TABOR Whitepaper

(January 2019)

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What is TABOR?

“TABOR” (an acronym for the “Taxpayer Bill of Rights”) is an amendment to Article X of Colorado’s state constitution which Colorado voters adopted in 1992. TABOR affects Colorado’s fiscal policy and processes in several ways, most notably:

1) Requires a vote of the people within a state or local government taxing district to approve any increase in taxes for that district (unless those people vote to remove this restriction), and
2) Limits the ability of a state or local government taxing district’s revenue to grow over time. (TABOR defines different parameters for establishing the revenue limit for “state” versus “local” revenues.) All surplus tax revenue which the taxing district might collect beyond the established revenue limit must be returned to the taxpayers of the district in the following fiscal year by any “reasonable means,” including refunds or temporary tax credits (unless voters approve of the district keeping and spending it).

While most states operate with some tax or spending limits, TABOR is the most restrictive Tax Expenditure Limitation (TEL) in the country, with controls on the amount of revenue that can be collected and spent, as well as on how and which taxes can be raised.

Many Coloradans enthusiastically SUPPORT TABOR because its fiscal constraints on government have contributed to smaller government, lower state taxes, and have arguably helped minimize the effects of recessions on the state’s already restricted spending.

Many other Coloradans enthusiastically OPPOSE TABOR because it has forced reductions in important state services, diminished the role of our elected representatives and their ability to manage the state's budget, and forces a continual shrinking of the state budget relative to the size of our economy.

What is a "tax DISTRICT" versus a "tax AUTHORITY"?

A "tax DISTRICT" is a defined geographic AREA which maintains the same tax rate as approved by the voters who live in that geographic area. The "tax district" could be the state, a city, a county, or some other geographic area which has a defined boundary.

A "tax AUTHORITY" is a legal ENTITY which governments create for the purpose of providing a specific service to the public within a taxing district (or multiple districts). The "tax authority" could be the State of Colorado, a City, a County, or some other Special District (such as public schools, fire district, a library, or a recreational district). (NOTE: Many "special district" taxing authorities have the word "District" in their name (i.e. "Montrose Fire Protection District") which adds a little confusion to the difference between a geographic taxing "district" and a legal taxing "authority".)

- Tax authorities are created by the government which has jurisdictional authority over the geographic area in which the authority will operate. For example, the County Commissioners are responsible for approving the creation of any tax authorities which will serve the citizens within the boundary of the county and beyond the boundary of any single city within the county.
- A tax authority can be created to exist within an entire single tax district, or cover the entirety of multiple tax districts, but it cannot cover only a portion of a tax district.
- Once a tax authority is created, the voters within that tax district are authorized to approve how much tax the authority may collect from them.

What does TABOR do?

There are two primary aspects of TABOR of which most people are aware and on which the TABOR ballot measure was largely promoted to voters:

1) <u>TABOR prohibits tax increases without voter approval.</u>
   TABOR prohibits the state or a local government taxing district from increasing taxes without an affirmative vote of the people within that district. This requirement has sometimes been mistakenly described as "giving taxpayers the right to vote on taxes", however, in reality, taxpayers have ALWAYS had the right to vote on taxes – Rather, what TABOR did in this regard was prohibit the taxpayers' elected representatives in government (Special District board members, City Councilmembers, County Commissioners and State Legislators) from being able to raise taxes WITHOUT such a vote of the people.

2) <u>TABOR limits the growth of state and local tax revenues.</u>
   TABOR limits the ability of a state or local government taxing district's revenue to grow over time, and all "surplus" tax revenue which the taxing district might collect beyond the established revenue limit must be refunded to the taxpayers of the district.

TABOR defines the following different parameters for establishing the limit on the growth of revenue for “state government”, “local governments”, and local “school districts”.

a. STATE GOVERNMENT revenue limit

Household Consumer Prices (measured by the Denver-Boulder-Greeley Consumer Price Index)	**+**	**Population Growth**

b. LOCAL GOVERNMENTS revenue limit (counties, cities and Special Districts)

Household Consumer Prices (measured by the Denver-Boulder-Greeley Consumer Price Index)	**+**	**Growth in Real Property Values**

c. LOCAL SCHOOL DISTRICTS revenue limit

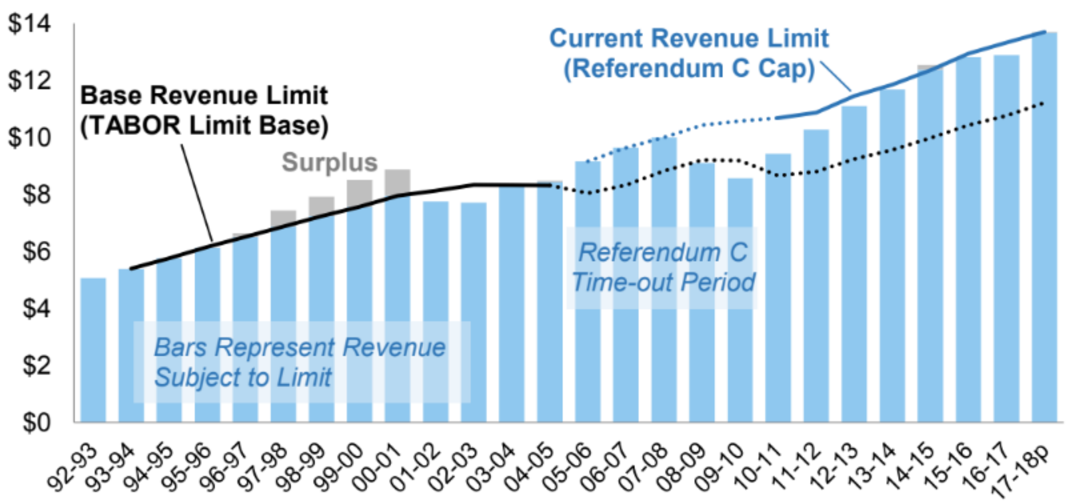
Household Consumer Prices (measured by the Denver-Aurora-Lakewood Consumer Price Index)	**+**	**Growth in School Enrollment**

