

Significant November 2010 Ballot Measures:

Amendment 60, Amendment 61, and Proposition 101

Three measures will appear on the November 2, 2010, statewide ballot that, if passed, will have significant and detrimental impacts on Colorado government. The language and effects of the proposals are subject to interpretation, but it is clear that the passage of any one of these measures would have negative financial impacts on all levels of government throughout our state. This report provides a summary of each ballot measure and explanations of substantive issues of which every citizen and local government should be aware. The actual text of each measure is included in the appendix.

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I. Amendment 60

A. Summary

Amendment 60 deals generally with property taxes in four ways:

i. Property tax elections:

- Allows electors to vote on property taxes where they own real property.
- Requires local governments to allow petitions to lower property taxes and requires property tax issues to have November election notices. These are required to be voted on independent of debt issues.

ii. Property Taxes Generally:

- Requires property tax bills to list only taxes and late charges.
- Requires enterprises and authorities to pay property taxes and requires local governments to reduce their mill levies to offset this revenue. Also prohibits enterprises and authorities from levying a mandatory fee or tax on property.
- Requires all future property tax rate increases to expire within 10 years.
- Requires prior elections to allow the retention of excess property tax revenue to expire (effectively cancels all prior property tax de-Taboring elections).
- Deems the extension of an expiring tax to be a tax increase.
- Deems future actions to retain excess property tax revenue to be tax increases and requires they expire after four years.
- Requires non-college school districts to phase out half their non-debt paying property taxes (i.e., taxes which fund operations and maintenance) by 2020 and requires this lost revenue to be replaced by the state.

iii. Taxes which must expire:

- Taxes exceeding state law, tax policies, or limits "violated, changed, or weakened" without voter approval.
- Taxes exceeding the dollar amount first listed on a tax increase ballot title.
- Tax rates without voter approval after 1992.

iv. Enforcement:

- The state must audit and enforce the provisions of the amendment.
- Awards costs and attorney fees only to successful plaintiffs.

B. Substantive Issues

The amendment language allowing all "electors" to vote on property taxes where they own real property does not define "elector." This term could be interpreted several ways. For example, it could be interpreted to include: (1) only registered electors who own real property, (2) corporations or other legal entities who own real property, (3) persons who own property in Colorado but reside out of state, or (4) property owners who are not registered to vote.

The requirements that local governments allow petitions to lower property taxes and that property tax issues be voted on independent of debt issues would impose a new and substantial financial burden on local governments conducting such elections.

By limiting future property tax rate increases to ten year terms, Amendment 60 would effectively limit general obligation and other property tax supported bonds to ten year terms. This would significantly restrict the size of bond issues and the projects they fund.

The requirement that non-college school districts phase out half of their non-debt paying property taxes means that these school districts must eliminate half of those taxes which fund operations and maintenance (effectively cutting operations and maintenance budgets in half) over the next ten years. Although the measure requires the state to make up the difference, the Legislative Council has determined that the amount of lost revenue could be more than \$600 million.

It is unclear what will happen to previously-approved election questions that authorized the retention and expenditure of excess revenues since 1992. There have been many of such questions approved by voters since 1992. Many entities formed after 1992 could find themselves without financial authority. All other entities could be required to reduce revenue and spending to 1992 levels.

Amendment 60 would require enterprises and authorities to pay property taxes, and in turn require the receiving local government to offset these revenues by reducing property tax rates by a proportionate amount. The net result of this increased-revenue/rate-reduction cycle is unclear, but enterprises and authorities would likely have to increase user fees or other charges in order to maintain revenues.

The measure requires the state to audit and enforce its provisions and awards attorney fees and costs to prevailing plaintiffs, but explicitly states that districts shall not receive either costs or attorney fees when they prevail. These provisions would impose additional financial burdens on the state and special districts.

