts' levies.

Each of these limits can be changed or waived with voter approval pursuant to TABOR in the case of those limits and pursuant to statute in the case of the 5.5 percent limit.

The Division of Local Government produces forms officials can use to calculate these limits in a fairly simplistic way. They are also included within the "Financial Management Manual," a guide for local governments published by the Office of the State Auditor.

Airport Revenue Bonds
The board, in connection with acquisition of, and improvements to, airports and airport facilities, may finance the same by issuing revenue bonds pledging receipts from landing fees, rentals, concessions and other sources for retirement of the bonds. The decision to issue such bonds does not require an election because the bonds do not constitute a debt for purposes of aggregated debt limitations established by law, or for purposes of pledging general revenues of the county. C.R.S. §41-5-101 -- 102.

Anticipation Warrants
The board may acquire, construct, or reconstruct any public project, through the use of proceeds from anticipation warrants. The warrants may be issued following and in

accordance with the terms of a resolution identifying the project, its costs, the amount of warrants to be issued and their maximum interest rate. C.R.S. §30-20-303 -- 305.

The maximum interest rate may not exceed a net effective rate established prior to the sale or issuance of the warrants. Anticipation warrants do not constitute a debt for purposes of debt limits. Industrial Building and Loan Association v. Knight, 224 P. 216 (1924).

Business Personal Property Tax (BPPT)
Almost all counties rely, to varying degrees, on revenue generated from the business personal property tax. Business personal property generally consists of any equipment that is used in an income-generating enterprise. It includes machinery, furniture, and computers as well as cable, pipelines, utility and phone lines and similar assets. Like property tax, a local government's mill levy is applied to business personal property to determine the business' annual tax liability.

Businesses with personal property inventories valued at $50,000 or less for tax years 2021 and 2022 are exempt from paying BPPT. After 2022, the exemption will be adjusted every two years based on an inflation factor. The state general fund reimburses local governments for the lost business personal property tax revenue that will occur due to this 2021 policy change. If state general funds are eliminated, the exemption amount is reduced to the level it existed at in 2020, adjusted for inflation.

C.R.S. §39-3-119.5. Additionally, in tax year 2019 and beyond, businesses can claim an income tax credit on the first $18,000 of actual business personal property they own. C.R.S. §39 -22-537.

Cigarette, Tobacco Products or Nicotine Products – Special Sales Tax
Counties can seek voter approval for a special sales tax on cigarettes, tobacco products or nicotine products. C.R.S. §39-28-112. A counties' special tax applies to sales in the unincorporated area and in municipalities where there is no special sales tax on the sale of these products. Many counties that have this special sales tax have entered into an intergovernmental agreement with their municipalities to apportion the tax revenue fairly among all local governments. Collection, administration, and enforcement requirements for this tax lies with the local government and not with the Colorado Department of Revenue. C.R.S. §39-28-112 (6)(a).

County Loans for Public Infrastructure Projects
The board, in consultation with the county treasurer, may loan unencumbered county funds to other governmental entities (special districts, schools, etc.) for infrastructure projects. Infrastructure projects can include the construction, maintenance or repair of transportation and recreational infrastructure. Prior to making such a loan, the county must require the loan recipient to first pursue private sector options, establish the terms and conditions of the loan including the payment of interest and adopt underwriting standards. C.R.S §30-25-106.5

Fees/Interest
There are a variety of fees that can be assessed pursuant to statute for various activities of agencies of the county government. In general, fees are assessed for particular services and

the money collected is typically earmarked for that service. Fees may include those for: 1) adoption reports; 2) the sheriff's service of process; 3) the treasurer's collection of property tax receipts for other taxing entities than the county; 4) the clerk and recorder for a variety of activities; 5) real estate transactions supervised by the public trustee; and 6) the board, itself, for its licensing and regulatory activities.

Fees collected are generally set by statute or are set by the board within statutorily prescribed limits and are usually (although not always) credited to the general fund.

In addition, interest on the proceeds of investments made by the county treasurer is generally credited to the county general fund, unless otherwise required by law.

General Obligation Bonds

The board may issue general obligation bonds to pay for acquisition, construction, reconstruction or major repair of airports, buildings, mass transit systems or roads or bridges. Indebtedness may not exceed 3.0 percent of actual value. Such bonds require approval of the electorate at a general or special election and may not run for more than 20 years. General obligation bonds of the county must be registered by the county and must bear the county seal and a serial number, and must state their face value (which may not be smaller than $50 and must be in multiples of $50 for larger denominations). C.R.S. §30-26-301 et seq.

Lease-Purchase Authority

The board is authorized to enter into lease-purchase agreements to provide financing for a courthouse, jail or other county building and equipment used, or to be used, for governmental purposes. The agreement may include an option to purchase, transfer or acquire title to such property, but may not exceed 30 years. C.R.S. §30-11-104.1 and 104.2.

The obligation to make payments under such an agreement and the obligation to pay other charges incident to such an agreement do not constitute indebtedness within any constitutional, statutory, or home rule charter debt limitation.

Property financed pursuant to a lease-purchase is exempt from taxation as long as it is used for governmental purposes. C.R.S. §30-11-104.2.

Lodging Tax

Counties are also able to collect an excise tax on lodging services including hotels, motels, condominiums, and camping spaces. The use of the revenues generated by a lodging tax is limited to tourism marketing activities. Subsequently, the lodging tax is collected almost exclusively in those counties that depend on tourism (rural resort regions, etc.). The tax is remitted quarterly on Form DR 1385, "County Lodging Tax Return." C.R.S. §30-11-1075.

Refunding Bonds

The board may issue refunding bonds without an election when there are not funds available for payment of outstanding bonds. The term of refunding bonds may run for 25 years, and the first maturity shall not occur later than five years from the date of issue. C.R.S. §30-26-401 et seq.

Retail Marijuana Excise Tax
Counties may seek voter approval for an excise tax on retail marijuana. The tax may not exceed 5%. It applies on the first sale or transfer of unprocessed retail marijuana from a cultivation facility to a retail product manufacturing facility, a retail store, or another retail cultivation facility. The tax can be collected throughout the county except in instances where a municipality has adopted its own retail marijuana excise tax. Counties, not the Colorado Department of Revenue, are responsible for administration, collecting and enforcing their marijuana excise tax. C.R.S. § 29-2-114

Revenue Bonds
The BOCC is permitted to issue revenue bonds (repayment of which is guaranteed from specified revenue sources other than the general property tax) by specific statutory enactment. Examples (not all-inclusive) of specifically permitted revenue bonds are:

- Airport revenue bonds C.R.S. §41-5-101 et seq.;
- Capital improvement trust fund bonds C.R.S. §30-26-501 et seq.;
- Local improvement district bonds C.R.S. §30-20-601 et seq.;
- Public project warrants (bonds) C.R.S. §30-20-301 et seq.;
- Sewer and water district bonds C.R.S. §30-20-401 et seq.; and
- Sales tax revenue bonds C.R.S. §29-2-112.

Sales Tax
Sales taxes, while collected in many counties, are primarily a municipal revenue source. It is, however, becoming increasingly important for counties. Sales tax is collected at the point of delivery (aka destination-based sourcing). It is also collected on remote sales from vendors with more than $100,000 of retail sales into the state per year. C.R.S. §39-26-102 (3)(c).

The BOCC, or five percent of the registered voters by petition, may refer the question of a countywide sales tax to voters at a general or special election. If properly referred or initiated, the issue must be submitted to the voters at the next general election or sooner if the general election is more than 120 days after adoption of the resolution or certification of the petition. The text of the proposal must be published by the county clerk four times in an official county newspaper. If the tax proposal is defeated, the issue may not be resubmitted for a period of one year and 350 days. C.R.S. §29-2-104(7).

The tax shall be collected at no charge by the Colorado Department of Revenue and remitted monthly to the county. Personal property registered outside of the county in which a sale occurs, owned by a non-resident of the county, is exempt from a county sales tax. C.R.S. §§29-2-105(1)(e), 29-2-106(3).

Use Tax
Counties may also collect a use tax. In Colorado, a counties' authority to collect a use tax is limited to construction and building materials and motor vehicles. The purpose of a use tax is to equalize competition between in-county and out-of-county vendors making wholesale purchases. If a county has a use tax on construction and building materials, for example, a vendor is required to pay use tax on the building materials purchased outside of the county

and used within the county. When this circumstance occurs, the county sales tax is not collected. C.R.S. §29-2-109.

State Revenue Sources

Cigarette & Nicotine Taxes

For local governments that do not have their own special sales tax on cigarettes, twenty-seven percent of the state's cigarette tax revenue is rebated to local governments. A percentage of this amount is rebated to each county, based upon the state sales tax revenues collected in the unincorporated area of the county compared to state sales tax revenues in the state as a whole. Municipalities also share state cigarette tax revenue on the same basis. C.R.S. §39-22-623.

In 2020, voters agreed to gradually increase the sales tax on cigarettes from 84 cents to $2.64 by 2027. They also agreed to gradually increase the tax on all other tobacco products from 40% of the price to 62% of the price by 2027 and to tax nicotine products (like e-cigarettes) at 62% of the price by 2027. In response to concerns that these higher prices would result in reduced consumption and therefore reduced tax receipts for state and local governments, a portion of the revenue from the tax increase was set aside for state and local governments for any health-related purpose. Colorado Constitution, Article X, Section 21. Funding from the voter-approved 2020 increases will support a litany of programs including K-12 education, housing, preschool programs, tobacco education and health care programs C.R.S. §39-28-401.

Courthouse Assistance Funds

Two funds currently exist to provide support to courthouses with building and security infrastructure, staffing, and training. The Court Security Cash Fund Commission, issues grants each year to counties to use for ongoing security staffing, equipment costs, training of local security teams, and emergency court security needs. C.R.S. § 13-1-201 et. seq. This grant is available to all counties, but awards are prioritized based on financial need. The Underfunded Courthouse Facility Cash Fund Commission, C.R.S. § 13-1-301 et. seq. awards grants to counties for commissioning master planning services, serving as matching funds or leveraging grant funding opportunities, or addressing emergency needs due to the imminent closure of a court facility as designated by the state court administrator. This grant is limited to counties that are designated as "underfunded" by the Office of the State Court Administrator.

FASTER Revenues

In 2009, the General Assembly passed the Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act as way to increase transportation revenues in order to address structurally deficient bridges and highway safety issues. The act established a number of new surcharges and late fees on vehicle registration, a portion of which is transferred to counties using the same formula as HUTF (above). C.R.S. §43-4-801 et seq. FASTER revenues that come to the county are to be used only for county road safety projects. C.R.S. §43-4-207.