Although TABOR’s revenue growth limit is referred to as a “spending limit” in the constitution, it is, in actuality, a limit on the amount of REVENUE that state and local governments can collect because that revenue is subject to the limit regardless of whether it is spent or saved.[1]

[1] Colorado Legislative Council Issue Brief, “Colorado's Constitutional Spending Limit” (2015) http://leg.colorado.gov/publications/colorados-constitutional-spending-limit-2015

TABOR's Revenue/Spending Limit and State Revenue

(Bars show when economic growth forced the state's historic annual state revenue to exceed TABOR's revenue limit, thus necessitating a refund to taxpayers.)



Source: Office of the State Controller and Legislative Council Staff

How is the TABOR surplus returned to taxpayers?

TABOR requires that the state rebate to taxpayers within one year any excess revenue collected over the revenue limit unless voters approve a revenue change that allows the state to keep all or part of the TABOR surplus. TABOR does not specify how money is to be rebated to taxpayers, so lawmakers have utilized over 20 different mechanisms to rebate surplus funds to taxpayers since the adoption of TABOR in 1992.

Under current law, depending on the size of the TABOR surplus, surplus funds are required to be rebated to taxpayers using a property tax break for seniors and disabled veterans as a first priority, and using a sales tax break and a temporary reduction in the state income tax rate as additional mechanisms. [2]

In addition to these two primary impacts on state and local government fiscal policy, TABOR imposes additional lesser-known impacts on state and local governments.

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[2] Colorado Legislative Council Issue Brief, "TABOR and Referendum C" (2009) http://leg.colorado.gov/publications/tabor-and-referendum-c-2009

3) TABOR limits taxation options.
TABOR places limitations on the kinds of taxes that can be proposed and implemented. The amendment specifically prohibits real estate transfer taxes, local income taxes and state property taxes. It requires that any state income tax change have a single rate with no surcharges.

4) TABOR defines requirements and restrictions concerning tax elections.
TABOR allows statewide tax-related measures to appear on the ballot in any year, whereas non-tax measures can only appear on the ballot in EVEN-numbered years. TABOR requires that all ballot measures which propose to increase taxes must begin with the words *"SHALL TAXES BE INCREASED ...?"* in capital letters.

5) TABOR limits the ability of governments to save money in reserve.
Because TABOR's revenue growth limit applies to revenues regardless of whether those revenues are SPENT or SAVED, it limits the ability of government to grow their emergency reserves unless they reduce spending accordingly.

How has TABOR impacted Colorado?

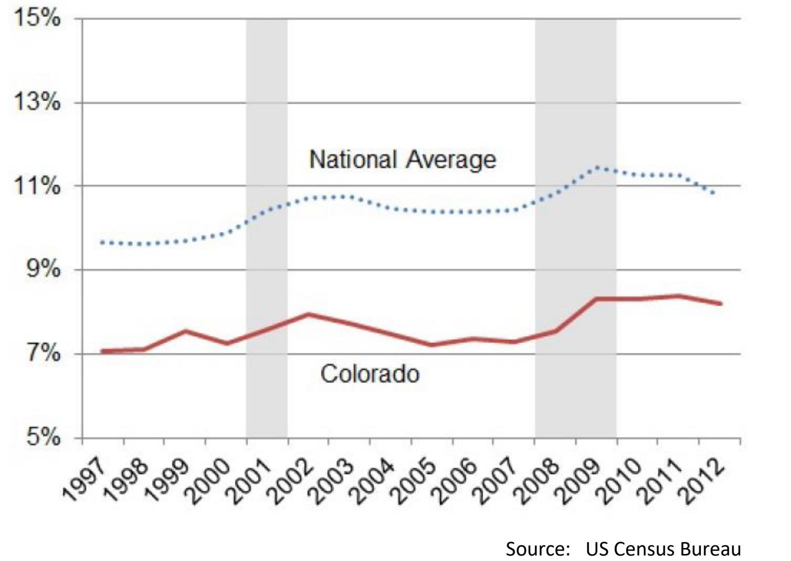
TABOR has had a number of significant impacts on local and state government budgets, and while much of this impact is a result of the intended effect of TABOR, some of those impacts have been unintended consequences resulting from the interaction of TABOR with other fiscal restrictions which Colorado voters have also placed into our constitution over the years.

1) TABOR has helped keep taxes low.

Colorado's overall tax burden is lower than most other states.
Compared to other states, Colorado's STATE government expenditures (as a percent of the state's Gross Domestic Product) are lower while our LOCAL government expenditures are about average[3]. In the following three charts, a proportion of 10.0 percent would signify that the state government spends a dime for each dollar produced in the state economy.