II. Amendment 61

A. Summary

Amendment 61 applies to debt in the following ways:

- Generally states that "The state shall not contract any debt by loan in any form."
- Prohibits the state, its enterprises, authorities, and other state political entities from borrowing in any form, directly or indirectly.
- Prohibits any voter-approved debt incurred from being repealed until it is fully repaid.
- Specifies that a ballot title for any question must detail how the moneys to be borrowed are to be used, and prohibits any subsequent change in the use of the money borrowed.
- Prohibits local governments and other political subdivisions from borrowing money or other items of value without "November voter approval."
- Requires that local government and other political subdivision future borrowing may be prepaid without penalty, shall be bonded debt, and shall be repaid within ten years.
- Prohibits local governments from borrowing if the total principal of direct and indirect current and proposed borrowing exceeds 10% of the *assessed value* within the jurisdiction.
- Prohibits any borrowing from continuing beyond its original term.
- Requires that all current borrowing be repaid.
- After current borrowing is repaid, tax rates are required to decline in an amount equal to that debt's planned average annual repayment, even if the debt is not repaid by taxes.

B. Substantive Issues

From the enabling language of this amendment, which expressly prohibits any debt by loan in any form, it is unclear what will happen to currently outstanding state indebtedness.

The amendment prohibits the state, its enterprises, authorities and other entities from borrowing in any form, directly or indirectly. This broad language could be interpreted to reach so far as to prohibit, for example, a lease in any form, variable rate debt secured by renewable letters of credit, and even the acceptance of federal funds.

The requirement that all current borrowing be repaid would potentially eliminate a local government's ability to refund (or refinance) bonds or seek bankruptcy protection. The amendment also requires that once current borrowing is repaid, tax rates be reduced by amounts tied to the repayment rate of that debt, greatly reducing overall tax revenues regardless of whether the taxes were actually used to repay the debt. The amendment further limits the ability to refinance debt by prohibiting borrowing to continue beyond its original term.

The amendment appears to require voter approval for certificates of participation, lease purchase agreements, and all other annually-renewable contracts. Such elections would be costly and time-consuming. The stipulation that entities may borrow, "only after November voter

approval," could be interpreted to refer to a general election only, or November in odd-numbered years, imposing an additional time constraint on these agreements.

The amendment requires that all future borrowing be bonded indebtedness and be repaid within ten years. This ten year limitation would require annual payment obligations to be large in proportion to the total debt, greatly limiting the total amount that local governments could borrow and feasibly repay. Additionally, the amendment may require that all borrowing have the option to be prepaid without penalty. This requirement would negatively affect Colorado bonds as compared to bonds issued in other states without such option.

The amendment limits future borrowing (except for enterprises) to an aggregate amount not to exceed 10% of the *assessed value* within the entity's jurisdiction. It is important to recognize that *assessed value* is substantially lower than *actual* or *taxable value* (assessed value is 7.9% of actual value for residential properties and 29% of actual value for others). Thus, this cap would limit borrowing to only a very small fraction of actual property value.

III. Proposition 101

A. Summary

Proposition 101 affects vehicle taxes and fees, state income tax, and telecommunication taxes. Importantly, even though this measure is a statutory change only, it would nonetheless require a statewide election to modify or repeal it.

i. Vehicle Taxes and Fees

- Decreases the specific ownership ("SO") tax to \$2 for new vehicles and \$1 for other vehicles in four years.
- Ends state and local car rental taxes, taxes on vehicle leases, and taxes on the first \$10,000 of value of vehicle prices, phased-in over four years.
- Ends the taxation of sale rebates.
- Requires that all registration, license, and title charges, combined, equal \$10 annually, per vehicle.
- Ends all state and local government charges on vehicles and vehicle uses, except charges and taxes related to registration, license, title, fine, toll, parking, seizure, inspection, and new plate charges.
- Specifies that all added charges are to be considered tax increases, except those related to "fine, toll, parking, seizure, inspection, and new plate charges."

ii. State Income Tax:

- Sets the 2011 state income tax rate at 4.5% and eventually reduces the tax rate to 3.5%.

iii. Telecommunication Tax:

- Eliminates almost all charges and taxes on telecommunication services.
- Exempts 9-1-1 fees, but sets them at 2009 rates.
- Specifies that added charges shall be considered tax increases.

B. Substantive Issues

The specific ownership ("SO") tax reduction would be substantial. Today, the tax is based on a percentage of value formula and makes up approximately 7-10% of local government revenue. Proposition 101 would reduce the SO tax to a flat dollar amount of \$2 for new vehicles and \$1 for all others.