Gaming Monies – Local Government Limited Gaming Impact Fund

In November of 1990, Colorado voters approved a constitutional amendment to allow limited-stakes gaming in the mountain communities of Cripple Creek, Black Hawk and

Central City. In passing the Limited Gaming Act of 1991, the General Assembly created the Contiguous County Limited Gaming Impact fund to address off-site impacts of gaming in counties bordering Teller and Gilpin Counties. This fund was later expanded to include those counties bordering Indian lands on which gaming is being conducted. This fund sunsetted in 1998 and was replaced with the Local Government Limited Gaming Impact Fund. Monies from the fund are available to the following counties: Boulder, Clear Creek, Grand, Jefferson, El Paso, Fremont, Park, Douglas, Gilpin, Teller, La Plata, Montezuma, and Archuleta. C.R.S. §12-47.1-1601.

In 2008, statewide voters approved an initiated measure allowing the residents of Colorado's gaming communities to extend casino hours, approve additional games and increase the maximum single bet limit. The measure also added community colleges as an eligible recipient of the new gaming revenue.

Great Outdoors Colorado (GOCO) Trust Fund
The state board of the Great Outdoors Colorado Trust Fund awards a portion of Colorado lottery proceeds to park, open space, wildlife, and outdoor recreation projects through a competitive grant application process. Municipalities and counties are eligible to apply for funds in five different grant program areas:

- Local government parks, outdoor recreation, and environmental education facilities;
- Open space;
- Planning and capacity building;
- Trails; and
- Legacy projects, which combine several of the project types.

In addition to these grant programs, the state board awards outdoor recreation grants through the Colorado Division of Parks and Outdoor Recreation and species and habitat protection grants through the Colorado Division of Wildlife. Colorado Constitution, Article XXVII; C.R.S. §33-60-101 et seq.

Highway Users Tax (Trust) Fund (HUTF)
Counties receive monies from the state Highway Users Tax Fund, into which all motor fuel excise taxes, other motor vehicle-related taxes collected by the state and certain other state revenues are deposited. Counties receive a share determined by the statutory guidelines in C.R.S. §43-4-205 and 207. County shares must be deposited in the county road and bridge fund and be used for highway or transit related purposes. C.R.S. §43-4-201 & 202 et seq. (See also Road and Bridge Finance Issues below).

Impact Assistance Grants and State PILT
In any county in which the Division of Wildlife or Division of Parks and Outdoor Recreation owns property, the BOCC may certify once a year, to the wildlife commissioner or to the Board of Parks and Outdoor Recreation, the current dollar amount representing the negative financial impact which such ownership has on the county's expenditures. State statutes refer to these payments as "payments-in-lieu-of-taxes" or PILT. If the property was acquired by the state agency with GOCO funds,

GOCO is responsible for a portion of the payment. C.R.S. §§30-25-301 and 302, 33-60-104.5.

Law Enforcement Activities/Grants

- **Drunk Driving Fines**

  Fifty percent of all drunk driving fines from incidents occurring in the unincorporated area of a county shall be transmitted by the imposing court to the county treasurer (presumably for deposit in the general fund). C.R.S. §42-1-217 (1)(d).

- **Drunk Driving Convictions**

  A $15 fine shall be paid by all persons convicted of (or given deferred sentence to) alcohol-related driving offenses and shall be deposited to the treasury of the county (presumably the general fund) in which the conviction (or deferred sentence) took place. C.R.S. §43-4-402.

- **Gray & Black Market Marijuana Enforcement Grants**

  Grants are available to local law enforcement agencies and district attorneys to cover investigation and prosecution costs associated with unlicensed marijuana cultivation or distribution. C.R.S. §24-32-119.

- **Law Enforcement Assistance Fund for the Prevention of Drunken Driving**

  Thirty percent to 50 percent of the monies in this fund are to be allocated by the office of transportation safety to counties that have established a qualified drunken driving prevention and law enforcement program, and the balance to municipalities (including Denver) that have established such programs, for funding improved enforcement of drunken driving laws. C.R.S. §43-4-404.

- **Law Enforcement Community Services Grant**

  Grants are available to all local governments, law enforcement entities, and community organizations for services to the community through policing; community outreach; drug intervention, prevention, treatment, and recovery; technology; and training. The amount available in the grant will vary based on the money collected from civil forfeiture activity each year. C.R.S. §24-32-124.

- **Law Enforcement Assistance Grant**

  Grants are only available to local governments and law enforcement entities that participate in civil asset forfeiture. The purpose of the grant is to reimburse local governments and law enforcement that lose revenue as a result of limitations imposed on the receipt of forfeiture proceeds. C.R.S. §§16-13-306.5, 16-13-504.5. The funds can be used for any purpose permissible under federal equitable sharing guidelines. C.R.S. §24-33.5-522.

- **Peace Officers Mental Health Support Grant Program**

  Grants are available to local law enforcement agencies to engage mental health professionals who can provide on-scene response services to support peace officers' handling of persons with mental health disorders, and counseling services to peace officers. C.R.S. §24-32-3501.

Specific Ownership Tax

Each county and political subdivision within the county levying a property tax receives a statutorily-prescribed portion of the specific ownership tax collected upon registration or re-registration of a motor vehicle within that county, after a statutory collection fee is

deducted. Revenues are deposited into the general fund or the road and bridge fund. C.R.S. §42-3-107 (See also Road and Bridge Finance Issues).

Federal Revenue Sources

Grazing Receipts

The federal Taylor Grazing Act of June 28, 1934, provides for a payment to states of 50 percent of the money collected from grazing fees on Taylor grazing lands. As amended (48 Statute 1269; 43 U.S.C. 315i) the monies are distributed to counties in which grazing lands are situated. There is no restriction on the use of the money. However, it is generally used for rangeland improvements.

In 1986, the General Assembly passed SB 86-41, implementing federal amendments to the Taylor Grazing Act. Monies received by the state treasurer are deposited into a clearing account. Monies from this clearing account are then paid to range improvement funds in counties in which grazing districts are located. Monies in county range improvement funds may be expended for range improvements and maintenance, predatory animal control, rodent control, poisonous or noxious weed exterminations, the purchase or rental of land and water rights, the general welfare of livestock grazing within the district or any other similar purpose. C.R.S. §35-45-101 et. seq.

Payment-In-Lieu-of-Taxes (PILT)

The Payment-In-Lieu-of-Taxes (PILT) Act of 1976 (as amended, 31 U.S.C. 6901-6907) authorizes the U.S. Secretary of the Interior to make payments to local governmental units on the basis of the number of qualifying federally-owned acres situated in the unit's jurisdiction. These payments are calculated and distributed by the Department of the Interior's Bureau of Land Management, to the states for automatic and unimpeded distribution to counties where federally owned land is located.

PILT does not provide the full tax equivalent of privately owned land. The initial PILT authorization in 1977 was not increased until 1994. Since that time, funding has steadily increased – due in large part to lobbying efforts by public lands counties in the Western United States. In 2015, the PILT Program will be fully funded at $372 million. PILT payments remain uncertain as Congress annually debates the longevity of the funding.

A board whose county receives federal PILT payments may, at its discretion, appropriate money from the payments to public school districts containing lands from which such payments are derived. C.R.S. §30-25-106(2).

There is also state PILT paid to counties by GOCO for lands acquired by state agencies using GOCO funds. This is a separate concept discussed briefly in the state revenue sources section.

National Forest Receipts

Prior to 2000, counties with federal forest lands received annual payments from the Federal Government representing 25% of the revenues generated by the U.S. Forest Service for the federal forest lands in the county. These revenues were derived from activities like logging sales, leases for ski areas and fees from other recreation activities.

In 2000, Congress passed the Secure Rural Schools and Community Self-Determination Act, in order to stabilize forest receipt payments to counties and decouple the payments from relying directly on logging activities. This legislation allows counties to choose between the traditional 25% payment plan or opt for the average of the county's three highest payments between 1986 and 1999 ("full payment amount"). If counties choose the full payment amount, and that amount is greater than $100,000, they must allocate 15-20 percent for special projects on federal lands ("Title II Projects") and/or for investments in county projects ("Title III Projects"). Title II investments require the county to participate in a Resource Advisory Committee with environmental, commodity and local representatives to determine how project money is allocated. Regardless of which payment plan a county chooses, statute requires counties receiving forest receipts to divert at least twenty-five percent of these payments to local public schools and a like amount to the county road and bridge fund. Counties may allocate less than twenty-five percent to the county road and bridge fund in order to maximize a county's PILT allocation. The remaining 50% must be negotiated by a group of three county commissioners and three school district representatives. It should be noted that in years when the national forest payments for the entire state are less than $6 million, commissioners and school district representatives must negotiate the allocation of the entire payment between the county road and bridge fund and the public school districts within the county. C.R.S. §30-29-101.

Full funding for PILT and the reauthorization of the Secure Rural Schools Act is constantly debated by Congress. Any future funding for either program at this time remains uncertain.

Joint – Federal and State – Revenue Source

Mineral Revenues to Local Governments

In 1977, the Colorado General Assembly enacted two separate acts that govern the distribution of 1) royalties from mineral leasing on federal lands and 2) the state severance tax on mineral production throughout the state.

While these distribution formulas have evolved over the years, local governments, including counties, are a primary beneficiary. Localities receive money from these two revenue streams as direct payments under the formulas described below, and through grants and loans from the Department of Local Affairs (DoLA) accounts created under the Local Government Energy and Mineral Impact Program.

Federal Mineral Leasing Funds

Revenues collected by the federal government from leases of oil, gas, coal, and other minerals are returned to the State Treasurer to be distributed under a formula set in state statute. C.R.S. 34-63-102. The statute requires the funding to be used by state agencies, public schools, political subdivisions of the state and higher education.

Prior to SFY 2009, the state relied on a complex "cascade formula" to distribute federal mineral lease revenues to eligible beneficiaries. The old "cascade formula" grouped FML rents, royalties, earnings, and bonus payments together and then distributed the total through a series of tiers. The current formula distributes FML rents, royalties, and earnings differently than it does bonus payments. An explanation of both distribution formulas follows.

FML Rents, Royalties and Earnings

In general, rents, royalties and earnings are split 60/40 with K-12, the Colorado Water Conservation Board (CWCB) and the Higher Education Capital Fund receiving the 60% share and DOLA receiving the 40% share. More specifically, the 60% share is distributed as follows:

1.) K-12 receives no more than $65 million/year until SFY 2011. Then, beginning in SFY 2012, the K-12 allocation grows by 4% each year above the amount granted to K-12 in SFY 2011.
2.) CWCB receives no more than $14 million in SFY 2009. Then, beginning in SFY 2010, the CWCB allocation grows by 4% each year above the amount granted to CWCB in SFY 2009.
3.) Higher Education receives the balance of what remains after K-12 and CWCB receive their share.