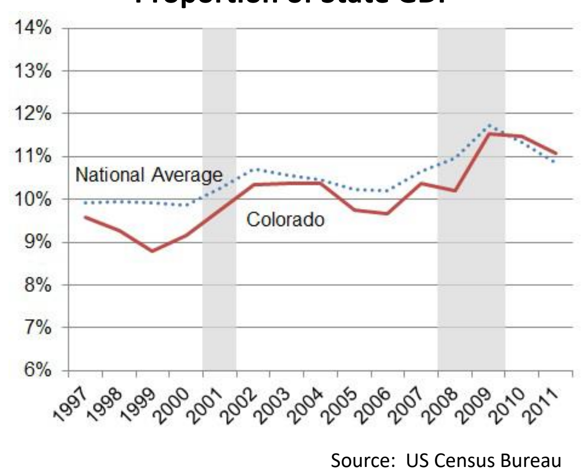
[3] Colorado Legislative Council Issue Brief, "State and Local Government as a Proportion of the State Economy" (2014) https://leg.colorado.gov/publications/state-and-local-government-proportion-state-economy-2014

STATE Government Expenditures as a Proportion of State GDP

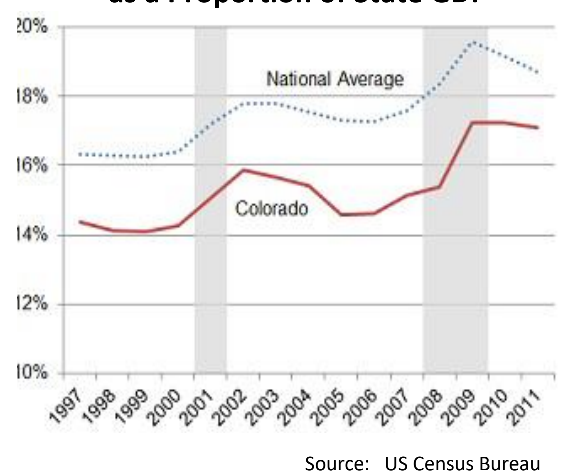


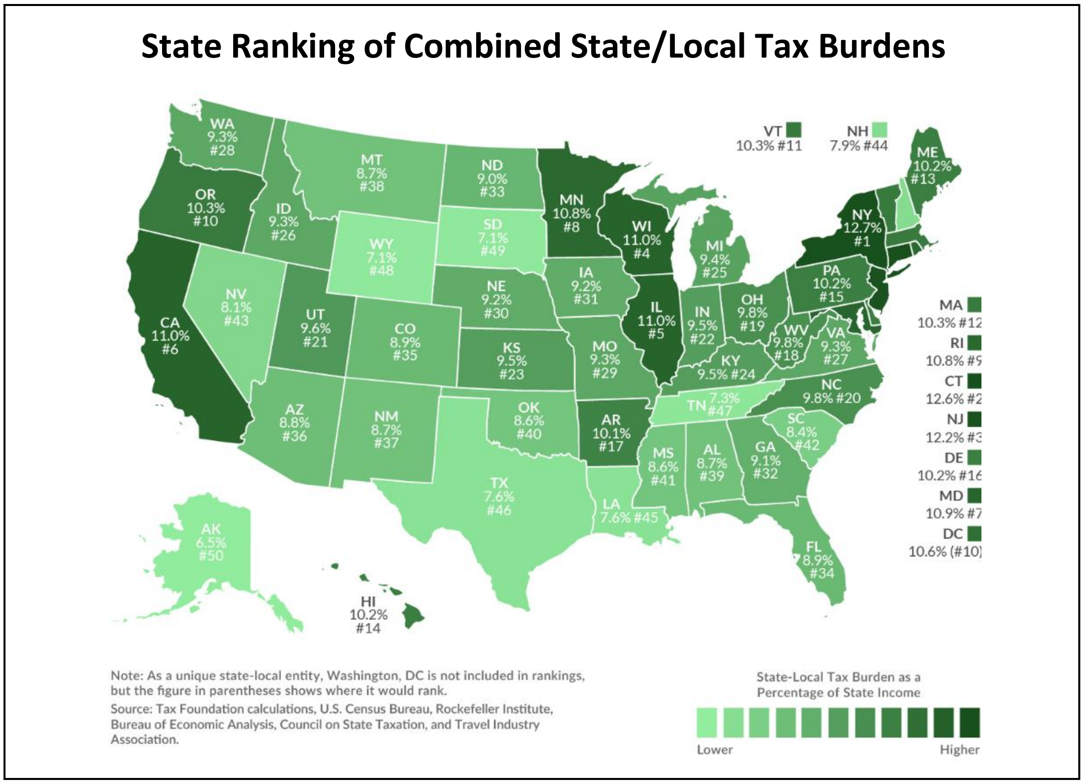
(NOTE: "State Government Expenditures" includes "Federal" pass-thru funds not collected by the state and "Cash" fees paid to fund specific programs such as college tuition.)

LOCAL Government Expenditures as a Proportion of State GDP



COMBINED State and Local Expenditures as a Proportion of State GDP

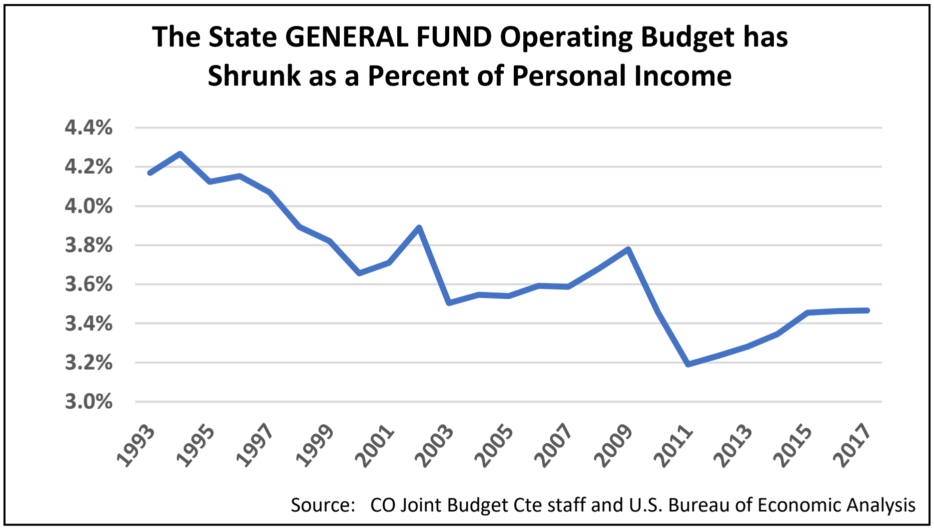




TABOR has contributed to a reduction in state tax rates.
While it's unknown if the State would have RAISED taxes in the absence of TABOR, it's likely that the State WOULDN'T have LOWERED taxes as it has done three times since the adoption of TABOR. During the late 1990's, when the internet economy was developing and state revenues were growing beyond TABOR's revenue limit, Colorado's state legislature approved reductions in both the State Income Tax and State Sales Tax.

