

**OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY**

STATE CAPITOL BUILDING, ROOM 091
200 EAST COLFAX AVENUE
DENVER, COLORADO 80203-1782

TELEPHONE: 303-866-2045 FACSIMILE: 303-866-4157
E-MAIL: OLLS.GA@STATE.CO.US

MEMORANDUM

To: Interested Persons

From: Office of Legislative Legal Services

Re: The Arveschoug-Bird general fund appropriations limit, section 24-75-201.1 (1) (a) (II) through (VII), C.R.S.¹

This memorandum will address the "general rules" which have developed and which have provided a basis for the General Assembly's enactments implementing the general fund appropriations limit.

**Part I - The "Arveschoug-Bird Limit":
The Current State General Fund Appropriations Limit -
Overview and Summary**

The "Kadlecek Amendment"

The first statutory limit on the growth of state general fund appropriations was enacted in 1977 to be effective July 1, 1977. Named the "Kadlecek amendment" after Senator Jim Kadlecek, the first limit was added as an amendment to a property tax bill. (See 1977 Session Laws, page 1794). As first enacted, the limit was designated as a limit on **state general fund spending** and was expressed in a single paragraph which also included a reserve requirement. This provision limited general fund spending growth to seven percent over the previous year, required a four percent reserve, and provided that the excess revenues were to be used for property tax relief.

Enactment of Current Appropriations Limit

The current state general fund appropriations limit was enacted in 1991 as an amendment to section 24-75-201 (1), C.R.S., and is sometimes referred to as the "Arveschoug-Bird limit" after Representative Steve Arveschoug and Senator Mike Bird. The

¹ This memorandum is an edited version of a longer memorandum on the Arveschoug-Bird appropriations limit, dated December 23, 1993. The longer memorandum is available from the Office of Legislative Legal Services upon request.

provisions of the limit can be found in section 24-75-201.1 (1) (a) (II) through (VII) the text of which is attached to this memorandum. The Arveschoug-Bird limit has not been amended since 1991.

Statement of the General Rule in the Arveschoug-Bird Limit

Section 24-75-201.1 (1) (a) (II) describes a limit on the annual growth of total appropriations from the state general fund for the 1991-92 fiscal year and each fiscal year thereafter. The limit on annual growth is expressed as the lesser of five percent of Colorado personal income or six percent over the total state general fund appropriations for the previous fiscal year. For the 1991-92 fiscal year and each fiscal year since, the six percent limit has described a lesser amount than five percent of Colorado personal income.

Exceptions from the Arveschoug-Bird Limit.

Certain state general fund appropriations are excepted from the limit:

- General fund appropriations for property tax reappraisals.
- General fund appropriations required by factors outside of the control of the General Assembly. Examples are appropriations required by new programs or service levels required by federal law or state or federal court order and overexpenditures or supplemental appropriations for Medicaid.
- General fund appropriations from voter-approved tax or fee increases.
- General fund appropriation for a state fiscal emergency.

Exclusion from the Arveschoug-Bird limit of annual general fund transfers to the capital construction fund.

Annual transfers from the general fund to the capital construction fund pursuant to section 24-75-302 (2), C.R.S., are excluded from the limiting effect of the state general fund appropriations limit. This transfer is for a specified purpose, is authorized by permanent statute, and is to occur over a specified period of time. (The water conservation board construction fund transfer was also excluded from the limit but such transfer has since been eliminated.)

Exclusion from the Arveschoug-bird Limit of Annual General Fund Transfers to the Controlled Maintenance Trust Fund

Annual transfers of excess general fund revenues to the controlled maintenance trust fund pursuant to section 24-75-201.1 (c.5) (II) are also excluded from the limiting effect of the state general fund appropriations limit. The statutory provision authorizing this transfer was added by permanent statute in 1993 and is made for the purpose of creating a trust fund which will generate interest income that can be used to fund state controlled maintenance projects.

Effect of Section 24-75-201.1 (1) on Cash Fund Appropriations

Section 24-75-201.1 (1) specifically states that "state general fund appropriations" are limited. As a general principle, cash fund appropriations are not subject to the limit; however, certain state cash fund appropriations are affected by section 24-75-201.1 (1) (a) (V). This statutory provision prohibits an appropriation of a fee-based cash fund which either supplants a state general fund appropriation or, if not made, would necessitate a state general fund appropriation if the effect of the state cash fund appropriation would be to circumvent the general fund appropriation limit.

How the General Fund Appropriations Base Grows for Purposes of the Arveschoug-Bird Limit

The base for calculating the six percent limit on annual growth is the total general fund appropriations for the previous year. The base includes general fund appropriations not subject to the limit because, although excepted in the year of actual appropriation, such appropriations are general fund appropriations. Excluded general fund appropriations included in the base, if continued, are subject to the limit in the following year.

Part II - the Arveschoug-Bird Limit: Basic Questions Concerning its Operation

Part II of this memorandum attempts to provide answers to some of the basic questions about how the Arveschoug-Bird limit operates consistent with the explanation of the appropriations limit contained in Part I of this memorandum.