The 40% share is distributed as follows:

1.) The DOLA grant program receives 50% of this share. Grants are distributed giving "priority to those communities most directly and substantially impacted by production of energy resources on federal mineral lands and to grant applications that: a) are submitted jointly by multiple local governments or b) seek funding for a project that is a multi-jurisdictional project or that requires a substantial amount of funding." CRS 34-63-102 (5.4) (b).

2.) DOLA direct distribution receives 50% of this share. This funding is distributed statewide and then a sub-county distribution occurs.

a. The statewide distribution is based on two factors i.) FML revenues derived from the county and ii.) employee residence. DOLA establishes the weights for these two factors.

b. The sub-county distribution is based on three factors i.) employee residence; ii.) population and iii.) road miles. DOLA, in consultation with the Energy Impact Assistance Advisory Committee, establishes the weights for each of these three factors. Alternatively, a county and all municipalities residing in that county can offer an alternative distribution which weighs each of these factors differently than that which is offered by DOLA and the Energy Impact Assistance Advisory Committee.

For the sake of simplicity, the above 60/40 split description uses rounded numbers. There is also a small percentage of FML rents, royalties and earnings which goes to school districts in counties that receive direct distribution payments. For SFY 2009, these school districts receive no more than $3.3 million. Then, beginning in SFY 2010, this allocation grows by 4% each year above the amount granted to school districts in SFY 2009.

Bonus Payments

FML bonus payments are split 50/50 between Higher Education and the Local Government Permanent Fund. Specifically, the 50% share that goes to higher education is parceled out as follows:

1.) Higher Education Revenue Fund receives up to $50 million/year. The primary purpose of this fund is to finance higher education capital construction projects, especially those located in communities that are substantially impacted by energy production or conversion.

2.) Higher Education Maintenance and Reserve Fund receives the balance of the bonus payments above $50 million. Interest and income generated by this fund can be used for controlled maintenance projects.

The 50% share that is channeled to the Local Government Permanent Fund may, at the discretion of the General Assembly, be distributed to DOLA for direct distribution payments when total FML receipts (rents, royalties, earnings and bonus payments) are projected to be 10% lower than the preceding fiscal year.

It should be noted that some of the FML revenue received by county governments is included as a deduction in the federal Payment-in-Lieu-of-Taxes (PILT) payment calculation each spring.

State Severance Tax

The state imposes a tax on oil, gas, coal, and some metal production within Colorado. Half of these funds go to support the operating budgets of the State Department of Natural Resources. The other half is deposited in the Local Government Severance Tax Fund and is distributed annually by the Executive Director of DOLA via grants and direct distribution payments.

According to statute, 30% of the severance tax revenue credited to the Local Fund is required to be distributed directly to counties and municipalities. Direct distributions to localities are determined using a statewide distribution formula followed by a sub-county distribution formula. The statewide direct distribution formula takes into account employee residence, well permits, and overall mineral production. Employee residence well permits, and mineral production are each weighted at 30%. DOLA, in consultation with the Energy Impact Assistance Advisory Committee, can determine how to apportion the remaining 10% among these three factors or some other factor. After the statewide allocation is determined, sub-county distributions are made using the following three factors: 1.) employee residence; 2.) population and 3.) total road miles. The Energy Impact Advisory Committee is charged with assigning weights to each of these three factors. However, a county and all municipalities residing in that county can offer an alternative distribution which weighs each of these factors differently than that which is offered by DOLA and the Energy Impact Assistance Advisory Committee.

The remaining 70% of the funds in the Local Government Severance Tax Fund are distributed as project grants and loans "to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels" subject to severance taxation. This funding must be "used for the planning, construction, and maintenance of public facilities and for the provision of public services." Provision is also made in statute for loans for sewer and water projects. C.R.S §39-29-110.

Local Government Energy and Mineral Impact Assistance Grants and Loans Program in the Department of Local Affairs

The revenues from both the federal mineral lease and state severance tax that go into the DOLA are deposited and administered together as the Energy and Mineral Impact Assistance program. Applications from local governments for these project grants and loans are reviewed by the department. Field staff in the department provides application assistance. Applications are reviewed by a twelve-member advisory committee who meet to consider applications. The executive director of DOLA makes final funding decisions. Grants can be used to fund a large variety of projects, including water and sewer improvements, road improvements, construction/improvements to recreation centers, senior centers and other public facilities, fire protection buildings and equipment, and local government planning. Loans are available only for sewer and water projects.

More information on the grant/loan program and the mineral revenue distribution formula can be found on DOLA's website.

ROAD AND BRIDGE FINANCE ISSUES

The board shall create a road and bridge fund and may levy taxes on all property for the purposes of construction, maintenance and administration of county roads and bridges. Fifty percent of the tax collections realized from that portion of assessed valuation within city or town limits in each county shall be returned to each such city or town, either in cash or in its equivalent value of work or materials. The board may provide additional money, materials, or work to a city at its option. The county road and bridge fund shall also be the repository for all state and federal payments to the county for road and bridge purposes. C.R.S. §43-2-202 -- 203. A board may not appropriate monies from the county general fund for purposes related to roads, highways, or bridges. The only exception to this prohibition occurs in instances of a governor declared natural disaster when additional dollars may be needed to fix destroyed roads and bridges. C.R.S. §30-25-106. Administrative expenditures cannot exceed five percent. C.R.S. §43-4-207(1). For more information on road and bridge finance issues, please see Chapter 8.

County Financing Mechanisms

Anticipation Warrants

A board may issue county highway anticipation warrants to obtain funds for constructing and maintaining roads and highways in those counties where there may be an oil or gas-producing well located.

When a board determines anticipation warrants are necessary, it may order their issue. However, value of the warrants may not exceed 10 percent of the then-assessed value of all property in the county and must be repayable within 10 years from the date of issue. They may not bear interest in excess of 4 percent. They must be issued at not less than par value. Monies held in the county highway anticipation warrant retirement fund may not be used for any other purpose. The BOCC shall allocate to the fund all monies that may become available from federal royalties together with additional revenues from the county road and bridge fund. The county highway anticipation warrant retirement fund may not exceed 50 percent of revenues to the county road and bridge fund. The county

treasurer is the county's fiscal agent for the highway anticipation warrants. C.R.S. §43-2-214 -- 217.

Annual Reports
Before May 1, a board must annually file with the Highway Operations and Maintenance Division of the Colorado Department of Transportation, a complete report of road, highway and bridge revenues and expenditures for the preceding calendar year. The report must show all revenues from federal and state sources, the county's own revenues (including bond receipts, special assessments and taxes or other sources), and detailed expenditures, including obligations incurred but not paid as of December 31 of the preceding year. On or before March 1 each year, the board must also send a map to the Colorado Department of Transportation showing all changes in mileage; changes in location of roads, highways and bridges on the county system; and any changes in the surface classification of any county road or highway during the preceding year. This report must also include information concerning the condition of the roads in categorical groupings of good, fair, and poor. C.R.S. §43-2-120.

Bonding
A board may issue bonds to derive revenues for the construction, reconstruction, or repair of public roads, highways, or bridges. It must specify by resolution the revenues required and the purpose for which they will be used. The resolution must be submitted to a vote at a general or special election and must state the maximum interest rate payable on the bonds. If a majority of the electorate approves the bonds, the board may issue them. The board may sell such bonds for cash but discounts on the bonds may not exceed 15 percent. C.R.S. §§30-26-301-302, 30-26-305.

Budgeting Requirements
A board must annually prepare a tentative road budget in compliance with the Local Government Budget Law. C.R.S. §29-1-101 -- 118. The budget must show the anticipated revenues available and the expenditures necessary for county roads, highways, and bridges. C.R.S. §43-2-119.

Highway Crossing Protection Fund
The Highway Crossing Protection Fund exists to further public safety through payment of part of the costs of installation, reconstruction or improvement to automatic and other safety signals or devices at crossings at grade of public roads and highways over the tracks of any railroad or street railway corporation in the state. (Monies from this fund are allocated based upon priorities established by the Colorado Department of Transportation and the Colorado Public Utilities Commission.) C.R.S. §§43-4-201(2), 43-4-205.

Highway User's Tax Fund (HUTF) and FASTER
The Highway Users Tax Fund (HUTF) is state collected, locally shared revenue that is distributed monthly among the state, counties, and municipalities. Revenues from each of these sources are distributed among the state, counties, and municipalities on a different formula.

The state Highway Users Tax Fund (HUTF) receives proceeds from excise tax on motor fuel, registration fee, passenger-mile taxes on vehicles and fees for receipts of tax payments on Class A personal property and other sources. HUTF revenues may be used for construction, maintenance and supervision of the public roads and highways of Colorado or for the construction, planning, acquisition, maintenance, and operation of transit-related projects, including bicycle or pedestrian lanes and multimodal transportation infrastructure. An amount not to exceed 5 percent of each county's allocation may be used for administrative purposes. C.R.S. §43-4-207(1).

FASTER revenues are state collected, locally shared revenues derived from various surcharges and late fees on vehicle registration that were enacted in 2009. FASTER revenues are apportioned to counties using the same formula as HUTF. C.R.S. §43-4-801 et seq. FASTER revenues that come to the county are to be used only for county road safety projects. C.R.S. §43-4-207.

The state treasurer apportions HUTF and FASTER monies monthly, with apportionment based upon estimates of current monthly collections of highway users taxes from the Colorado Department of Revenue. The monies are then reconciled in succeeding months by the department for individual eligible governmental entities. C.R.S. §43-4-201 -- 207.

For more information on HUTF and FASTER Fees, please see chapter 8 of this handbook.

Basic Fund

Revenues derived from the first seven-cents of the gas tax and various other fees are then shared on a 65/26/9 proportion between the state, the counties, and the municipalities (respectively). These revenues are subject to certain "off-the-top" state administrative allocations before distribution. These HUTF revenues may be spent for acquisition of rights-of-way for the construction, engineering, safety, reconstruction, improvement, repair, maintenance and administration of streets, roads, and highways. Administrative expenditures cannot exceed 5 percent. C.R.S. §43-4-205(5).

County Share

Each county receives a share of the county portion of HUTF based on the three-tier funding formula adopted by the 1989 General Assembly. The first tier is referred to as the "hold harmless" provision. This dollar amount is locked into statute at $69.7 million. Each county is guaranteed to receive an amount equal to the distribution they received in state fiscal year 1987-88. Once that amount is disbursed the second tier begins. The second tier provides the next $17 million in HUTF revenues be disbursed to 17 primarily urban district counties. These counties were chosen as "gainers" based on population and vehicle registration.

When HUTF revenues exceed $86.7 million, the third and final tier of the funding formula is received, and all counties again receive disbursements. At this level, all counties receive disbursements based on the following: 60 percent on the basis of

lane miles, 30 percent on vehicle registration, and 10 percent on square feet of bridge deck for bridges greater than 20 feet. C.R.S. §43-4-207(2).