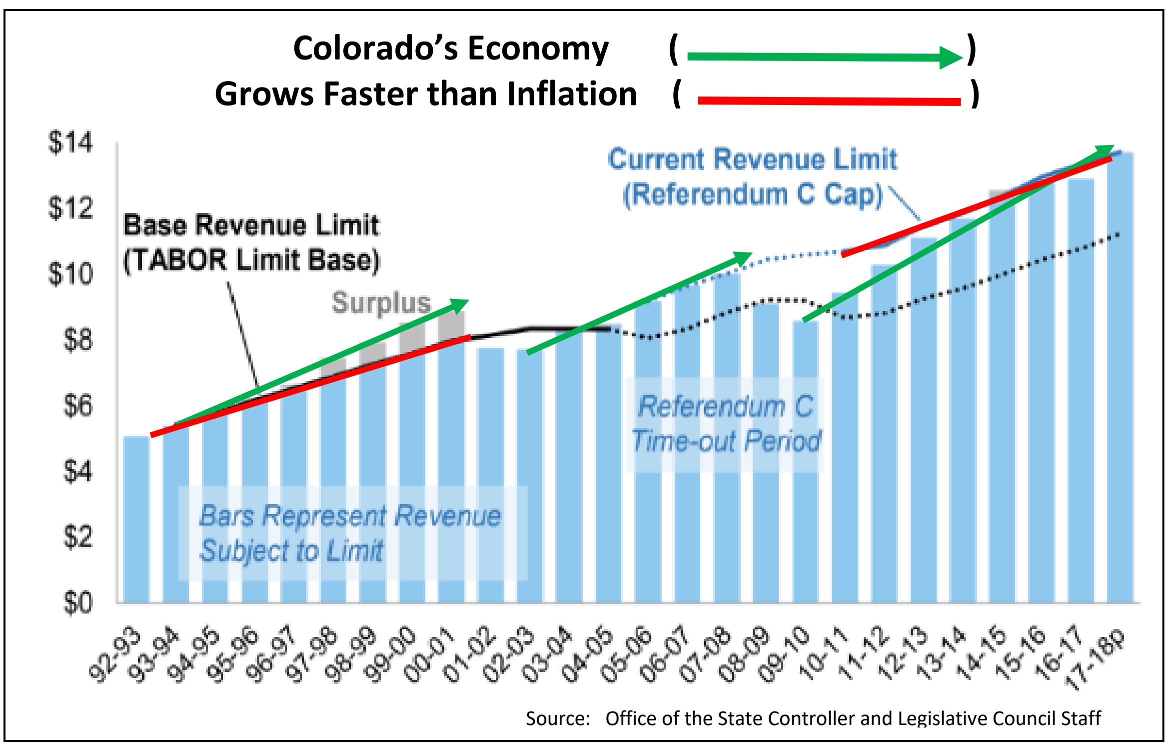
The legislature approved two reductions in the State Income Tax: from 5.0% to 4.75% in 1999, and to 4.63% in 2000. The State Income Tax represents 2/3rds of the revenue to the "General Fund" (the state's discretionary "checkbook") and these two reductions in the State Income Tax rate contributed to reduced state collections/revenues thereafter, including an anticipated reduction of over $600 million in FY2017-18. Additionally, in 2000, the legislature reduced the State Sales Tax (which represents about 1/4th of the revenue to the General Fund) from 3.0% to 2.9%. Because TABOR requires an affirmative vote of the people to raise taxes, the State's Income Tax and Sales Tax have stayed at their reduced rates of 4.63% and 2.9%, respectively.

2) TABOR has shrunk the state's General Fund operating budget as a percent of our economy. Rather than simply LIMITING THE GROWTH of state government as most voters understood to be the intention of TABOR, TABOR has actually SHRUNK the state's General Fund operating budget relative to the size of the economy (measured by "Personal Income").



The state's discretionary General Fund primarily represents the sales and income taxes which the state collects and uses to pay for essential programs like health care and K-12 education.

The reason that the General Fund has shrunk as a percent of personal income is because Personal Income (a measurement of the size of our economy) grows faster than TABOR's inflation-based revenue limit.



