

TABOR — The Taxpayer's Bill of Rights

Summary

- ▶ TABOR restricts state revenues from growing by more than the sum of inflation plus state population growth. It also requires voter approval for any new or increased taxes.
- ▶ If state revenues are higher than the TABOR limit, the surplus revenues in excess of the limit must be refunded to taxpayers unless the state has voter approval to keep a portion of the excess. If revenues are lower than the TABOR limit, no refunds occur.
- ▶ TABOR has not caused any of the recent budget shortfalls or cuts. We have not rebated any TABOR revenue since FY 2000-01 because there has not been any TABOR surplus since then. TABOR only requires that, when revenues exceed the limit, the surplus must be returned to taxpayers. When revenues are less than the TABOR limit, as has been the case since FY 2000-01, there are no TABOR refunds.
- ▶ The fact that the TABOR limit was higher than revenues from FY 2001-02 through FY 2002-03 meant that the state could keep the revenues it collected for its programs. Budget “cuts” were the result of sagging revenues — a phenomenon experienced in 42 other states that do not possess a TABOR limit.
- ▶ The ratchet-down effect occurs because TABOR re-bases the limit to revenues in the event of a revenue downturn. Once the TABOR limit is re-based, it again grows by population growth plus inflation. This means that the reduction in the TABOR limit that results from the re-basing is not recovered.

What is TABOR?

On November 3, 1992, the voters of Colorado approved Amendment 1¹ (53.7 percent for; 46.3 percent against), a constitutional amendment that is codified as Article X, Section 20 of the Colorado Constitution. This amendment is commonly known as TABOR — the Taxpayer's Bill of Rights. TABOR imposes various fiscal limits and requirements on the state and local Colorado governments.

¹ Citizen initiatives to amend the Colorado Constitution are numbered in the order in which the Secretary of State validates the number of signatures submitted.

Overall, TABOR is a limitation on the amount of *revenue* that may be kept by the state in any particular year, regardless of whether that revenue is spent during the year. Any revenue received during a fiscal year in excess of the limitations provided for in TABOR must be refunded to the taxpayers during the next fiscal year unless voters approve its retention.

This report describes the TABOR limit and TABOR surplus. It discusses why the TABOR surplus disappeared and the resulting “ratchet down” effect. It also details how TABOR is implemented, how it interacts with the Arveschoug-Bird statutory appropriations limit, the outlook for future TABOR surpluses, and potential future budgetary issues. Constitutional and statutory citations for the provisions discussed herein are listed in the last section of this report. The actual language of the TABOR amendment is included at the end of this document. The refund mechanisms used to return the TABOR surplus to taxpayers are discussed separately in the Governor’s Office of State Planning and Budgeting (OSPB) Special Report titled “The TABOR Surplus and TABOR Refund Mechanisms” (see www.state.co.us/ospb).

What is the TABOR limit?

The TABOR provision of the constitution limits the state’s revenue growth to the sum of inflation and population growth in the previous calendar year. For example, the FY 2002-03 limit was 6.9 percent, which is the sum of calendar year 2001 inflation (4.7 percent) and population growth (2.2 percent). Local governments have TABOR growth limits that differ from the state’s limit. For example, school districts face a TABOR limit tied to inflation plus student enrollment growth, while other local governments are restricted to growth that must not exceed inflation plus a measure of actual value growth attributed to new construction.

It is important to note that although TABOR is widely thought to be a *spending* limit, it is actually a *revenue* limit. TABOR defines fiscal year spending as all expenditures and increases in reserves except those for refunds or those from gifts, federal funds, collections for another government, pension contributions by employees, pension fund earnings, reserve transfers or spending from reserves, damage awards, or earnings from property sales. *This definition of spending is so broad that it effectively means all revenues collected directly by the state.* Thus, the TABOR revenue limit applies to almost all state revenues, from both general and cash sources. Only those sources specifically excluded from the definition of fiscal year spending are excluded from the TABOR revenue growth limit.

What is the TABOR surplus?

The TABOR surplus is the amount by which revenues exceed the TABOR limit. All surplus revenues received in excess of the TABOR limit must be refunded in the next fiscal year unless voters authorize the state to retain the revenue. **Table 1** shows the amount of the TABOR surplus from FY 1992-93 through FY 2003-04 and the September 2004 OSPB forecast for the TABOR surplus from FY 2004-05 through FY 2009-10.