Certification of City and County Mileage Data
The Colorado Department of Transportation (CDOT) must certify state, county and municipal road and highway mileage to the state treasurer by July 1 annually. The county clerk and recorder must certify to the Motor Vehicle Division of the state Department of Revenue the number of motor vehicle license registrations issued in the preceding calendar year to persons within the county and its municipalities. The Department of Revenue then tabulates totals and calculates each county's percentage of those totals. (For this purpose, the City and County of Denver is treated as a municipality). Counties may expend HUTF monies on county roads and highways maintained by crews of other governmental entities authorized to engage in such maintenance.

If a city fails to provide data on licensing and street mileage required for distribution and allocation of its share of the HUTF, the state treasurer is required to withhold that city's share and to notify it as to the reason why. After six months if the city has still not provided the requisite data, the state treasurer must pay its monies to the county in which the city is located, and the county must expend the monies on the city's streets. C.R.S. §43-4-209.

If a county has not furnished necessary information to the state treasurer to permit determination of the county share of HUTF allocations, the treasurer must estimate the share due and must remit 75 percent of the estimated amount to the county. The treasurer must notify the county that the estimated amount only is being paid because of the absence of actual county registration data. C.R.S. §43-2-210. If the county does not provide the required vehicle registration information to the treasurer by December 31 of the year following the year in which the reduced allocation is made, the balance creditable to that county but not distributed shall be forfeited to the HUTF for redistribution in the following year. C.R.S. §43-4-213.

With the approval of the Colorado Department of Transportation (CDOT), a board may use monies accrued from distributions from the Highway Users Tax Fund (HUTF) to match federal highway funds available to the county

Specific Ownership Tax
A board is authorized to allocate the revenue it receives from specific ownership tax to the road and bridge fund. Further, unless prohibited by law, a board has broad discretion to use monies to fund road and bridge construction projects unless specifically prohibited by statute. The specific ownership tax is levied on motor vehicles in lieu of ad valorem taxes. Colorado Constitution, Article X, Section 6; C.R.S. §43-2-102 -- 144.

In City of Aurora, et al. v. Adams County Board of County Commissioners, a county board allocated a majority of its specific ownership tax revenue to the road and bridge fund. As a result, the board was able to reduce its road and bridge mill levy that, in turn, resulted in a decrease in net revenues from the mill levy. Since the share-back provision

to municipalities is only required for monies from the mill levy, the municipalities share was reduced. The cities claimed the specific ownership tax must be deposited into the general fund where monies cannot be used for road and bridges. The board argued it had broad discretion in using monies to fund road and bridge construction projects unless otherwise prohibited by law. In its decision in favor of the board, the Colorado State Supreme Court concluded the board is given a wide degree of discretion in determining budgetary matters for a county. City of Aurora, et al. v. Adams County Board of County Commissioners, Colo. Sup. Ct., June 21, 1996.

TAX INCREMENT FINANCING

Tax increment financing (TIF) is a method of municipal support for private development projects that was originally intended to help redevelop areas that are deemed "blighted" or "distressed." TIF allows municipal governments to enter into negotiated agreements with counties and other governmental entities to identify how much, if any, tax revenues can be used to subsidize projects.

In general, cities create TIFs by first designating a district for redevelopment. Since the area in the district is slated for redevelopment, property values will likely increase, and therefore property tax revenues will go up, based on higher assessments. When this increase occurs, the property tax revenue from the TIF district is split into two streams. The first stream results from the original property values before the redevelopment. This amount of tax continues to go to the city, county, school district and other taxing bodies as before. The second stream consists of the increase in taxes resulting from the new development and higher property values. This is referred to as the "tax increment." Money from this stream is the subject of negotiation between elected county and other governmental officials and the municipality. Any negotiated amounts are paid into a special fund and used to subsidize some portion of the redevelopment in the district until the TIF district expires. Municipal sales tax revenues generated within the authority may, at the election of the municipality, also be used for TIF.

In Colorado, cities can employ TIF through urban renewal authorities (C.R.S § 31-25-101 et seq.) and downtown development authorities*.C.R.S § 31-25-801 et seq. Prior to relying on TIFs, a municipality must designate an area as "blighted". A blighted area is an area that… "substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare." Areas can satisfy this definition if at least four of eleven factors are present. These factors include a predominance of defective inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, unusual topography or inadequate public improvements or utilities and/or environmental contamination of buildings or property. Following a public hearing process, if a municipality finds that blight exists a certificate outlining the municipality's findings and declaration of an urban renewal authority is filed with the Department of Local Affairs.

Prior to 2016, urban renewal authorities used TIF by tapping into taxes levied by "any public body" on properties residing in the authority without their consent. Public bodies include the state, counties, municipalities, and/or other political subdivisions. Beginning in 2016, new urban renewal authorities and existing urban renewal authorities that are modified through actions like the addition of new land, a new project or an extension of the plan's duration must secure a negotiated fiscal arrangement with counties and other public bodies prior to moving forward.

In addition to negotiating the county contribution to a project, county participation includes the receipt of information regarding 1) the timeframe for completing the TIF project; 2) estimates of the project's increment tax; 3) estimates of the project's impact on county services and revenue; and 4) statements setting forth the method in which county services needed to serve the urban renewal area will be financed. Counties may also resort to arbitration if impacts to county services and methods of financing those impacts are not adequately addressed by the municipality.

According to statute, school districts may participate in an advisory capacity in the TIF process. The state, in accordance with the School Finance Act, must offset any loss of TIF revenues. This is commonly referred to as "state backfill." Special district involvement is not mentioned in the urban renewal authorities' statutes. * Downtown Development Authorities (DDA) operate differently than Urban Renewal Authorities. Under a DDA, the municipality takes the county and other governmental entities' incremental revenue without their consent. No negotiation is required.

THE TAXPAYER'S BILL OF RIGHTS[1]

by
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TABOR is a tax, spending, revenue, and debt limitation provision of the Colorado Constitution that applies to the State and all local governments. TABOR generally became effective December 31, 1992.[2] "The principal purpose of TABOR is to limit the spending and taxing power of State and local governments by providing taxpayers with greater direct control over government growth."[3] TABOR is complex in terms of which governments it covers, what the tax, spending, revenue and debt limitations are, what procedures are necessary for elections under TABOR, and what procedures are necessary for emergency taxes. "Its preferred interpretation shall reasonably restrain most of the growth of government."[4] Most of the interpretations of TABOR come from Colorado courts and the General Assembly. This is in part because the Colorado Supreme Court determined that the opinions of TABOR's author, Douglas Bruce, regarding interpretations of TABOR after its adoption, carry no weight.[5] However, the Colorado Supreme Court said that the legislative council's analysis of TABOR could provide important insight into voter intent.[6] Nonetheless, TABOR's many undefined terms and complexities make it a difficult amendment to interpret and follow. This article provides some guidelines for TABOR's complex areas based upon current Colorado case law and also highlights the questions that Colorado courts have yet to answer.

TABOR Includes Governments & Excludes Enterprises

In general, TABOR requires districts to receive voter approval prior to increasing taxes, spending, revenue, or debt above TABOR's limitations. The first question, then, is what constitutes a "district" such that TABOR's limitations apply.

"DISTRICT" MEANS THE STATE OR ANY LOCAL GOVERNMENT.[7]

Almost from TABOR's inception, Colorado courts repeatedly have had to address what constitutes a "district" under TABOR, in part because the term "local government" is not defined in TABOR or in any other Constitutional provision. If an entity is not a "local government," then it is not a "district" and does not have to comply with TABOR's requirements.

In determining whether an entity is a "district," the Colorado Supreme Court has taken two approaches. The first approach was determining whether the entity was essentially governmental.

1 COLO. CONST. art X, § 20 [hereinafter, "TABOR"]. All § references are to Article X § 20 of the Colorado Constitution.
2 § (1).
3 *Boulder County Board of County Comm'rs v. City of Broomfield*, 7 P.3d 1033, 1037 (Colo. App. 1999).
4 § (1).
5 *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1, 7-8 n.7 (Colo. 1993).
6 *Zaner v. City of Brighton*, 899 P.2d 263, 270 (Colo. App. 1994), aff'd. 917 P.2d 280 (Colo. 1996).
7 § (2)(b).

In 1993, the Court refused to decide whether Great Outdoors Colorado ("GOCO") was a district, stating that that categorization did not determine TABOR's application in that instance.[8] The Court stated that GOCO was not a private entity or enterprise. Nor was GOCO a local government because its activities and authority were not confined to a specific geographical area within the State, because it addressed matters of statewide concern, and because it was created by a statewide vote. Still, TABOR was intended to exclude only non-governmental entities; therefore, TABOR governed GOCO because, though it was not a local government, it was essentially governmental.[9]

Later, the Court used a second approach in defining "district," focusing this time on an entity's ability to create and levy taxes. In 1998, the Court compared local governments and irrigation districts when asked whether an irrigation district was a "district" for the purposes of TABOR.[10] The Court compared the taxing abilities and voting requirements of a local government with those of an irrigation district.[11] The Court noted that general taxes and an irrigation district's special assessment are different in that the former exacts revenue from the public at large for general governmental purposes while the latter benefits specific landowners. Additionally, all registered voters may vote on taxing and spending increases in a local government, whereas nonresident, unregistered voters who own irrigated land—and may or may not be natural persons—are eligible to vote in irrigation district elections. Based on these differences, the Court held that an irrigation district is essentially a private entity and not a local government within the meaning of TABOR.[12]

The Colorado Court of Appeals has also used this second approach to define "district" for TABOR purposes. In 2002, that Court ruled that an urban renewal authority is not a local government and therefore not a "district" under TABOR.[13] The Court focused on the ability to levy taxes or assessments and the ability to conduct elections as hallmarks of a local government, yet the urban renewal authority was unable to engage in either of these activities. In addition, the Urban Renewal Law defines an urban renewal authority as a "corporate body," not a local government or political subdivision. Therefore, the urban renewal authority was not subject to the provisions of TABOR. [14]

An entity, then, is probably a "district" if it performs essentially governmental functions, holds elections as a government, and has the ability to tax the public at large for general governmental purposes. Entities with these characteristics need to comply with TABOR before increasing taxes, spending, revenue, or debt.

"DISTRICT" EXCLUDES ENTERPRISES.[15]

Enterprises are not subject to TABOR. There are three separate tests to determine if an entity is an "enterprise."[16] TABOR defines an "enterprise" as a government-owned business authorized

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8 *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1, 10 (Colo. 1993).
9 *Id.*
10 *Campbell v. Orchard Mesa Irrigation District*, 972 P.2d 1037 (Colo. 1998).
11 *Id.* at 1040.
12 *Id.* at 1041.
13 *Olson v. City of Golden,* 53 P.3d 747 (Colo. App. 2002).
14 *Id.*
15 § (2)(b).

to issue its own revenue bonds and receiving under ten percent of annual revenue in grants from all Colorado State and local governments combined. The determination whether a business is an enterprise is made annually.