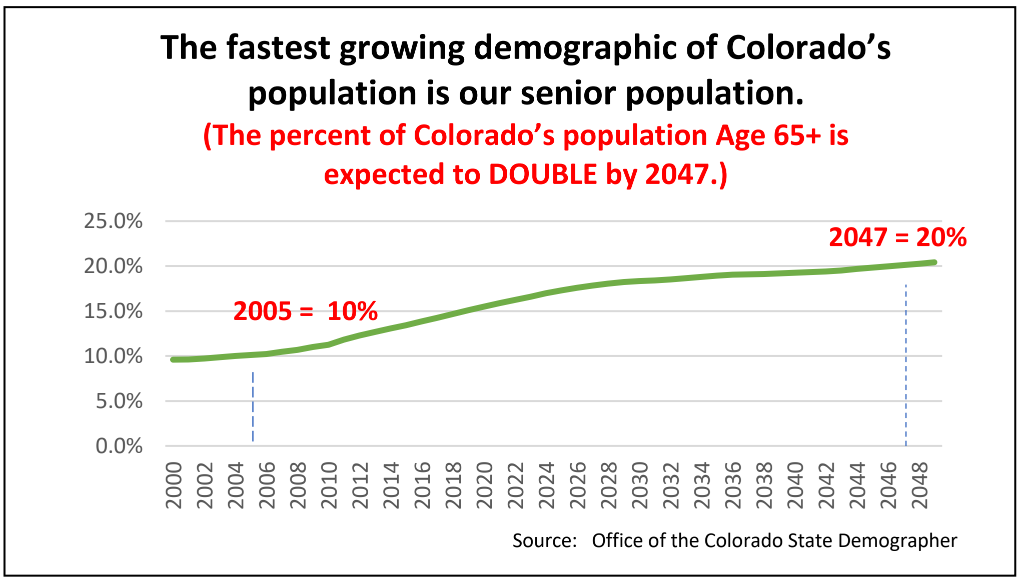
While the ACTUAL size of the state budget has certainly grown over time as an obvious result of inflation and population growth, the RELATIVE size of the budget as a percent of the state's economy has shrunk, and this has prevented the state from being able to sustain service levels for Colorado's growing population.

3) TABOR doesn't allow state spending on programs to keep up with the growth in the cost of those programs.

Both the "Population" and "Inflation" factors which define TABOR's revenue limit for the state inherently under-represent the actual growth in state costs.

A. TABOR's "Population" constraint on revenue doesn't keep up with the costs associated with our population.

The segments of the population requiring the most state services, such as senior citizens and children, often expand more rapidly than the population overall; therefore, as population grows, the state's cost per person also grows, but TABOR doesn't allow revenue to grow accordingly. For example, the fastest growing segment of Colorado's population (as a percent of total population) is our "over 65" citizens.



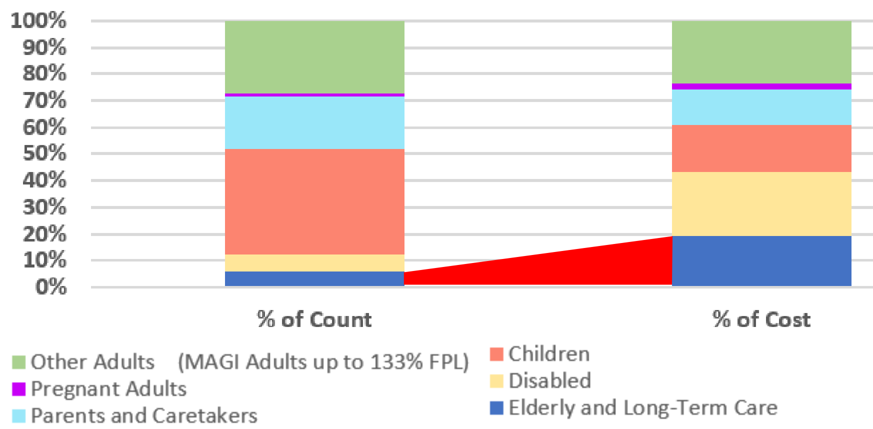
In prior years, Colorado has enjoyed a relatively young population compared with other states. In 2010, Colorado had the 4th lowest share of seniors (age 65+) as a percent of our total population (only 11%). Our relatively youthful population has meant that we've previously had a larger share of our population in the workforce, which means our state has enjoyed a relatively larger tax revenue and a relatively lower cost for senior health care. This is changing as our previously large share of youthful "Baby Boomers" who flocked to Colorado in the 1970's to ski (and never left) are now aging into seniors.

- Between 2010-16, Colorado's population of seniors (age 65+) grew by 34%, which was the 3rd fastest rate of growth in the US.

- Over the next 30 years, the percent of Colorado's population which is age 65+ is expected to double from 10% to 20% -- at which point 1 in 5 Coloradans will be seniors who will contribute relatively little tax revenue and consume relatively large health care costs for our state.

Seniors are the MOST EXPENSIVE health care demographic.

Although Seniors make up only 6% of the Colorado Medicaid population, they represent almost 20% of the total program cost.



Source: Colo Dept of Health Care Policy & Finance

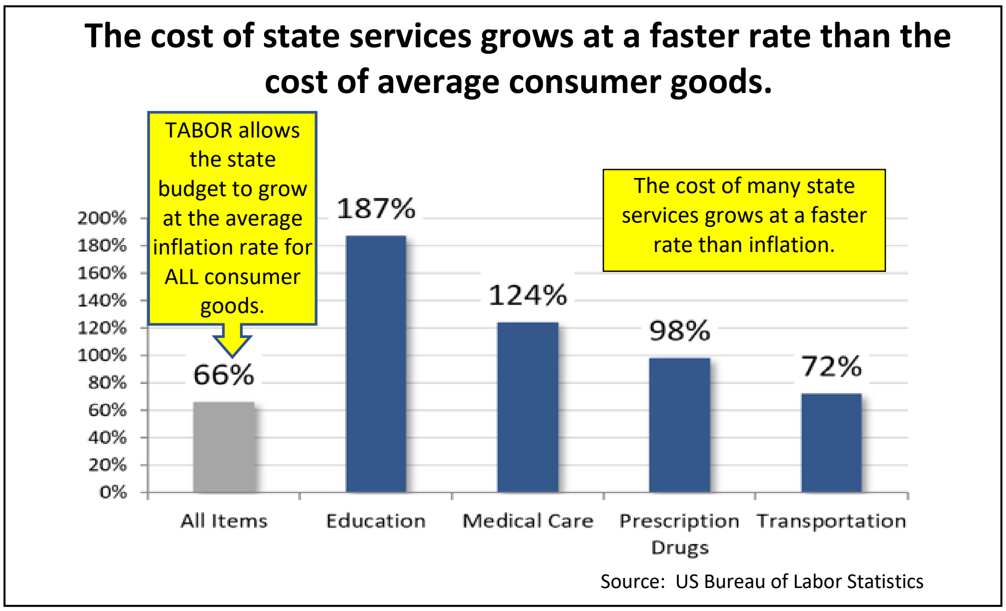
Colorado's senior population is not only the FASTEST GROWING segment of our population, it's also the MOST EXPENSIVE in terms of government services because of the cost of long-term health care. Although seniors only make up 6% of the state's Medicaid population, they consume 20% of the total cost of the Medicaid program.