The state first exceeded the TABOR limit in FY 1996-97. The healthy Colorado economy and the national economic expansion of the 1990s generated strong revenue growth. This robust revenue growth, coupled with low TABOR limits (the sum of

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population growth plus inflation), led to large TABOR surpluses. Indeed, the TABOR surplus exceeded \$900 million in both FY 1999-00 and FY 2000-01. However, in FY 2001-02 through FY 2003-04 there was no TABOR surplus. Furthermore, we forecast that when the TABOR surplus reappears in FY 2004-05 the excess will be relatively small. Between FY 2005-06 and FY 2009-10, we expect the TABOR surplus to be between \$290 million and \$950 million.

**Table 1
TABOR Revenues, Limits, and Surpluses**

Fiscal Year	TABOR Limit ⁽¹⁾		Net TABOR Revenues ^(1,2)		Revenues Above (Below)
	Amount (Millions)	Change (%)	Total (Millions)	Change (%)	Limit (Millions)
1992-93	\$5,109.9	NA	\$5,057.0	NA	NA
1993-94	5,401.2	6.5	5,385.7	6.5	(\$15.5)
1994-95	5,769.4	7.1	5,757.3	6.9	(12.1)
1995-96	6,160.3	7.0	6,124.3	6.4	(36.0)
1996-97	6,508.6	6.6	6,647.6	8.5	139.0
1997-98	6,872.0	5.5	7,435.2	14.2	563.2
1998-99	7,243.4	5.3	7,923.0	15.3	679.6
1999-00	7,563.7	4.4	8,503.0	17.4	941.1
2000-01	7,948.6	5.1	8,877.1	17.4	927.2
2001-02 ⁽³⁾	8,126.2	4.0	7,752.2	(2.5)	(365.7)
2002-03 ⁽³⁾	8,296.8	6.9	7,712.5	(0.5)	(584.3)
2003-04 ⁽³⁾	8,332.1	8.5	8,332.1	8.5	0.0
2004-05 ⁽⁴⁾	8,209.0	3.3	8,262.1	4.0	53.1
2005-06 ⁽⁴⁾	7,914.8	1.1	8,205.6	4.8	290.8
2006-07 ⁽⁴⁾	8,128.5	2.7	8,552.5	8.1	424.1
2007-08 ⁽⁴⁾	8,404.8	3.4	8,986.0	10.5	581.1
2008-09 ⁽⁴⁾	8,757.8	4.2	9,458.9	12.5	701.0
2009-10 ⁽⁴⁾	9,099.4	3.9	10,046.5	14.7	947.1

NA: Not Available.

(1) TABOR limits are periodically adjusted for changes to the TABOR revenue base. Because of this, the amounts and changes shown here do not necessarily correspond arithmetically.

(2) Net TABOR revenues exclude amounts credited to the State Education Fund per Amendment 23 and other revenues that are exempt from TABOR. Change in revenue is from the previous year’s TABOR limit.

(3) The TABOR limit is computed from the lesser of the previous year’s TABOR revenues and TABOR limit.

(4) OSPB September 2004 forecast.

Why did the TABOR surplus disappear?

After logging surplus TABOR revenues for five years, the TABOR surplus vanished in FY 2001-02 and remains absent through FY 2003-04. Indeed, FY 2002-03 TABOR revenues were lower than the TABOR limit by \$584.3 million. We do not expect the TABOR surplus to reappear until FY 2004-05. The TABOR surplus disappeared for three reasons.

- First, a national recession began in March 2001, after an unprecedented 10 years of economic expansion. The *Colorado economy* was negatively affected by the national recession and the events of September 11, 2001. As a result, state revenues decreased in FY 2001-02 and FY 2002-03. Although a recovery in the national economy is underway, strong growth in Colorado will not be evident until late 2004.

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- Second, a *measure passed by voters* in the November 2000 election lowered TABOR revenues each year by more than \$250 million. *Amendment 23*, which provides increased public school funding, exempts about 7.2 percent of Colorado income tax revenues from the TABOR restriction.
- Third, legislation enacted through House Bill 02-1310 and Senate Bill 02-179 enables the state to recoup revenues lost because the TABOR limits used during the 1990s relied on population estimates that were too low. The percentage change associated with this lost revenue is called the *growth dividend* and is equal to six percent. The state will gradually be using this growth dividend in FY 2003-04 and FY 2004-05. The full six percent growth dividend is applied to the TABOR limit by FY 2004-05. The growth dividend acts to eliminate the TABOR surplus in FY 2003-04 and to reduce the TABOR surplus in FY 2004-05. This adjustment allows the state to keep an additional \$3.4 billion through the forecast horizon.

In FY 2004-05, the TABOR surplus reappears, totaling \$53.1 million. From FY 2005-06 through the forecast horizon, we expect the TABOR surplus to range between \$290 million and \$950 million.