State and local taxes would not be applied to the first \$10,000 of the value of a new vehicle when purchased. This would result in substantial losses of sales tax revenue.

Proposition 101 decreases registration, license, and title charges to an amount no greater than \$10 annually. This effectively eliminates the "FASTER" bill passed by the General Assembly last session and further reduces revenues.

9-1-1 fees are locked into their 2009 rates without an escalator clause to allow for increases, thus causing a limitation on revenues even as 9-1-1 service demands increase.

The restriction on telecommunication taxes is quite broad and extends to "telephone, pager, cable, television, radio, internet computer, satellite, or other telecommunication service accounts." It calls into question the administration, collection, and enforcement of utility occupation taxes, sales and use taxes on telecommunication services, and possibly franchise fees.

The current state income tax rate is 4.63% and generated \$5.6 billion in 2008 for the state general fund. One estimate maintains that the proposed state income tax rate reduction to 3.5% will cause a 25% reduction to the state general fund, a loss of more than \$1 billion.

By defining all added vehicle and telecommunication charges as "tax increases," Proposition 101 would effectively require an election for every increase in those charges, regardless of amount.

Proposition 101 also allows prevailing plaintiffs to be awarded costs and fees, without a similar provision for prevailing defendants (such as a local government entity), and requires the state to audit yearly compliance, imposing an additional financial burden on state and local government.

APPENDIX

Ballot Title for Amendment 60

Shall there be an amendment to the Colorado constitution concerning government charges on property, and, in connection therewith, allowing petitions in all districts for elections to lower property taxes; specifying requirements for property tax elections; requiring enterprises and authorities to pay property taxes but offsetting the revenues with lower tax rates; prohibiting enterprises and unelected boards from levying fees or taxes on property; setting expiration dates for certain tax rate and revenue increases; requiring school districts to reduce property tax rates and replacing the revenue with state aid; and eliminating property taxes that exceed the dollar amount included in an approved ballot question, that exceed state property tax laws, policies, and limits existing in 1992 that have been violated, changed, or weakened without state voter approval, or that were not approved by voters without certain ballot language?

Full Text of Amendment 60

Be it Enacted by the People of the State of Colorado:

Article X, section 20, The Taxpayer's Bill of Rights, is amended to add:

(10) Property taxes.

Starting in 2011:

(a) The state yearly shall audit and enforce, and any person may file suit to enforce, strictest compliance with all property tax requirements of this section. Successful plaintiffs shall always be awarded costs and attorney fees; districts shall receive neither. This voter-approved revenue change supersedes conflicting laws, opinions, and constitutional provisions, and shall always be strictly interpreted to favor taxpayers.

(b) Electors may vote on property taxes where they own real property. Adapting state law, all districts shall allow petitions to lower property taxes as voter-approved revenue changes. Property tax issues shall have November election notices and be separate from debt issues. Property tax bills shall list only property taxes and late charges. Enterprises and authorities shall pay property taxes; lower rates shall offset that revenue. Enterprises and unelected boards shall levy no mandatory fee or tax on property. Future property tax rate increases shall expire within ten years. Extending expiring property taxes is a tax increase. Prior actions to keep excess property tax revenue are expired; future actions are tax increases expiring within four years. Non-college school districts shall phase out equally by 2020 half their 2011 rate not paying debt; state aid shall replace that revenue yearly. Nothing here shall limit payment of bonded debt issued before 2011.

(c) These property tax increase, extension, and abatement rates after 1992 shall expire:

(i) Taxes exceeding state laws, tax policies, or limits violated, changed, or weakened without state voter approval. Those laws, policies, and limits, including debt limits, are restored.

(ii) Taxes exceeding the one annual fixed, final, numerical dollar amount first listed in their tax increase ballot title as stated in (3)(c).

(iii) Those rates without voter approval after 1992 of a ballot title as stated in (3)(c).

Ballot Title for Amendment 61

Shall there be an amendment to the Colorado constitution concerning limitations on government borrowing, and, in connection therewith, prohibiting future borrowing in any form by state government; requiring voter approval of future borrowing by local governmental entities; limiting the form, term, and amount of total borrowing by each local governmental entity; directing all current borrowing to be paid; and reducing tax rates after certain borrowing is fully repaid?