Medicaid (which is a health insurance program for low-income and needy people) is often confused with Medicare (which is a separate federal program that provides health coverage if you are 65 or older or have a severe disability, no matter your income). Because Medicare does NOT cover long-term care costs, and because Medicaid is paid for (in part) by the State, the cost of long-term care for Colorado's increasingly aging population has a growing impact on the state budget.

The Difference Between MediCAID and MediCARE

	Medicaid	**Medicare**
Eligible recipients	Children, the aged, blind, and/or disabled and other low-income people	People who are 65 or older or have a severe disability, no matter their income
How funded	Funded jointly by both federal and state government	Funded by the federal government through automatic deductions in recipients' paychecks throughout their working life

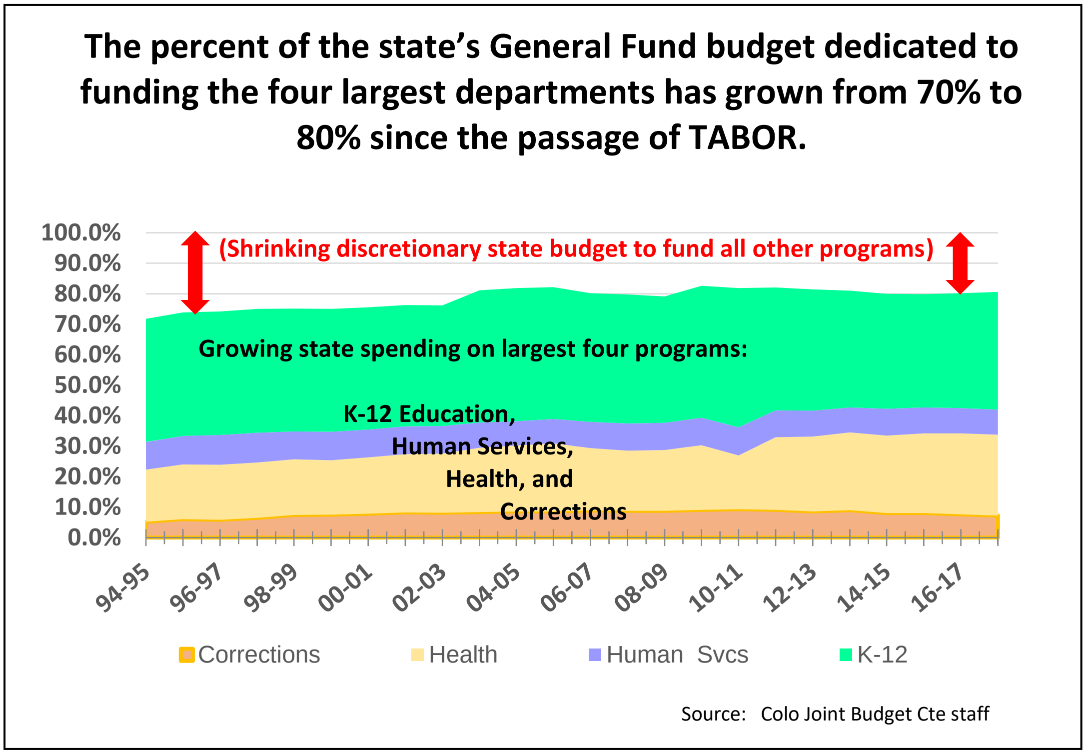
B. TABOR's "Inflation" constraint doesn't keep up the with cost of government services. The inflation measure that TABOR uses — the Denver-Aurora-Lakewood Consumer Price Index (CPI) — measures changes in the cost of goods and services that INDIVIDUAL consumers buy, like housing, clothing, and food, rather than the cost of public services that state GOVERNMENT pays for, like construction costs, education and health care for our aging population. The cost of providing public services grows much faster than the general rate of inflation for consumer goods, in part because labor-intensive public services are less likely to reap the efficiency and productivity gains achieved by other sectors of the economy. For example, teachers can only teach so many students, and nurses can only care for so many patients.