What is the “ratchet down” effect of TABOR?

There are no provisions in TABOR to account for cyclical revenue swings. This results in a “ratchet down” effect when state revenues fall below the allowed TABOR limit. The ratchet down effect occurs because the TABOR limit is based on the lesser of the previous year’s TABOR revenues and TABOR limit. For example, the FY 2002-03 TABOR limit is computed from FY 2001-02 TABOR revenues — not the FY 2001-02 TABOR limit — because FY 2001-02 revenues were less than the FY 2001-02 limit. Similarly, the FY 2003-04 TABOR limit is computed from FY 2002-03 TABOR revenues — not the FY 2002-03 TABOR limit — because FY 2002-03 revenues were less than the FY 2002-03 limit. Hence, the base from which the TABOR limit is computed is permanently lowered in subsequent years because of the 2001-2002 economic downturn.

Note in Table 1 that state revenues were lower than the TABOR revenue limit from FY 1993-94 through FY 1995-96. Thus, the state experienced a ratchet down effect in each of those three years. However, as shown in Table 1, revenues were below the TABOR limit by a relatively small amount. Furthermore, the TABOR growth rate was substantially above the appropriations growth allowed by Arveschoug-Bird. Hence, the ratchet down effect did not significantly disrupt government services to its citizens and appropriations continued to grow during this period.

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The revenue growth limits during the first four years after TABOR was enacted ranged from 6.5 percent to 7.1 percent and averaged 6.8 percent, well above General Fund appropriations growth allowed by TABOR and Arveschoug-Bird. Furthermore, General Fund *appropriations* represent less than two-thirds of the TABOR *revenue limit*. Thus, the state could build a substantial General Fund excess reserve, which is the difference between fiscal year spending — the sum of General Fund appropriations, highway spending, capital construction, the TABOR refund, the four percent statutory reserve, other General Fund rebates and expenditures, and cash fund obligations — and the TABOR revenue limit. Indeed, the high TABOR revenue

growth limits in FY 1993-94 through FY 1996-97 meant that the TABOR revenue limit was diverging from the appropriations level by a substantial amount. Thus, from FY 1996-97 through FY 2000-01, the amount of new spending allowed by the TABOR revenue limit was more than enough to support significant capital and highway construction as well as six percent appropriations growth, even though the TABOR growth limit averaged just 5.1 percent during this period.

How do cash fund revenues affect General Fund spending under TABOR?

Most cash fund revenues are included in the TABOR revenue limit and are part of the base upon which future TABOR limits are computed. TABOR thus required several adjustments to the budgeting and appropriations process related to cash funds. Now, cash fund forecasts are reviewed, evaluated, and included in the quarterly revenue forecasts prepared by both the Executive and Legislative Branches. In particular, the format of the state budget was altered to include extra columns to identify cash funds appropriations excluded from the limitations.

As a matter of policy, the state pays the entire TABOR refund from the General Fund. Thus, the cash fund revenue growth rate is an important variable in state budgeting. If the state is in a TABOR surplus position, the state can keep more General Fund revenues under TABOR when cash fund revenues grow at a pace that is less than the TABOR revenue growth limit. Conversely, when cash fund revenues grow faster than the TABOR limit, the amount of General Fund revenues that the state can keep will grow slower than the TABOR limit.

Between FY 1993-94 and FY 2000-01, cash fund revenues, which contribute about one third of total TABOR revenues, grew by less than the TABOR limit in most years. Indeed, between FY 1993-94 and FY 2000-01, annual cash fund revenue growth averaged only 5.1 percent per year while the TABOR revenue growth limit averaged 5.9 percent. Since cash fund revenues were growing slower than the TABOR limit, General Fund revenues — and obligations — could grow faster than the TABOR limit. Indeed, slow cash fund revenue growth from FY 1993-94 through FY 2000-01 meant there was an additional \$177 million that could be collected in the General Fund without violating the TABOR revenue limit.

The 2001-2002 economic downturn resulted in cash fund revenue growth that was substantially faster than the TABOR limit. Indeed, during and immediately after the 2001 recession, revenue growth for some of the major cash funds accelerated, even as General Fund revenues declined. For example, unemployment insurance tax revenues — a large contributor to total cash fund revenues — automatically climbed (as they are designed to do) in order to compensate for rising unemployment insurance benefit payments. In addition, higher education tuition payments — another large source of total cash fund revenues — also grew much faster than the TABOR limit. Tuition payments increased because student enrollment soared as a consequence of the tight labor market and because tuition rates were raised to compensate for reduced General Fund appropriations for higher education. However, even with rising cash fund revenues, the state was well below the TABOR limit in FY 2001-02 and FY 2002-03.