First, the enterprise must be a government-owned business.[17] TABOR, however, does not define "business" or "government-owned." Generally, water, sewer and electric utilities, golf courses and airports should be considered businesses.[18] However, the Colorado Supreme Court has addressed what constitutes a "business" only once.[19] In *Nicholl v. E-470 Public Highway Authority*, the issue was whether the Highway Authority was a "business." The Court said that the term "business" is "generally understood to mean an activity which is conducted in the pursuit of benefit, gain or livelihood."[20] The Colorado Court of Appeals applied this standard and held that the Colorado Bridge Enterprise is a business because it pursues a benefit and charges fees to service users.[21] The fee imposed is a bridge safety surcharge imposed upon any vehicle for which a registration fee is imposed. The Court decided that a fee does not need to be a market exchange taking place in a competitive, arms-length manner.[22]

Additionally, the *Nicholl* Court determined that the public highway authority was not an enterprise because, although it was government-owned and business-like, it had the power to levy sales or use taxes.[23] This characteristic was not typical of a business, and including a taxing authority within TABOR's definition of "enterprise" was, in the Court's view, inconsistent with the terms of the definition as a whole.[24] The Court reached this conclusion even though the public highway authority had never exercised its taxing powers.

The business must also be "government-owned." This raises the question of whether a single purpose entity, such as a water district, can be a government-owned business. One possible answer is that the special district is the government that owns the business, such as a water utility, which is operated by the district.[25]

Second, the government-owned business must be authorized to issue its own revenue bonds.[26] In *Board of County Commissioners v. Fixed Base Operators, Inc.*,[27] the Colorado Court of Appeals held that a government-owned fixed base operator at an airport was an enterprise. The Federal Aviation Administration treated the operator as a governmental entity, yet this did not influence the Court's analysis. The entity was authorized to issue its own revenue bonds, and, therefore,

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16 Dee P. Wisor, *Government by Plebiscite*, 22 COLO. LAW. 293, 293 (1993).
17 *Id.*
18 *Id.*
19 *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859, 868 (Colo. 1995).
20 *Id.*
21 *TABOR Foundation v. Colorado Bridge Enterprise*, 2014 COA 106, 13CA1621 (Colo. App. 2014).
22 *Id.*
23 *Nicholl v. E-470 Public Highway Authority*, 896 P.2d at 868.
24 *Id.*
25 Wisor, *supra* note 16, at 293.
26 *Id.*
27 939 P.2d 464, 468 (Colo. App. 1997).

was an enterprise.[28] The second enterprise test is probably met if the business's governing body is authorized to issue revenue bonds payable solely from the business's revenue.[29]

Third, not more than ten percent of the business's annual revenue can be from all Colorado State and local government grants, combined.[30] Neither TABOR nor Colorado courts have defined what constitutes a "grant" in calculating the ten-percent limitation, though *Nicholl* suggests that the independent power to levy taxes may factor into the calculation. If so, the ten-percent limitation may include the revenue a government uses to subsidize a government-owned business. The statutes enacted to implement TABOR define "grant" to include only cash transactions, but because courts remain free to adopt their own definitions when interpreting TABOR, they may not accept the statutory definition.[31] To maintain "enterprise" status, an enterprise would be well advised to reduce the amount of government grants to keep the enterprise under the ten-percent limit.[32]

In conclusion, if a government-owned business is authorized to issue its own revenue bonds and complies with the ten-percent limitation annually, it should maintain its "enterprise" status, exempting it from TABOR.

Tax Limitation

BEGINNING NOVEMBER 4, 1992, DISTRICTS MUST HAVE VOTER APPROVAL IN ADVANCE FOR ANY NEW TAX, TAX RATE INCREASE, MILL LEVY ABOVE THAT FOR THE PRIOR YEAR, VALUATION FOR ASSESSMENT RATIO INCREASE FOR A PROPERTY CLASS OR EXTENSION OF AN EXPIRING TAX, OR TAX POLICY CHANGE DIRECTLY CAUSING A NEW TAX REVENUE GAIN.[33]

This section of TABOR requires districts to receive voter approval prior to taking any of these listed actions. Of the listed actions, the limit on the mill levy is a local government's most immediate concern.[34] If the assessed value within a government area declines, the government needs a vote before it may increase the mill levy to generate the same revenues as the previous year. The voter approval requirement does not apply, however, to a mill levy when annual district revenue is less than annual payments on general obligation bonds, pensions, final court judgments[35] or in an emergency.[36]

The voter approval requirement also does not apply to tax levies for tax abatements, refunds, and credits, or to tax levies to pay bonds issued pursuant to a pre-TABOR election. The Colorado Supreme Court addressed this latter situation in *Bolt v. Arapahoe County School District Number 6*.[37] In May of 1984, the voters had approved the school district's bonds, and the ballot issue had

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28 *Id.*
29 Wisor, *supra* note 16, at 294.
30 *Id.*
31 Amy Kennedy and Dee P. Wisor, Enterprises Under Article X, § 20 of the Colorado Constitution – Part 1, 27 COLO. LAW. 55 (1998).
32 *Id.*
33 § (4).
34 Wisor, *supra* note 16, at 294.
35 § (1).
36 § (4)(a).
37 898 P.2d 525 (Colo. 1995).

"provided an open-ended mechanism for the school district to repay its bonded debt."[38] Because the voters approved the bonded debt with the understanding that the school district would be able to raise revenues to meet the bond obligations, the Court held that the school district had voter approval in advance for its bond redemption mill levy increases.[39] The Court also held that the Board of County Commissioners had no authority to refuse to impose a levy certified by the school district because it violated TABOR. In the Court's view, TABOR does not limit the amount of the levy the school board may impose; rather it prescribes the procedures by which the levy may be increased.[40]

A frequently litigated question under TABOR's tax-limiting section is whether an action is a "tax policy change." In *Board of Commissioners of County of Boulder v. City of Broomfield*,[41] the Board of County Commissioners ("BOCC") argued that a new or extended tax increment plan was a "tax policy change." The Broomfield City Council had determined that an area of the city was blighted and approved an urban renewal plan for the area. The BOCC claimed that the increased value in the renewal area under the tax increment plan for financing the renewal would be attributable in part to an increase in property values in general, and that the resultant increase in tax revenues ordinarily would be paid to the county. However, because of the presumption that the renewal plan generates increases in property values, the renewal authority would receive the increased tax revenues. Thus, the BOCC argued that the renewal plan would deprive the county of income that it would otherwise receive. According to the BOCC, this constituted a tax policy change that required voter approval.[42]

The Colorado Court of Appeals disagreed, based upon a Colorado Supreme Court decision. That decision held that the urban renewal statute is carefully drafted to provide a direct relationship between an increase in the valuation of property within the renewal area and amounts paid the renewal authority. Therefore, the increase in revenues that would be paid to the urban renewal authority would not result in a county's loss of property tax revenues. Thus, the BOCC lacked standing to sue because it was not adversely affected by the tax increment plan.[43]

The application of TABOR's "tax policy change" language was at issue again before the Colorado Court of Appeals in *Olson v. City of Golden*.[44] There, the plaintiff taxpayer argued that the Golden Urban Renewal Authority (GURA) conveyed property to a limited liability company for less than fair market value, resulting in a reduction of GURA's revenue.[45] The plaintiff argued that this reduced revenue would cause GURA to spend a greater amount of tax revenue to pay its obligations, depriving taxpayers of tax revenue.[46] The Court disagreed because the tax allocation plan did not result in the creation of any new taxes. Additionally, the plan did not authorize GURA to levy, assess or collect taxes; therefore, GURA was not a "district." Thus,

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38 *Id.* at 534.
39 *Id.* at 536.
40 *Id.* at 539.
41 7 P.3d 1033, 1034 (Colo. App. 1999).
42 *Id.* at 1035-1036.
43 *Id.* at 1036.
44 2002 Colo. App. 165, 53 P.3d 747.
45 *Id.*
46 *Id.*

TABOR's "tax policy change" language did not apply to GURA.[47] However, the *Olson* decision suggests, that the "tax policy change" language may have applied if GURA had been a "district."

The Supreme Court considered the "tax policy change" issue in *Mesa County v. Ritter*[48]. The Court determined that a "tax policy change resulting in a net tax revenue gain" only requires voter approval when the gain exceeds one of TABOR's revenue limits. So, a government which has had an election exempting it from TABOR's revenue limits apparently does not need voter approval for a tax policy change which results in a net revenue gain. See **"De-Brucing" Elections** below.

There has also been litigation over what constitutes a "tax." In *Campbell v. Orchard Mesa Irrigation District*,[49] the Colorado Supreme Court held that an irrigation district's special assessments are not "taxes." The Court reasoned that while "general taxes exact revenue from the public at large for general governmental purposes, an irrigation district's special assessment benefits specific landowners whose land the district supplies with water."[50] Under *Orchard Mesa*, special assessments collected from a finite group that benefit only that affected group are not "taxes" under TABOR.

The Colorado Court of Appeals held that a street light charge billed by a city to property owners to pay for operation and maintenance is not a tax requiring voter approval under TABOR.[51] In the same case, the Court held that a charge collected by a cable television provider pursuant to a franchise agreement with the city was also not a tax. And the Colorado Court of Appeals has held that a bridge safety surcharge imposed on all vehicles which must be registered is not a tax.[52]

A number of governments have received voter approval for a tax increase that terminates on a specific date. Any extension of such an increase must have voter approval. However, the election does not have to comply with TABOR election-question and tax-increase notice provisions because the Colorado Supreme Court has held that an extension of an expiring tax is not a tax increase for TABOR purposes.[53]

Property Tax Revenue Limitation

THE MAXIMUM ANNUAL PERCENTAGE CHANGE IN EACH DISTRICT'S PROPERTY TAX REVENUE EQUALS INFLATION IN THE PRIOR CALENDAR YEAR PLUS ANNUAL LOCAL GROWTH, ADJUSTED FOR PROPERTY TAX REVENUE CHANGES APPROVED BY THE VOTERS AFTER 1991 AND CERTAIN PERMITTED REDUCTIONS.[54]

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[47] *Id.* The Court also determined that because GURA did not have the authority to tax, it was not a district under TABOR. This aspect of the case is discussed above under the heading "I. GOVERNMENTS INCLUDED & ENTERPRISES EXCLUDED."

[48] 203 P.3d 519 (Colo. 2009)

[49] 972 P.2d 1037, 1040 (Colo. 1998).

[50] *Id.*

[51] 131 P.3d 1187 (Colo. App. 2005).

[52] *TABOR Foundation v. Colorado Bridge Enterprise*, 2014 COA 106, 13CA1621 (Colo. App. 2014).