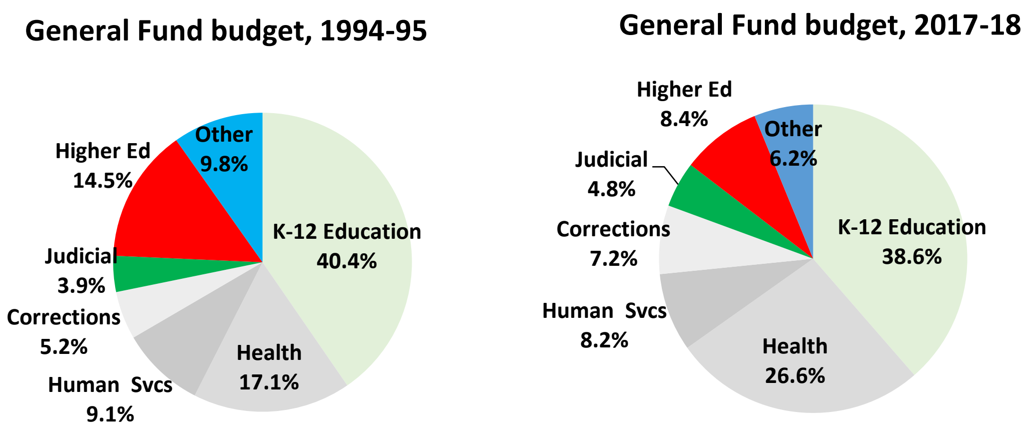
In short, because TABOR's "Population + Inflation" revenue limit doesn't allow Colorado's state budget (the General Fund) to keep pace with the normal growth in the cost of maintaining the public services that Coloradans demand of their state government, and because our state's economy grows faster than inflation (because our economy grows at the speed of inflation PLUS other factors like increases in productivity), TABOR forces our state budget to therefore shrink relative to the size of our economy.

4) TABOR has forced cuts in primary service areas of our state budget.

Because TABOR doesn't allow the overall state budget to grow any faster than "Population + Inflation", and cost of the state's largest four departments (K-12 Education, Health, Human Services and Corrections) grows faster than inflation, the amount which the state has had to dedicate to fund these four programs since the passage of TABOR in 1992 has grown from about 70% of the total state General Fund budget to over 80%. In turn, the remainder of the state's budget available to pay for all other programs has shrunk from about 30% to less than 20%.



As a result, over the last 25 years, the legislature has been forced to significantly reduce state support for other funding priorities like Higher Education.



The growth in cost of the state's four largest programs has squeezed funding for other programs

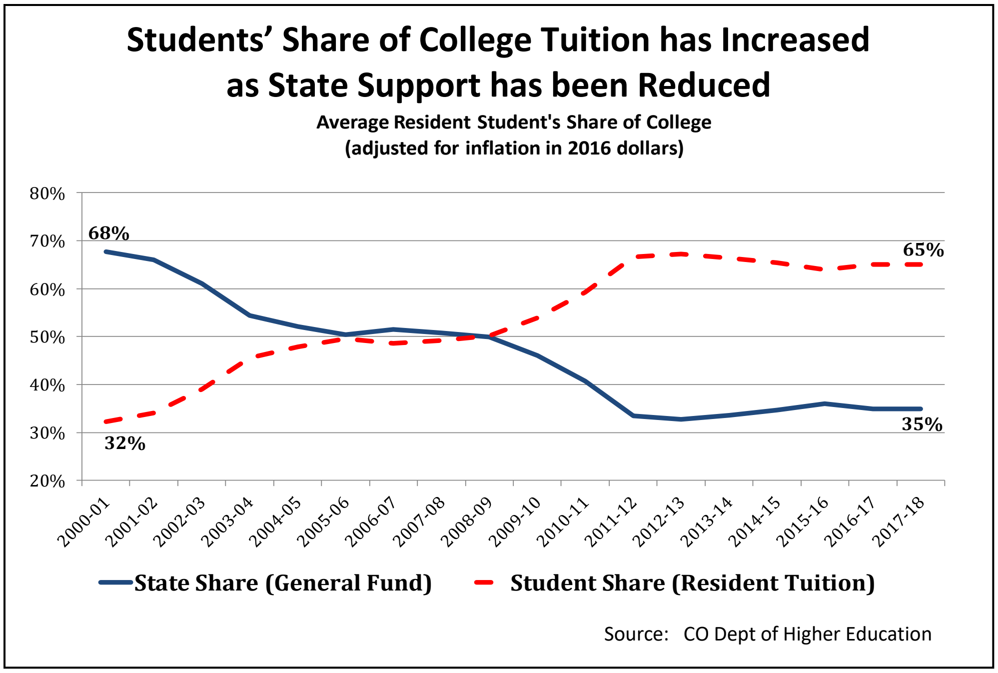
It's important to note that funding is only ONE component of achieving successful outcomes in any program area; other factors such as establishing measurable program performance metrics and linking additional investments to demonstrated improvements in performance, and ensuring an efficient division of resources between program investments and accompanying administrative costs, are also essential components of achieving successful outcomes in any program area. In short, more funding alone in any program area does not guarantee better program outcomes; funding is only effective to the extent that it is strategically invested and efficiently utilized.

What's does the impact of TABOR on our state budget mean for YOU?

The fiscal constraints which we've embedded into our constitution since the 1980's, including TABOR, have forced reductions in funding for several important state service areas that affect our everyday lives.

Budget Challenges for HIGHER EDUCATION

The state's reduction in support for Higher Education – from 15% of the state's General Fund budget in 1992 when TABOR was adopted to only 8% today -- has resulted in shifting the funding burden for Higher Education from the State to students.



- Average state funding for Colorado resident students has been cut by almost HALF since FY 2000-01. (adjusted for inflation)
- In FY 2000-01, the state covered 68 percent of the cost of college, while students and families picked up 32 percent. Today, those numbers have reversed with students and families covering two-thirds of the costs and the state paying for one third.