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Both House Bill 02-1310 and Senate Bill 02-179 contain provisions that enable the state to recoup revenues lost because the TABOR limits computed during the 1990s used population estimates that were too low.

What is the Growth Dividend?

Legislation adopted during the 2002 legislative session mitigates the ratchet down effect of TABOR through the decennial census adjustment. Both House Bill 02-1310 and Senate Bill 02-179 contain provisions that enable the state to recoup revenues lost because the TABOR limits computed during the 1990s used population estimates that were too low. This undercount resulted in lower TABOR limits and higher refunds than would have occurred with more accurate population figures. The percentage change associated with this lost revenue is called the **growth dividend**.

The TABOR limit for FY 2001-02 was calculated using the 2000 census measure of the state's population compared with an estimate of 1999 population that was not yet revised to reflect the 2000 census. In 2001, the U.S. Bureau of the Census reported that the state's population between 1999 and 2000 grew 6.0 percent, an artificially high value because the U.S. Bureau of the Census underestimated the state's population in 1999 and throughout the 1990s.

Since the state was not in a TABOR surplus position in FY 2001-02, the state could not recoup the extra money refunded to taxpayers through the 1990s when the census undercounted the state's population. Thus, House Bill 02-1310 and Senate Bill 02-179 allow the six percent growth dividend to be carried forward for up to nine years. The growth dividend is applied to the TABOR limit in an amount that maximizes the TABOR revenue growth rate subject to available TABOR revenues. In subsequent years, the unused amount of the growth dividend is applied in a similar manner, until either the cumulative amount by which the TABOR limit is increased equals six percent (the original growth dividend amount) or the nine-year limit is reached.

The September 2004 OSPB revenue forecast indicates that the state will use the growth dividend in FY 2003-04 and FY 2004-05, with the full six percent growth dividend applied to the TABOR limit by FY 2004-05. The growth dividend acts to eliminate the TABOR surplus in FY 2003-04 and reduce the TABOR surplus in FY 2004-05. This adjustment allows the state to keep an additional \$3.4 billion through the forecast horizon. The details of the September 2004 OSPB forecast for TABOR surplus revenues are shown in **Table 2**.

How does the TABOR limit interact with the Arveschoug-Bird limit?

The Arveschoug-Bird limit — often called the six percent limit — is a statutory limit that applies only to General Fund *appropriations growth*. By contrast, the TABOR limit only affects state *revenues*. The Arveschoug-Bird statute (Section 24-75-201.1(1), C.R.S.) limits General Fund appropriations to the lesser of (a) the previous year's General Fund appropriations increased by six percent or (b) five percent of Colorado personal income. Exceptions to the Arveschoug-Bird limit include court orders, federal mandates, transfers to the Capital Construction Fund, and Medicaid over-expenditures. Although originally statutory in nature, the Arveschoug-Bird appropriation limit is now constitutionally established because of TABOR. TABOR does not allow the state to weaken any existing spending limits without voter approval. Thus, state General Fund appropriations are constitutionally prohibited from growing by more than six percent per year without prior voter approval.

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Table 2
TABOR Surplus Revenue Calculation
(Dollar Amounts in Millions)

Line No.	Preliminary Close FY 2003-04	September 2004 Estimate by Fiscal Year						
		FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	
TABOR Revenues:								
1	General Fund	\$5,929.4 /A	\$6,252.2 /A	\$6,680.8 /A	\$7,098.0 /A	\$7,517.4 /A	\$8,077.7 /A	
2	Cash Funds	\$2,613.0 /B	\$1,953.4 /B	\$1,871.7	\$1,888.0	\$1,941.5	\$1,968.8	
3	Total TABOR Revenues	\$8,332.1	\$8,205.6	\$8,552.5	\$8,986.0	\$9,458.9	\$10,046.5	
4	Adjustment to base	(\$387.1) /B						
5	Adjusted total for computing next year's limit	\$7,945.0	\$8,205.6	\$8,552.5	\$8,986.0	\$9,458.9	\$10,046.5	
TABOR Limit Calculation:								
6	Previous calendar year population growth	1.7%	1.0%	1.2%	1.3%	1.5%	1.6%	
7	Previous calendar year inflation	1.9%	0.1%	1.5%	2.1%	2.7%	2.3%	
8	Growth Dividend	4.9% /C	0.0%	0.0%	0.0%	0.0%	0.0%	
9	Allowable TABOR Growth Rate	8.5%	1.1%	2.7%	3.4%	4.2%	3.9%	
10	Actual Change in TABOR Revenues from Limit	8.5%	4.0%	8.1%	10.5%	12.5%	14.7%	
11	TABOR Limit	\$8,332.1 /D	\$7,914.8 /D	\$8,128.5 /D	\$8,404.8 /D	\$8,757.8 /D	\$9,099.4 /D	
12	Revenues Above (Below) TABOR Limit	\$0.0	\$290.8	\$424.1	\$581.1	\$701.0	\$947.1	
13	TABOR Emergency Reserve	\$250.0 /E,F	\$237.4 /E,G	\$243.9 /E,G	\$252.1 /E,G	\$262.7 /E,G	\$273.0 /E,G	