Question #1. What is the limitation on general fund appropriations found in section 24-75-201.1 and how is it calculated?

Answer: Section 24-75-201.1 (1) places a limit on the growth of general fund

appropriations (minus some specifically excluded appropriations) in any given fiscal year to the amount necessary for property tax reappraisals, if any, plus the lesser of (a) an amount equal to 5% of Colorado personal income or (b) 6% over the total state general fund appropriations for the previous fiscal year (hereinafter referred to as the "appropriations base"). The total dollar figure which results from this formula becomes the "general fund appropriations limit" for the following fiscal year (hereinafter referred to as "the appropriations limit"). For FY 1991-1992 and each fiscal year thereafter, the appropriations limit was calculated by multiplying the appropriations base for the prior fiscal year by 106%. There were no property tax reappraisal costs.

Question #2. Does the appropriations limit apply to all general fund appropriations?

Answer: No. General fund appropriations to which the appropriation limit does not apply include the following:

- Appropriations for a new program or service or for an increase in the level of service of an existing program which result from a federal mandate or from a final state or federal court order
- Appropriations of revenue derived from a voter-approved increase in the rate or amount of any tax or fee
- Overexpenditures from the general fund for Medicaid programs or supplemental appropriations for overexpenditures in Medicaid programs
- Appropriations for fiscal emergencies

Question #3. Are cash fund appropriations subject to the appropriations limit?

Answer: No, unless the cash fund appropriation is made to circumvent the limit.

Question #4. Are statutory transfers from the general fund to the capital construction fund and the controlled maintenance trust fund subject to the appropriations limit?

Answer: No. The statutory provisions authorizing transfers to the capital construction fund and the controlled maintenance trust fund specifically state that the transfers "shall not be deemed to be appropriations" subject to the general fund appropriations limit.

Question #5. Are transfers which are not subject to the appropriations limit included in the appropriations base?

Answer: No. Since transfers from the general fund to other state funds are not

general fund appropriations, in addition to not being subject to the appropriations limit, such transfers are not included in the appropriations base for the fiscal year in which the transfer occurred.

Question #6. Are appropriations from the general fund to a cash fund included in the appropriations limit?

Answer: Yes. There is no provision in section 24-75-201.1 that would exclude general fund appropriations to cash funds from the appropriations limit.

Question #7. Are appropriations which are excluded from the appropriations limit included in the appropriations base for that particular year for purposes of determining the appropriations limit for the following fiscal year?

Answer: Yes, unless the appropriation was made for a state fiscal emergency. Even though an appropriation is excluded from the appropriations limit in the year in which the appropriation is made, such appropriation is still a "general fund appropriation" and included in the calculation of the appropriations base for the year in which the appropriation was made. The exception is any appropriation made for a state fiscal emergency.

Question #8. If the appropriations limit has not been reached in a particular fiscal year, can the General Assembly make additional general fund appropriations solely for the purpose of reaching the appropriations limit and increasing the appropriations base?

Answer: Yes. Section 24-75-201.1 imposes a limit on general fund appropriations which is not to be exceeded. Continuing to make general fund appropriations is within the province of the general assembly so long as the limit is not exceeded. It is advantageous to reach the appropriations limit because the appropriations base is a greater amount which, in turn, results in a greater appropriations limit for the following fiscal year.

Question #9. Is the Arveschoug-Bird limit a limit "on district revenue, spending, [or] debt" which is referred to in Amendment No. 1?

Answer: Technically, the Arveschoug-Bird limit is a limit on increases in general fund *appropriations*, not on revenue or spending. However, a court would probably conclude that, **for purposes of Amendment No. 1, the Arveschoug-Bird limit is a limit on spending** for the following reasons:

- Spending and appropriations are closely related concepts. Agencies normally

cannot make expenditures unless they have an appropriation, and placing limits on appropriations indirectly limits spending.

- The General Assembly defined "expenditure" in S.B. 93-74 as "the *appropriation* or disbursement of any state general fund or cash fund moneys for any expense incurred by the state". Section 24-77-102 (4), C.R.S.
- The proponent of Amendment No. 1 stated, prior to the 1992 election, that the statutory 7% limit then in effect was the kind of limit that could not be weakened except with voter approval.
- Courts will construe constitutional language to give it a natural and obvious significance, as opposed to a narrow, literal, or technical meaning.

Question #10. Would a modification of the Arveschoug-Bird limit "weaken" the limit, thus requiring submission to the voters?

Answer: Yes. The plain meaning of the verb "to weaken" is to lessen the strength of something, or to reduce it in intensity or effectiveness. Therefore, **while we have certainly not foreseen all the possible ways of modifying the Arveschoug-Bird limit, an amendment to Arveschoug-Bird which permits greater expenditures of funds than would have been allowed under the current limit appears to weaken the limit.** For example, changing the limit from 6% of current year's appropriations to 7% of current year's appropriations seems to weaken the limit.