[53] *Bruce v. Colorado Springs*, 129 P.3d 988 (Colo. 2006).

[54] §(7)(c).

This section of TABOR limits the maximum annual percentage increase in property tax revenue to inflation in the prior calendar year plus annual local growth. The calculation involves two definitions and three adjustments. To begin with, TABOR defines "inflation" as the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver/Boulder.[55] This information is published in August of the succeeding year, and, because property tax must be certified by December 15, districts must estimate the percentage change.

The definition of "local growth" for a non-school district, simply put, is a fraction.[56] The numerator of the fraction is the actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property.[57] The denominator of the fraction is the actual value of all real property in the district.[58] "Local growth" does not include growth in actual valuation from inflation or the addition of personal property. For a school district, "local growth" is the percentage change in the school district's student enrollment.[59]

There are three adjustments to the calculation for the property tax increase limitation. First, the calculation is adjusted by any property tax revenue changes approved by voters after 1991. Second, the calculation is adjusted by reductions for exemptions or credits to reduce or end business personal property taxes that the district might enact. Third, the calculation is adjusted by reductions as a result of reducing or ending subsidies to state-mandated programs.[60]

Additionally, to the extent this limitation permits a district to increase property tax, voters must approve any related increase in the mill levy under the limitations of § (4) of TABOR. In other words, the growth limitation allows a government to increase property tax revenues without a vote only if the mill levy does not increase. Finally, debt service is added to property tax revenues and never becomes part of the base.[61]

Spending Limitation

THE MAXIMUM ANNUAL PERCENTAGE CHANGE IN EACH STATE AND LOCAL DISTRICT'S FISCAL YEAR SPENDING EQUALS INFLATION IN THE PRIOR CALENDAR YEAR PLUS ANNUAL LOCAL GROWTH, ADJUSTED FOR REVENUE CHANGES APPROVED BY THE VOTERS AFTER 1991 AND CERTAIN PERMITTED REDUCTIONS.[62]

This section of TABOR, which applies to the State and, separately, to all local governments, limits spending. The maximum annual percentage change in the State's fiscal year spending is inflation plus the percentage change in the State's population. The maximum annual percentage change in each local district's fiscal year spending, like the maximum property tax revenue increase, equals inflation in the prior calendar year plus annual local growth. The definitions of

55 § (2)(f).
56 *See* Wisor, *supra* note 16, at 295.
57 § (2)(g).
58 S (2)(g).
59 § (2)(g).
60 Wisor, *supra* note 16, at 295.
61 § (7)(d).
62 §§ (7)(a), (b).

"inflation" and "local growth" are the same for this section as for the tax revenue increase limitation, resulting in the same calculations under both sections.[63]

The definition of "fiscal year spending" is important in understanding this section's application.[64] "Fiscal year spending," means a government's expenditures and reserve increases, with the exceptions discussed below.[65] This definition allows a government to transfer some of the money it receives in a year to a reserve for future years' expenses. If a government does increase its reserve in a given year, the total of expenditures and reserve increases together cannot exceed the total fiscal year spending limitation for the year.[66]

EXCLUSIONS FROM FISCAL YEAR SPENDING

"Fiscal year spending" excludes refunds made in the current or next fiscal year; gifts; federal refunds; collections for another government; pension contributions by employees and pension fund earnings; reserve fund transfer expenditures; damage awards; and property sales.[67] A number of these exclusions create ambiguities and are discussed in turn below. Additionally, the Colorado Supreme Court has held that bonded debt increases annual fiscal spending under TABOR only by the amount of the debt service, not by the amount of the borrowed funds expended.[68]

Gifts & Collections for Another Government. Amounts a government collects for another government are excluded as "collections for another government." For example, property taxes collected by a county for other taxing entities are excluded from the county's fiscal year spending. Additionally, in *Bishop v. Regional Transportation District*, the Denver District Court held that "pass through" monies from one government to another to fund a joint construction project are not subject to the receiving government's revenue and spending limits. However, whether lottery monies, cigarette tax, specific ownership tax and State aid payments to school districts fall under this exclusion is unclear.[69]

Alternatively, perhaps these revenues are excluded as "gifts." If so, they are subject to the State, but not the local, government spending limitation. Yet, if these revenues are gifts, it is unclear why federal funds are expressly excluded under the definition of "fiscal year spending" and these revenues are not. If these revenues are neither "gifts" nor "collections for another government," they are included in the fiscal year spending limitation for both the State and local governments.[70]

Reserve Fund Transfers. Excluding reserve fund transfer expenditures gives governments a method of handling revenue increases for multiple-year projects. A government can implement a revenue increase for the project in the first year and allocate a portion of that revenue to a reserve fund for future years. In the first year, the entire revenue increase is subject to the fiscal year

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63 §§ (2)(f), (2)(g), discussed *supra*.
64 Wisor, *supra* note 16, at 295.
65 § (2)(e).
66 Wisor, *supra* note 16, at 295.
67 § (2)(e).
68 *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859, 872 (Colo. 1995).
69 Wisor, *supra* note 16, at 295.
70 *Id*.

spending limit. In the succeeding years, the reserve fund expenditures for the project do not constitute spending.[71]

Damage Awards. This exclusion applies to awards paid *to* a government. However, it is unclear whether the damage awards exclusion applies to awards paid *by* a government.[72] The confusion stems from the language of § (1), which suspends various limits when annual revenue is insufficient to make payments on final court judgments and other specified payments. TABOR's suspension of limits because of insufficient funds for final court judgments implies that fiscal year spending includes these judgment amounts.

Property Sales. The application of this exclusion remains unclear. The Colorado Supreme Court has held that the sale of lottery tickets is not the sale of property because repetitive sales of lottery tickets do not fulfill either of the purposes of the property sales exclusion.[73] According to the Court, those purposes are to eliminate spending restrictions on the occasional sale of State property, and to encourage the State "to permanently divest itself of tangible assets, thereby returning property to the property tax rolls and promoting private economic activity."[74]

Whether tap fees are property sales was the question presented but not decided in *Romer v. Fountain Sanitation District*[75] because the sanitation district lacked standing to bring suit. Likewise, whether confiscated property falls into this exclusion remains unclear.

Revenue Limitation

If the revenue from sources not excluded exceeds the permitted fiscal year spending, the excess must be refunded in the next fiscal year unless the voters approve a change.[76]

This section of TABOR requires districts to refund excess revenues. A district may use any reasonable method for refunds, including temporary tax credits or rate reductions. Refunds do not have to be proportional to prior payments when prior payments are impracticable to identify or return. Finally, revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed must be refunded with ten percent annual simple interest.[77]

The revenue limitation does allow revenue changes to the extent voters approve them. Districts are not required to present proposed revenue changes in dollar amounts, unless voters are asked to approve a district tax increase.[78] In *City of Aurora v. Acosta*, taxpayers brought suit alleging that certain ballot proposals violated TABOR. Specifically, the taxpayer claimed a proposal seeking an increase in the sales and use tax rate for law enforcement purposes violated TABOR because it failed to state the proposed spending increase as a dollar amount.[79] TABOR requires voter

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71 *Id.*
72 *Id.*
73 *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1, 11 (Colo. 1993). The Court concluded, however, that State lottery proceeds dedicated by constitutional amendment to park and wildlife preservation are not subject to limitations on fiscal year spending. *Id.*
74 *Id* at 9.
75 898 P.2d 37 (Colo. 1995).
76 § (7)(d).
77 § (1).
78 *City of Aurora v. Acosta*, 892 P.2d 264, 268 (Colo. 1994).
79 *Id.* at 265-266.

approval for a revenue change "where the revenues generated by a specific tax increase exceed the estimated maximum dollar amount included in the election notice and the ballot title under which voters approved the tax increase."[80] Here, the City attempted to obtain voter approval to retain any excess future revenues from the proposed .25% increase in the city's sales and use tax. TABOR does not require proposed revenue changes of this type to be presented for voter approval as a dollar amount.[81]

"De-Brucing" Elections

These elections allow a district to collect, retain or expend excess revenues without further voter approval. In 1994, Archuleta County voters approved a ballot question allowing the County to "collect, retain and expend all excess revenues" for a four-year period.[82] With some exceptions, TABOR's election provisions allow voters to approve a delay of up to four years in voting on ballot issues.[83] The Colorado Supreme Court noted five reasons for upholding the question. First, the evident purpose of TABOR is to limit the discretion of governmental officials to take certain taxing, revenue, and spending actions in the *absence* of voter approval. The question presented to the voters clearly stated the County's objective, and the voters approved. Second, voters expected that TABOR would defer to voter approval or disapproval of proposed tax, revenue, and spending measures that varied from TABOR limitations. Third, the General Assembly has construed TABOR as including the approval of revenue changes by local government proposals to voters.[84] Fourth, there is a clear pattern of TABOR deferring to voter choice in the waiver of otherwise applicable limitations. Fifth, a rigid interpretation of TABOR would have the effect of working a reduction in government services.[85] This decision implies that courts will take a liberal look at "de-Brucing" elections.

The Colorado Court of Appeals has held that "de-Brucing" ballot questions are not limited to a four-year time period.[86] The voters of Archuleta County approved a ballot issue allowing the voters to waive permanently the revenue and spending limits of §7. The plaintiff argued that the voters may only waive these limitations for four years, relying on the language of §3 that states, "voters may approve a delay of up to four years," but the Court disagreed.

Debt Limitation

WITH TWO EXCEPTIONS, DISTRICTS MUST HAVE VOTER APPROVAL IN ADVANCE FOR CREATION OF ANY MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DISTRICT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER WITHOUT ADEQUATE PRESENT CASH RESERVES PLEDGED IRREVOCABLY AND HELD FOR PAYMENTS IN ALL FUTURE FISCAL YEARS.[87]

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80 *Id.* at 268.
81 *Id.*
82 *Havens v. Board of County Comm'rs of the County of Archuleta*, 924 P.2d 517, 519 (Colo. 1996).
83 § (3)(a). The exceptions are petitions, bonded debt, or charter or constitutional provisions. *Id.*
84 *Havens v. Board of County Comm'rs of the County of Archuleta*, 924 P.2d at 522.
85 *Id.* at 522-523.
86 *Havens v. Board of County Comm'rs of the County of Archuleta*, 58 P.3d 1165 (Colo. App. 2002).
87 § (4)(b). The two exceptions are adding new employees to existing pension plans and refinancing the pension plans at lower interest rates. *Id.*

This section of TABOR requires a vote on any multiple-fiscal year debt or other financial obligation. TABOR does not define what constitutes multiple-fiscal year debt. This section appears to require voter approval for revenue bonds payable from governmental revenues (except those issued by an enterprise), general obligation bonds and special assessment bonds.[88]

The Colorado Supreme Court has held that the remarketing of pre-TABOR bonds at a higher interest rate does not require voter approval if doing so was authorized at the time of the initial issuance of the bonds.[89] In *Nicholl v. E-470 Public Highway Authority,* the Highway Authority attempted to remarket the bonds pursuant to its 1985 agreement with three Colorado counties.[90] An Arapahoe County Commissioner objected on the ground that to do so required voter approval under TABOR. The Court disagreed, holding that the remarketing did not create a new obligation, but merely remarketed debt that was authorized before TABOR. Additionally, the terms under which refinancing would occur were specified in the original bond agreements and were also issued before TABOR.[91] The *Nicholl* case shows that districts can remarket pre-TABOR bonds without voter approval if the refinancing terms were established before TABOR.