/A These figures differ from the General Fund revenues reported in other tables because they net out revenues credited to the State Education Fund per Amendment 23, other revenues that are exempt from TABOR, and revenues that are recorded as both General Fund and cash fund. For instance, the General Fund gaming revenues, unexpended prior-year Medicaid expenditures that are booked in "other revenue," and transfers of unclaimed property are netted out.

/B S.B. 04-189 and S.B. 04-252 grant enterprise status to the University of Colorado in FY 2004-05 and all Colorado institutions of higher education in FY 2005-06 and thereafter. To account for this change, the FY 2003-04 TABOR limit is reduced by \$387.1 million (the amount of tuition and fees collected by the University of Colorado in FY 2003-04) before the FY 2004-05 TABOR limit is computed. Similarly, the FY 2004-05 TABOR limit is reduced by \$380.3 million (the amount of tuition and fees collected in FY 2004-05 by the remaining state institutions of higher education) before the FY 2005-06 TABOR limit is computed.

/C The allowable TABOR limit can be increased by a total of 6.0 percentage points over the next nine years as directed in H.B. 02-1310 and S.B. 02-179. These bills allow the state to increase the TABOR limit by 6.0 percentage points for population growth that occurred during the 1990s that was not captured by U.S. Bureau of the Census intercensal estimates. Since the state was not in a TABOR surplus position in FY 2001-02, the legislation allows the extra population growth to be used when the state returns to a TABOR surplus position.

/D The TABOR limit is calculated by applying the "Allowable TABOR Growth Rate" to either "Total TABOR Revenues" or the "TABOR Limit," whichever is smaller. In FY 2002-03, total TABOR revenues were less than the TABOR limit, so the FY 2003-04 TABOR limit was calculated by growing FY 2002-03 actual total TABOR revenues by the FY 2003-04 allowable TABOR growth rate. In the remaining years, the TABOR limit is less than or equal to total TABOR revenues, so the TABOR limit is calculated from the previous year's TABOR limit.

/E In years when projected revenues exceed the amount allowed by the Constitution, the three percent TABOR reserve is calculated based on the TABOR limit, rather than on projected total TABOR revenues. Given that the state will only retain the maximum allowed by the Constitution, it need only reserve three percent of such amount.

/F In FY 2003-04, per S.B. 03-258, the three percent TABOR emergency reserve is designated as the Colorado river recovery program loan fund, the fish and wildlife resources fund, the perpetual base account of the severance tax trust fund, the species conservation trust fund, the wildlife cash fund and fund equity, and up to \$87.4 million of state properties.

/G In FY 2004-05 and thereafter, per H.B. 04-1422, the three percent TABOR emergency reserve is designated as up to \$24.0 million from the major medical insurance fund, up to \$20.0 million from the subsequent injury fund, up to \$12.0 million from the workers' compensation cash fund, up to \$6.0 million from the severance tax trust fund, up to \$6.0 million from the Colorado river recovery program loan fund, up to \$3.0 million in the fish and wildlife resources fund, up to \$98.7 million in the wildlife cash fund and fund equity, and up to \$89.0 million of state properties.

What constitutes the TABOR emergency reserve?

Under TABOR, the state must create an emergency reserve equal to three percent of TABOR spending. The TABOR emergency reserve can be used only for declared emergencies and, by definition, such emergencies exclude “economic conditions, revenue shortfalls, and district salary or fringe benefit increases.”

Senate Bill 04-1422 designates the funds that constitute the TABOR emergency reserve. In FY 2004-05 and thereafter, the three percent TABOR emergency reserve is designated as up to \$24.0 million from the major medical insurance fund, up to \$20.0 million from the subsequent injury fund, up to \$12.0 million from the workers’ compensation cash fund, up to \$6.0 million from the severance tax trust fund, up to \$6.0 million from the Colorado river recovery program loan fund, up to \$3.0 million in the fish and wildlife resources fund, up to \$98.7 million in the wildlife cash fund and fund equity, and up to \$89.0 million of state properties.