Full Text of Amendment 61

Be it Enacted by the People of the State of Colorado:

Section 1.

Article XI, section 3 is repealed and re-enacted to read, as stated in the original constitution: "The state shall not contract any debt by loan in any form."

Sections 4, 5, 6(2), and 6(3) are repealed as obsolete and superseded.

Section 6 (1) is repealed and re-enacted as section 6 to read: "Without voter approval, no political subdivision of the state shall contract any debt by loan in any form. The loan shall not be repaid until such indebtedness is fully paid or discharged. The ballot title shall specify the use of the funds, which shall not be changed."

Section 2.

Article X, section 20 is amended to add:

(4)(c) After 2010, the following limits on borrowing shall exist:

(i) The state and all its enterprises, authorities, and other state political entities shall not borrow, directly or indirectly, money or other items of value for any reason or period of time. This ban covers any loan, whether or not it lasts more than one year; may default; is subject to annual appropriation or discretion; is called a certificate of participation, lease-purchase, lease-back, emergency, contingency, property lien, special fund, dedicated revenue bond, or any other name; or offers any other excuse, exception, or form.

(ii) Local districts, enterprises, authorities, and other political entities may borrow money or other items of value only after November voter approval. Loan coverage in (i) applies to loans in (ii). Future borrowing may be prepaid without penalty and shall be bonded debt repaid within ten years. A non-enterprise shall not borrow if the total principal of its direct and indirect current and proposed borrowing would exceed ten percent of assessed taxable value of real property in its jurisdiction.

(iii) No borrowing may continue past its original term. All current borrowing shall be paid. Except enterprise borrowing, after each borrowing is fully repaid, current tax rates shall decline as voter-approved revenue changes equal to its planned average annual repayment, even if not repaid by taxes. Such declines do not replace others required. Future borrowing is void if it violates this paragraph (c), which shall be strictly enforced. Conflicting laws, rulings, and practices are repealed, overturned, and superseded.

Ballot Title for Proposition 101

Shall there be an amendment to the Colorado Revised Statutes concerning limits on government charges, and, in connection therewith, reducing vehicle ownership taxes over four years to nominal amounts; ending taxes on vehicle rentals and leases; phasing in over four years a \$10,000 vehicle sale price tax exemption; setting total yearly registration, license, and title charges at \$10 per vehicle; repealing other specific vehicle charges; lowering the state income tax rate to 4.5% and phasing in a further reduction in the rate to 3.5%; ending state and local taxes and charges, except 911 charges, on telecommunication service customer accounts; and stating that, with certain specified exceptions, any added charges on vehicles and telecommunication service customer accounts shall be tax increases?

Full Text of Proposition 101

Be it Enacted by the People of the State of Colorado:
Title 39, article 25 of the Colorado Revised Statutes

Reducing government charges

(1) Enforcement. This voter-approved revenue change shall be strictly enforced to reduce government revenue. It is self-executing, severable, and a matter of statewide concern that overrides conflicting statutes and local laws. Prevailing plaintiffs only shall have their legal fees and court costs repaid. The state shall audit yearly compliance with this reform to reduce unfair, complex charges on common basic needs.

(2) Vehicle. Starting January 1, 2011: (a) All annual specific ownership taxes shall decrease in four equal yearly steps to: New vehicles, \$2; and other vehicles, \$1. All state and local taxes shall cease on vehicle rentals and leases, and on \$10,000, reached in four equal yearly steps, of sale prices per vehicle. Sale rebates are not taxable.

(b) All registration, license, and title charges combined shall total \$10 yearly per vehicle. Except those charges, and tax, fine, toll, parking, seizure, inspection, and new plate charges, all state and local government charges on vehicles and vehicle uses shall cease. Except the last six specific charges, added charges shall be tax increases.

(3) Income. The 2011 income tax rate shall be 4.5%. Later rates shall decrease 0.1% yearly, until reaching 3.5%, in each of the first ten years that yearly income tax revenue net growth exceeds 6%.

(4) Telecommunication. Starting January 1, 2011, except 911 fees at 2009 rates, no charge by, or aiding programs of, the state or local governments shall apply to telephone, pager, cable, television, radio, Internet, computer, satellite, or other telecommunication service customer accounts. Added charges shall be tax increases.