EXISTING CONSTITUTIONAL RESTRICTIONS

There is a question whether courts will interpret the debt limitation differently from existing constitutional restrictions regarding excise tax bonds, special assessment bonds, industrial development bonds and lease purchase agreements. Pre-TABOR case law held that any agreement subject to annual appropriation does not require voter approval.[92] Accordingly, the Colorado Court of Appeals held that lease purchase agreements subject to annual appropriation are not subject to TABOR's election requirement.[93] In that case, the County entered into an equipment lease-purchase agreement with a bank without holding an election. Under the terms of the agreement, the bank purchased the equipment and leased it to the County for an initial period of eight months with four one-year renewal terms.[94]

The Court determined that the agreement did not create a debt or other financial obligation in future years because it did not require funds to be appropriated for that purpose.[95] The agreement also did not obligate future commissioners to tax in order to fulfill the County's obligations. The County was not required to pay for the use of the equipment until the year in which it was used, making the agreement more like a series of one-year contracts than multiple-fiscal year debt.[96] The agreement was not a pledge to commit future funds to its performance, nor was it a commitment to tax citizens to assure the availability of funds to perform the agreement.[97]

In 1999, the Colorado Supreme Court held that State-issued notes used to fund highway improvements were a multiple-fiscal year obligation requiring an election even though the notes

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88 Wisor, *supra* note 16, at 296.

89 *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859, 870-871 (Colo. 1995).

90 *Id.* at 864.

91 *Id*. at 870.

92 *See e.g. Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981); *Denver Urban Renewal Authority v. Byrne*, 618 P.2d 1374 (Colo. 1980); and *Allardice v. Adams County*, 476 P.2d 982 (Colo. 1970).

93 *Boulder County v. Dougherty, Dawkins, Strand & Bigelow, Inc.*, 890 P.2d 199 (Colo. App. 1994).

94 *Id.* at 201.

95 *Id.* at 207.

96 *Id.*

97 *Id.* at 208.

were subject to annual appropriation.[98] The revenue anticipation notes were different from an equipment lease agreement because in the case of the notes it was evident that the State was receiving money in the form of loans from investors.[99] This holding creates doubt that courts will follow pre-TABOR precedent regarding debt limitations generally.

In 2005 and again in 2010, the Colorado Court of Appeals again held that a lease purchase agreement which could be terminated annually does not create a debt or other multiple fiscal year financial obligation that requires an election under TABOR.[100]

The Colorado Supreme Court has also held that an economic development agreement between a city and a developer did not require voter approval under TABOR.[101] The agreement provided for reimbursement of certain taxes to the developer subject to annual appropriation by the city council. The Supreme Court distinguished this agreement from the state-issued notes in the 1999 *Interrogatories* case and held that the agreement did not create a debt or other financial obligation.

Elections

TABOR'S ELECTION PROVISION

Section (3) contains TABOR's election provisions. Required elections may only be held in the State general election, the first Tuesday after the first Monday in November, or the regular biennial election of the local government. Voters can approve a four-year delay in deciding ballot issues, but district actions taken during that time cannot extend beyond that period. TABOR's election provisions require specific notice of ballot issues to be mailed to all registered voters at least 30 days prior to the election. This notice must include fiscal year spending calculations for the current and previous four years, and the overall percentage and dollar change. The notice must also include the estimate of the maximum dollar amount of any tax increase and a fiscal year spending calculation without the increase. If the actual receipts from the tax increase exceed this estimate, the tax increase must be reduced, and the excess refunded. For debt, the election notice must include the principal amount and maximum annual and total repayment cost and the principal balance of current debt and its maximum annual and remaining total repayment costs. Debt cannot be issued on terms that exceed these estimates.

Finally, TABOR outlines certain ballot issue language requirements. Titled notices must be addressed to "All Registered Voters." Titles must state, in this order, "NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."[102] Ballot titles for tax or bonded debt increases must begin, "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY…?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district costs),…?"

APPLYING TABOR'S ELECTION PROVISIONS

98 *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 557 (Colo. 1999).
99 *Id.*
100 *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288 (Colo. App. 2005) and *Fischer v. City of Colorado Springs,* 260 P.3d 331 (Colo.App. 2010) .
101 *Golden v. Parker*, 138 P.3d 285 (Colo. 2006).
102 § (3)(b).

The TABOR election provisions only apply to financial elections. In *Zaner v. City of Brighton*,[103] the Colorado Court of Appeals held that TABOR is limited to fiscal issues such as tax, revenue, and spending. Therefore, the City of Brighton's election concerning the transfer of a utility franchise was not a fiscal ballot issue and therefore need not have complied with TABOR.[104]

Districts should comply with TABOR's election provisions as much as possible. However, violations of the election provision occur, and, in *Bickel v. City of Boulder*,[105] the Colorado Supreme Court determined that "substantial compliance" is sufficient to defeat election challenges brought under TABOR's election provisions. That is, when an election is challenged under TABOR, a court will look at whether the district substantially complied with the applicable provisions instead of demanding strict adherence to every detail.[106] The Court held that certain omissions in the election notice were not significant because the City provided all of the relevant information for calculating percentage changes in the notice's chart, and the omissions appeared to be the result of the City's mere oversight in preparing the notice.[107] The Court also held that a plaintiff's complaint under TABOR's enforcement clause does not have to set forth facts showing that the claimed violations of TABOR affected the election results.[108]

The Court in *Bickel* also determined that a ballot issue presenting both the incurrence of debt and the adoption of taxes as a means to repay that debt presents a single subject for voter approval.[109] Additionally, districts may seek present authorization for future tax increases where the increases may be necessary to repay a specific, voter-approved debt.[110] Finally, in *Bickel*, the Court held that TABOR does not require districts to publish the entire text of the ordinance or resolution authorizing the election, provided the ballot issue contains the entire substance of the question presented to the voters.[111]

By statute, any challenge to the form or content of a ballot question must be brought within five days after the ballot title is set.[112] The Colorado Supreme Court has held that this statute of limitations is constitutional.[113]

TABOR requires that an election notice contain 500-word summaries of "pro" and "con" comments submitted by voters. In a recent case, the Court of Appeals was confronted with a situation where a person supporting a ballot issue also submitted comments against the measure.[114] Apparently, the voter was attempting to dilute and weaken the "con" comments. The Court held that the designated election official is not required to determine the motives of the person submitting a comment, and therefore refused to declare that a TABOR violation had occurred.

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103 899 P.2d 263, 266 (Colo. App. 1994), aff'd. 917 P.2d 280 (Colo. 1996).
104 *Id.*
105 885 P.2d 215, 227 (Colo. 1994), cert. denied 513 U.S. 1155 (1995).
106 *Id.*
107 *Id.* at 238.
108 *Id.* at 228.
109 *Id.* at 231.
110 *Id.* at 234.
111 *Id.* at 239.
112 C.R.S. §1-11-203.5
113 *Cacioppo v. Eagle County School District RE50-J*, 92 P.3d 453 (Colo. 2004).
114 *Gresh v. Balink*, No. 05CA0375, 2006 WL 2828857 (Colo. App., Oct. 5, 2006).

Emergencies, Revenue Limits & State Mandates

Emergencies. Section (6) governs emergency taxes and does not create a new taxing power. Emergency taxes can be levied by a two-thirds vote of the governing body of a district. The tax ends if it is not approved on the next election date more than 60 days after the emergency. Emergency tax revenue may only be expended after emergency reserves are depleted.[115] Each district must reserve 3% of its fiscal year spending, excluding bonded debt service, for use in declared emergencies. Emergency property taxes are prohibited. The increase in reserve requirements is subject to the spending limitation. "Emergency" excludes economic conditions, revenue shortfalls and salary or fringe benefit increases.[116] It is unclear whether a government may substitute a surety or insurance for the emergency reserve.

Miscellaneous Limits. Section (8) absolutely prohibits certain actions unless a future constitutional amendment approves them. TABOR prohibits new or increased real estate transfer taxes and any new State property tax or local income tax. Section (8) absolutely prohibits certain actions. No income tax increase or new definition of taxable income may apply before the next tax year. Any income tax change after July 1, 1992 must tax all income at one rate. Valuation notices must be sent annually. The actual value of residential real property must be determined solely by a market approach and must be stated on all property tax bills and valuations notices. Sales by a government or lender are to be considered as comparable sales, and the sales prices must be kept as public records.

State Mandates. Section (9) mandates that a local government may end or reduce any subsidy for any program delegated to it by the State, except for public education through twelfth grade. The Colorado Supreme Court held that a county's obligation to pay twenty percent of the State-mandated welfare program was not a "subsidy" the county could reject.[117] The Court held that a county is a political subdivision of the State, and because a State cannot subsidize itself, the county's payment to the State was not a "subsidy."[118]

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115 § (6).
116 § (2)(c).
117 *Romer v. Weld County,* 897 P.2d 779, 783 (Colo. 1995).
118 *Id.* at 782-783.

AMENDMENT ONE (TABOR) ISSUES

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Election Requirements and Procedures

I. Voter approval is required for a new mill levy, mill levy increase, expansion of an expiring tax, or a tax policy change causing a net revenue gain §(4)(a); creation of any multiple fiscal year debt or financial obligation §(4)(b); emergency tax §(6); or retention of excess revenue §(7)(d).

II. A county can seek voter approval on TABOR issues ("ballot issues") only at general elections in November of even-numbered years, and elections in November of odd-numbered years. Municipalities and special districts can also refer TABOR issues at their regular elections held at other times during the year.

III. Method of referral - board action appropriate.

A. Adopt a written resolution to refer a ballot issue at a general election in November of an even-numbered year, or to (i) call a special election for November of an odd-numbered year and (ii) refer the ballot issue to that election.

B. Odd-year November elections. (*See*, C.R.S. §1-41-101 et. seq.) TABOR ballot issues may be referred to election at this time; authority of board to refer other issues, e.g., recall, modify term limits, in accordance with any other provisions of law is not restricted. (*See* C.R.S. §1-41-103(5).)

IV. Notice issues.

A. First general notice to public of county's intent to refer a ballot issue is certification of the form and content of the ballot to Clerk and Recorder, not later than 55 days before election.