Were FY 2001-02 through FY 2003-04 General Fund appropriations lower because of TABOR?

To date, it is not the TABOR *limit* that has impacted state fiscal year spending but rather the decline in General Fund revenues.

In FY 2001-02, gross General Fund revenues fell by an unprecedented 13.0 percent and, for the first time since FY 1996-97, there was no TABOR surplus. Indeed, revenues declined to such an extent that substantial fiscal adjustments had to be made in FY 2001-02 and FY 2002-03.

Because revenues collected by the state were less than the TABOR limit in both FY 2001-02 and FY 2002-03, the TABOR limit was not binding and the state could — and did — keep all of the money it collected.

Because revenues collected by the state were less than the TABOR limit in both FY 2001-02 and FY 2002-03, the TABOR limit was not binding and the state could — and did — keep all of the money it collected. Furthermore, gross General Fund revenues from which appropriations are made declined in FY 2001-02 and FY 2002-03 by 13.0 percent and 3.1 percent, respectively. Thus, *General Fund appropriations did not grow by six percent in FY 2001-02 through FY 2003-04 because the state did not collect enough General Fund revenues to support six percent revenue growth*, not because of the provisions of TABOR. Hence, it is not the TABOR *limit* that impacted state fiscal year spending in FY 2001-02 through FY 2003-04. Rather, TABOR simply prohibited the state from responding to falling revenues by increasing taxes without voter approval. Once the state is again in a surplus position, however, General Fund appropriation growth could be adversely affected by the TABOR limit.

How will TABOR affect FY 2003-04 through FY 2009-10 spending?

In most years since FY 1995-96, the Arveschoug-Bird six percent General Fund appropriations growth limit exceeded the TABOR revenue growth limit. However, for the reasons cited above, General Fund appropriations were able to grow at the maximum allowed six percent rate until FY 2001-02 even when the TABOR revenue growth limit was substantially less than six percent. Indeed, through FY 2000-01 the state had substantial year-end General Fund reserves that it could keep and spend on capital and highway construction projects and other obligations that do not count towards the Arveschoug-Bird six percent appropriations growth limit.

The September 2004 OSPB forecast indicates that net General Fund revenues — General Fund revenues remaining after diversions to the Highway Users Tax Fund, the State Education Fund, and the Older Coloradans Program — will grow less than six percent in FY 2004-05 and FY 2005-06. If General Fund revenues increase by less than six percent, General Fund expenditures must also increase by less than six percent. However, beginning in FY 2004-05, the state will again have a TABOR surplus. This means that, beginning in FY 2004-05, TABOR will impact General Fund appropriations growth.

What is the current accounting treatment of the TABOR surplus/refund?

Although TABOR is not the cause of the state's present financial situation, House Bill 98-1414 exacerbated the revenue shortfall in FY 2001-02. Hence, House Bill 98-1414 was reversed during the 2003 legislative session.

The provisions of TABOR require that the state refund any TABOR surplus revenues in the following year. Legislation was passed in 1998 that allowed the state to recognize this obligation in the year after the money was realized instead of in the year in which the revenues were collected. This legislation — House Bill 98-1414 — obligated the TABOR refund from the following year's revenues. Hence, beginning in 1998 the state has treated the TABOR surplus as an asset in the year it occurred and only recognized it as a liability in the following year. This pre-spending of TABOR surplus revenues in FY 1998-99 freed \$468.3 million for capital construction and highways. If the TABOR surplus had been restricted in the year it was realized, only \$287 million would have been available for capital and highway expenditures in that year.

The House Bill 98-1414 mechanism for obligating the TABOR refund was problematic when TABOR revenues in FY 2001-02. Because there was no TABOR surplus in FY 2001-02, the refund due to the taxpayers for the FY 2000-01 TABOR surplus (\$927.2 million) came at the expense of capital construction projects, the Senate Bill 97-1 transfer to the Highway Users Tax Fund, and General Fund expenditures.

The delayed recognition of the TABOR obligation legislated by House Bill 98-1414 significantly worsened the FY 2001-02 revenue shortfall. In order to avoid a replay of this situation in future years, two bills — Senate Bill 03-222 and House Bill 03-1238 — were passed during the 2003 legislative session to reverse the 1998 legislation. In future years, the state must set aside surplus revenues in the year in which they come to the state and recognize the obligation in that year. This prevents the state from spending money that must be refunded in the next year. In sum, it places the state in a much better financial situation to deal with future revenue shortfalls when they occur.

What are the actual provisions of TABOR?

TABOR's revenue limitations are implemented through certain restrictions on fiscal year spending:

- TABOR spending is defined to mean all expenditures and reserve increases except those for refunds made in the current or next fiscal year. It also excludes expenditures made by governmental operations defined as business enterprises

If General Fund revenues increase by less than six percent . . . General Fund expenditures must also increase by less than six percent.

House Bill 98-1414 exacerbated the revenue shortfall in FY 2001-02.

and expenditures made from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, and property tax sales. This effectively defines TABOR spending as all revenues received by the state, other than those that are specifically exempted.

- If revenues received from sources not exempted from TABOR spending exceed the TABOR limit — the previous year’s TABOR spending base, adjusted for revenue changes approved by voters and increased by the sum of inflation plus the percentage change in state population in the prior calendar year — the excess must be refunded in the next fiscal year unless voters authorize the state to retain the excess. TABOR specifies the provisions for annual, statewide elections each November and provides requirements for voter notification of ballot issues to obtain such voter approval. Prior voter approval is required for:
 - Any increase in state TABOR spending from one year to the next in excess of the TABOR limit; and any new state tax, state tax rate increase, extension of an expiring state tax, state tax policy change directly causing a net revenue gain to the state, or the creation of any state “multiple fiscal year direct or indirect...debt or other financial obligation.”
- The TABOR refund must be made from the General Fund even though both General Fund and cash fund sources are counted as TABOR revenues and contribute to the TABOR surplus. The TABOR refund must be taken from the General Fund because cash fund monies are restricted to be used only for specific purposes.
- TABOR requires voter approval to weaken any existing statutory limits on revenue, spending, and debt. Hence, the Arveschoug-Bird statutory limit on appropriations growth became “constitutionalized” by TABOR. Now, the limit on appropriations growth cannot be increased except through voter approval, whereas previously, it could be increased by legislation introduced by the General Assembly and signed by the Governor.
- TABOR allows local governments, with the exception of K-12 funding, to reduce or end its subsidy to the State for any mandated program for which the State requires a local subsidy.
- TABOR limits the ability of local governments and school districts to adjust mill levies without voter approval; and sets up provisions for annual, statewide elections each November, and provides requirements for voter notification of ballot issues.
- Under TABOR, the state must create an emergency reserve equal to three percent of TABOR spending.
 - The TABOR emergency reserve can be used only for declared emergencies and, by definition, such emergencies exclude “economic conditions, revenue shortfalls, and district salary or fringe benefit increases.”
 - An emergency is declared either by the passage of a joint resolution that is approved by a two-thirds majority of the members of both houses of the

Prior voter approval is required for any increase in state TABOR spending from one year to the next in excess of the TABOR limit.

The TABOR emergency reserve can be used only for declared emergencies and, by definition, such emergencies exclude “economic conditions, revenue shortfalls, and salary and fringe benefit increases.”

General Assembly and by the Governor (Section 24-77-104(3)(a), C.R.S.) or by executive order or proclamation of the Governor if a disaster has occurred (Section 24-32-2104(4), C.R.S.).

- If the TABOR emergency reserve is depleted, an emergency tax can be imposed by the roll call recorded passage of a bill that is approved by a two-thirds majority of the members of both houses of the General Assembly and that is approved by the Governor. The emergency tax expires in the month of the next statewide election that occurs 60 days or more after the declaration of the emergency unless voters approve continuance of the tax at that election. Any emergency tax revenues that are not spent on the declared emergency must be refunded to taxpayers within 180 days after the emergency ends.
- The TABOR emergency reserve must be restored to three percent at the beginning of each fiscal year.

A number of statutes implementing TABOR have been enacted by the General Assembly, including statutes defining the revenues and spending included in the state's fiscal year revenue and spending for purposes of TABOR's revenue and spending limits, the accounting treatment of refunds owed by the state under TABOR, and defining state operations that qualify as "enterprises," which are excluded from TABOR. Statutory citations for these are listed in the last section of this report.

What is the statutory implementation of TABOR?

The General Assembly adopted and Governor Romer signed Senate Bill 93-094, which provides a framework for the implementation of TABOR. Specifically, Senate Bill 93-094 specified C.R.S. Sections 24-77-101 through 107, which:

- Further define terms and definitions used in Article X, Section 20, such as "grant," "gift," "property sale," etc.;
- Establish a reporting mechanism for officials to notify the General Assembly and the Governor of the estimates of population changes in the State and estimates of the inflation rate, as defined by the Denver-Boulder CPI;
- Establish a number of reserve funds so expenditure of these reserves can be spent with no impact on future fiscal years' spending limitations including:
 - Subsequent Injury Fund in the Department of Labor;
 - Major Medical Insurance Fund in the Department of Labor;
 - Unemployment Compensation Fund;
 - Capital Construction Fund; and
 - Highway Users Tax Fund;
- Expand the number of funds subject to annual appropriation by the General Assembly to include:
 - The Old Age Pension Fund;
 - The Old Age Pension Health and Medical Care Fund;

The TABOR emergency reserve must be restored to three percent at the beginning of each fiscal year.