B. Ballot Issue Notice.

1. County Clerk and Recorder acts as Designated Election Official (DEO). Prepares the text of the county ballot issue notice. DEOs of other districts referring ballot issues prepare their own notices and send to Clerk and Recorder for inclusion in consolidated notice. This is a <u>very detailed and technical</u> task: must follow TABOR precisely - depends on what type of ballot issue, e.g., debt, new or increased tax, retain excess revenue; TABOR specifies what must be included and prohibits additional material.

2. In coordinated elections, preparation and mailing of ballot issue notice will be coordinated by Clerk and Recorder, incorporating the text prepared by each district DEO.

3. Clerk and Recorder should be prepared and equipped to handle telephone inquiries from electors following mailing of notice.

C. Ballot Issue Comments.

1. County and county commissioner spending on ballot issue campaigns is governed by Fair Campaign Practices Act, C.R.S. §1-45-101 et seq., especially C.R.S. §1-45-117. County should not expend public funds to prepare comment either for or against any ballot issue. Use resolution or other lawful means to express opinion and reasons for it.

2. DEO of each district referring a ballot issue, and Clerk and Recorder for county ballot issues must summarize and include comments filed by deadline, even those which contain outright falsehoods (advisability of soliciting reasoned and balanced comment both for and against the ballot issue to offset other comments containing falsehoods).

3. Only the comments of registered electors of the entity referring a ballot issue may be summarized as to that ballot issue.

Spending/Revenue Limits

I. This has been one of the most publicized features of TABOR. Although it is stated in §(7)(b) as a limitation on fiscal year spending, because the definition of fiscal year spending ***includes savings*** ("reserve increases"), its practical effect is to limit revenues. The election requirement in §(7)(d) is triggered by revenues, not spending ("If revenue from sources not excluded from fiscal year spending exceed these limits, . . .").

II. The limit on "fiscal year spending" is fiscal year spending from the prior year multiplied by the rate of local growth + the rate of inflation. §(7)(b). "Local growth" for a county is the percentage change in actual value of all (not just taxable) real property in the county from construction of taxable real property net of demolition of same, and additions to, net of deletions from, taxable real property. §(2)(g). "Inflation" is the percentage change in the Consumer Price Index for Denver-Boulder, all item, all consumers. §(2)(f).

III. All county revenues count toward the limit <u>except</u> gifts, federal funds, collections for other governments, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards and property sales. The amount of a refund of excess revenues is also excluded. §(2)(e).

Refund of Excess Revenues

I. County has until the end of the "next" fiscal year to refund excess revenues from prior fiscal year. §(1)

II. Subject to judicial review, county may use any reasonable method for refunds, including temporary tax credits or rate reductions; need not be proportional when prior payments are impractical to identify or return. §(1)

III. Colorado statute interpreting TABOR (C.R.S. §39-1-111.5) expressly authorizes temporary mill levy reductions as a refund method.

IV. Refunds may not be included in county base to calculate revenue limit for following year. §(7)(d)

Reserves

County is required to maintain an "emergency reserve" of at least 3% of its fiscal year spending for use for declared emergencies only. §(5)

Enterprises

I. Are exempt from TABOR. Need not comply with any of its requirements. §(2)(b)

II. Definition: Government-owned business - authorized to issue its own revenue bonds - receives less than 10% of all of its revenue from grants ("grants" probably includes any state or local government contribution made from tax proceeds) from Colorado state and local governments combined. §2(d)

III. Most common examples include water and sewer utilities of municipalities and special districts. Key is fee- or other non-tax, non-grant revenue-based income stream. Power to tax, even though not used, disqualifies an entity from enterprise treatment. *See*, *Nicholl* case discussed below.

IV. Not common for counties to have an enterprise, but not impossible, *e.g.* airport, or county-owned water or sewer utility.

<u>Decided Court Cases</u>

I. <u>Bickel v. City of Boulder</u>, 885 P.2d (Colo. 1994 - 9/12/94), *cert. denied,* 115 S. Ct. 1112 (1995):

A. <u>Interpretation Standards.</u>

1. TABOR is not a grant of new powers or rights to the people but is more properly viewed as a limitation on the power of people's elected representatives.

2. Substantial compliance, rather than strict scrutiny, is the proper standard when reviewing claims to enforce constitutional election provisions.

3. Courts may rely on general rules of statutory construction when interpreting citizen-initiated measures.

4. Where no conflict exists between newly enacted law and prior law, courts should presume newly enacted law has been framed and adopted in light and understanding of prior law.

B. Ballot Issues - New Debt/New Taxes.

1. Voters in a post-TABOR election may approve new debt "without limitation as to rate" and may therefore give present authorization for future tax rate increases where such increases may be necessary to repay a specific voter-approved debt.

2. The incurrence of debt and the adoption of new taxes to pay it are a single subject and may be presented together in a single ballot issue.

3. The "text" which must be included in the election notice pursuant to §(3)(b)(i) is the ballot title, and not the authorizing ordinance or resolution, where the ballot issue contains the entire substance of the question before the voters.

4. A ballot title which did not include an estimate of "the first, or if phase-in, final, full fiscal year dollar increase" in property taxes did not substantially comply with this section because it did not specify the amount of increased property taxes - the question said only "in an amount sufficient." Boulder said the amount could not reasonably be estimated and court said you have to try - good faith estimate will suffice.

II. Board of County Commissioners of Boulder County v. Dougherty, Dawkins, Strand & Bigelow Inc., 890 P.2d 199 (Colo. App. 1994 - 11/3/94):

A. New Debt:

1. Terms "debt" and "financial obligation" in §(4)(b) are virtually synonymous.

2. Lease-purchase agreements subject to annual appropriation are not multiple fiscal year debt or financial obligation within the meaning of TABOR.

III. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995 - 2/6/95)

A. Ballot Issues - Content:

1. City sought approval for sales tax increase for more police protection. Ballot title did not include and estimate of the full fiscal year dollar increase in property taxes but substantial compliance with TABOR was achieved because the notice of election stated the dollar amount and was included in a mail ballot package for a mail ballot election.

2. Section (7)(d) does not require that voters approve a specific dollar amount for future revenues generated by a specific, voter-approved tax.

IV. Nicholl v. E-470 Public Highway Authority, 896 P.2d 859 (Colo. 1995 - 5/15/95)

Any Colorado taxpayer has standing to determine whether any district in Colorado is subject to TABOR, even if the taxpayer was not harmed.

A. Enterprises.

1. Construction and operation of a public highway as a fee-for-service toll way fits the definition of "business."

2. An entity, which is owned and controlled by one or more governments, is "government-owned" within the meaning of TABOR.

3. Authority's power to levy general taxes is inconsistent with the characteristics of a business and precludes the Authority from being considered an enterprise. (Followed by district court in Forest View Acres Water Dist. v. Forest View Co., El Paso County, No. 95-CV-246 - 8/9/95.)

B. Fiscal Year Spending/Revenue Limits.

1. Newly created debt service is included in fiscal year spending, but expenditure of bond proceeds collected before the effective date of TABOR is not.

2. Debt service that existed at the time TABOR took effect is already included in the District's base and does not reflect an increase in fiscal year spending.

3. Revenues collected from changing sources pursuant to the remarketing of valid pre-TABOR debt are changes in debt service and are not included in the district's base.

C. New Debt.

1. TABOR requires prior voter approval for revenue bonds that extend more than one fiscal year.

2. Public Highway Authority's plan to finance construction by releasing bond proceeds out of escrow and remarketing bonds did not create a new financial obligation so as to require prior voter approval.

3. Public Highway Authority's plan to finance construction of a portion of highway by using intergovernmental loans constituted a new multi-year fiscal obligation.

V. Romer v. Fountain Sanitation Dist., 898 P.2d 37 (Colo. 1995 - 6/19/95)

A special district does not have standing to file a declaratory judgment action against the State to determine whether tap fee revenues are subject to TABOR.

VI. Bolt v. Arapahoe County School District No. 6, a/k/a Littleton Public Schools, 898 P.2d 525 (Colo. 1995)

A. Interpretation Standards.

1. Terms of constitutional amendment should be given their ordinary and popular meanings.

2. Interpretation, which results in unreasonable or absurd result, is avoided.

3. Construction of constitutional amendment which harmonizes different constitutional provisions is favored over one that creates conflict between them.

B. Mill Levies.

1. A district mill levy is divisible into its component parts, and only those portions of the mill levy, which are subject to TABOR's elections requirements, must be voted.

2. Pre-TABOR elections which authorized general obligation debt and a mill levy to pay it without limit as to rate or amount are sufficient authorization for mill levy increases to pay the debt without further voter approval after the effective date of TABOR.

3. A mill levy imposed to recover lost revenue from the previous year to recoup property tax abatements and refunds need not be voted, because it is not an increase in tax revenue.

4. Mill levies for asbestos removal and ADA compliance imposed on June 16, 1992, need not be voted because TABOR did not become effective until November 4, 1992.

C. New Debt.

1. A refunding bond pays off a previously issued bond but does not create new debt. NOTE: If refunding bond is issued at a higher rate of interest, an election is required, See §(4)(b).

VII. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

A. Attorney Fees.

1. Amendment does not require an award of attorney fees to a prevailing plaintiff under TABOR.

2. Plaintiffs who bring an enforcement action under TABOR may be entitled to attorney fees, even though they do not personally incur an obligation to pay them. The lack of financial risk to such plaintiffs, however, is a factor that a court may consider in determining whether to award attorney fees.

3. Another factor, which may be considered by the Court, is the extent to which the attorney representing the plaintiffs may have deviated from Court rules or professional standards applicable to his or her conduct.

VIII. Havens v. Board of County Commissioners of the County of Archuleta, 924 P2d. 517 (Colo., 1996)

Supreme Court ruled in favor of counties' authority to "de-Bruce." De-Brucing measure approved by voters complied with §(7)(d), even though it did not offset excess revenues by lowering future revenues.

IX. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

A. TABOR election provisions do not govern city referral of issues not relating to financing, spending or taxes. (Brighton referred a question to approve the transfer of an electric utility franchise to its voters at a time other than those permitted by TABOR.)

B. The statutes codified at C.R.S. §1-41-101 et seq., which clarify procedural and other matters relating to November elections in odd-numbered years do not conflict with with "self-executing" provisions of TABOR and are constitutional.

X. Board of Commissioners of Boulder County v. City of Broomfield, 7 P.3d 1033 (Colo. App., 1999), cert. **granted** September 11, 2000.

TABOR confers standing, or right to sue, upon individual taxpayers to challenge a city's policies with respect to taxation, but this standing does not extend to a county allegedly acting on behalf of its taxpayers. (Boulder County challenged Broomfield Urban Renewal Authority's action as a "tax policy change" which should have been voted.)

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