- The Fire and Police Pension Association payments;
 - The Cigarette tax distributions to local governments;
 - The Property Tax Assistance Grants for the Elderly and Disabled;
 - The Aviation Fund;
 - The Displaced Homemakers Fund;
 - The Elected state officials discretionary funds;
 - The Highway Crossing Protection Fund; and
 - Allocations of the cities' and counties' share of the Highway Users Tax Fund.
- Establish procedures for the General Assembly to follow in budgeting for the institutions in Higher Education including limiting the amount of tuition and other fee income that each Governing Board may raise in any fiscal year; and
 - Grant the General Assembly authority to limit total expenditures from the state highway fund administered by the Transportation Commission.

Senate Bill 94-073 also provides a comprehensive listing of criteria for determining which cash funds are exempt from the TABOR spending limitations. These include the following:

1. Gifts and donations, including the accrued interest. A gift is defined as something of value that is given to the State voluntarily by any person or entity, regardless of whether the person or entity specifies the purpose for which it is to be used. Examples of gifts would include: voluntary contributions of state income tax refunds, tax check-offs, grants from foundations, sponsored research in Higher Education, and patient revenues.
2. Refunds of excess state revenues made in current or subsequent fiscal years.
3. Federal funds including interest on federal funds.
4. Collections for another government, i.e. Assistance Payment Intercept. This refers to tax revenues collected by the State for the benefit and use of any government other than the State. These revenues would be passed through to that government.
5. Pension contributions from employees to the retirement plan.
6. Pension fund earnings from the investment of moneys set aside for retirement income for state employees.
7. Reserve transfers or expenditures out of a reserve.
8. Damage awards, including interest on damage awards. Damage award means any pecuniary (payment of money) compensation received by the State as a result of a judgment in favor of the State for any loss, detriment, or injury through unlawful act or omission or negligence of any person or entity.
9. Property sales, including interest. Property sales are defined as the transfer of absolute ownership of tangible assets, intangible rights, or any contract resulting in the payment of pecuniary compensation to the State for another to exploit, use, or

market nonrenewable natural resources located on real property owned by the State.
This includes royalties from the sale of nonrenewable minerals.

What are the relevant constitutional and statutory citations?

TABOR

- Article X, Section 20, Colorado Constitution.
- Implementation details —
 - Definition of terms: Section 24-77-102, C.R.S.
 - Determination of population growth: Section 24-77-103(2), C.R.S.
 - Declaration of Emergency: Section 24-77-104(3)(a), C.R.S.
 - Executive order proclaiming disaster: Section 24-32-2104(4), C.R.S.
 - See also cross-references at the end of Article X, Section 20.

Amendment 23

- Article IX, Section 17, Colorado Constitution.

Arveschoug-Bird appropriation growth limit

- Section 24-75-201.1 (1), C.R.S.
- General Fund transfers excluded from the Arveschoug-Bird limit —
 - Capital Construction Fund: Section 24-75-302(2), C.R.S.
 - Controlled Maintenance Trust Fund: Section 24-75-201.1(1)(c.5)(II), C.R.S.

Diversions from General Fund revenues

- Highway Users Tax Fund: Section 39-26-123(2), C.R.S.
 - Receives 10.34 percent from state sales and use taxes.
- State Education Fund: Article IX, Section 17 (4), Colorado Constitution.
 - Receives 0.00333 percent of federal taxable income
- Older Coloradans Program: Section 26-11-205.5.
 - Receives monies appropriated by the General Assembly.

Colorado Constitution, Article X, Section 20: The Taxpayer's Bill of Rights.

(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in 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. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions.

(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting

on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall 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 cost)...?"**

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, 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 a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, 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.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) 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 voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the

annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Source: Initiated 92: Entire section added, effective December 31, 1992, see **L. 93**, p. 2165. **L. 94:** (3)(b)(v) amended, p. 2851, effective upon proclamation of the Governor, **L. 95**, p. 1430, January 19, 1995. **L. 96:** IP(3)(b) and (3)(b)(v) amended, p. 1425, effective upon proclamation of the Governor, **L. 97**, p. 2393, December 26, 1996.

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