Budget Challenges for K-12 Education

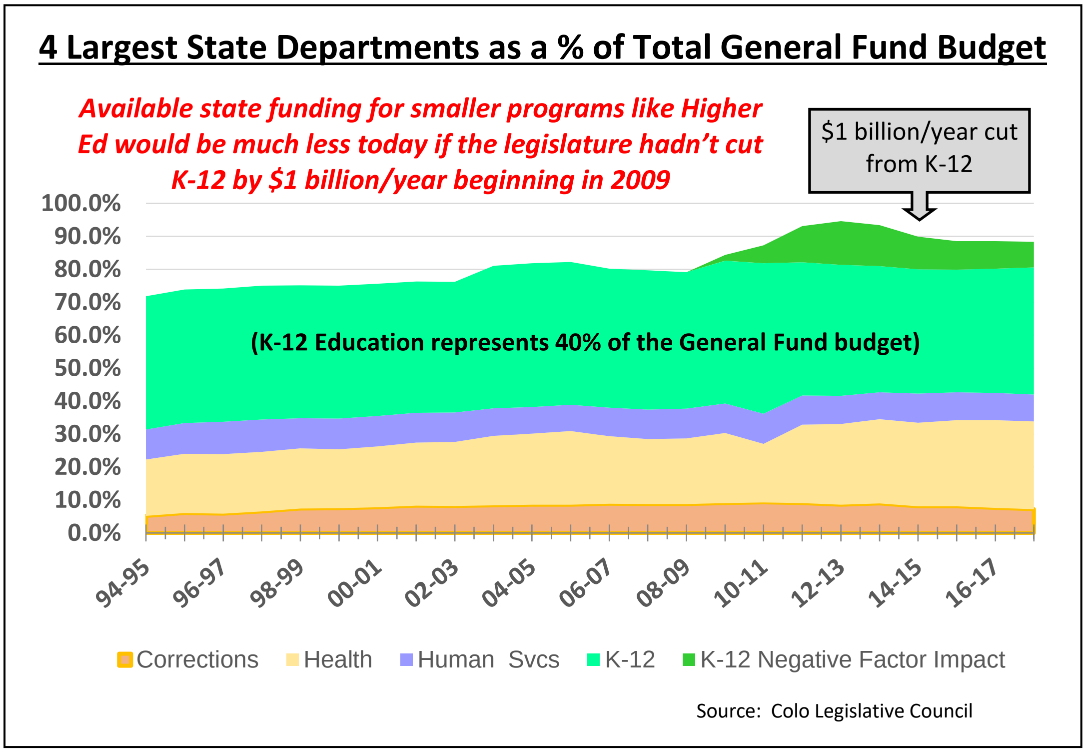
In 2009, in the wake of "The Great Recession" and faced with significant budget shortfalls, the Colorado legislature made the difficult decision to cut about $1 billion/year from the state's annual budget for K-12 education by reinterpreting the "Amendment 23" constitutional K-12 funding mandate (adopted in 2000) to ONLY apply the mandated funding increase to the "base" per-pupil funding requirement and NOT the additional "disparity factors" which allocate additional funding to address inequities between student populations . This reinterpretation has withstood a Supreme Court challenge and has contributed to Colorado's declining performance in the following national K-12 rankings.

As of 2018…

- Colorado continues to invest less per pupil than the national average and now ranks 42nd in per pupil spending. (Source: Education Week) Colorado spends $2,800 below the national average per pupil (adjusted for regional cost differences)
- Colorado ranks 50th in teacher wage competitiveness—compares teachers to non-teachers with similar education, experience and hours worked. (Source: Rutgers Education Law Center) Colorado ranks 2nd in number of novice teachers (1st or 2nd year) in the classroom (Source: Education Week, October 2016)
- 58% of Colorado districts (104 out of 178 school districts) are on or have some schools on 4-day school weeks, primarily forced due to budget reductions. This has more than doubled since 2000.

- Colorado's graduation rate lags the national average in EVERY student subgroup.

While the portion of the state budget to fund K-12 education would be much larger today if the legislature had NOT reinterpreted "Amendment 23" in 2009, other state priorities – like funding for higher education – would be significantly reduced or perhaps defunded entirely.



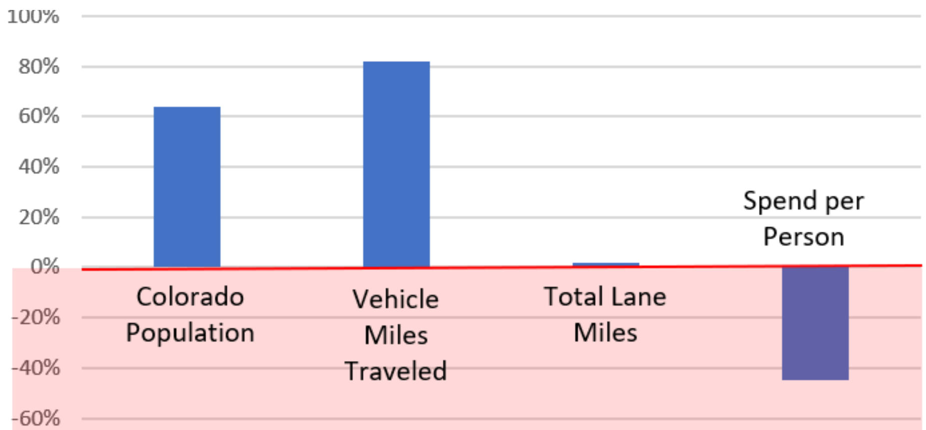
Budget Challenges for Transportation Infrastructure

Because of the constraints on our state budget, the state has not been able to keep up with much-needed investments in our statewide transportation infrastructure.

- Since 1991, Colorado's population has grown by 64%, and Vehicle Miles Traveled has increased 82%, while the amount that CDOT spends per person has declined from $125 to $69 (adjusted for inflation) and the total lane miles on our highways to transport that growing population has only gone up by 2%.
- The largest source of funding for Colorado's transportation system is the "gas tax" which has not been adjusted for inflation since 1991. Every $1 generated from the gas tax in 1991 is only worth 56-cents today. As a result, CDOT estimates that Colorado's roads and highways face a $9 billion revenue shortfall over the next decade.
- 41% of Colorado's major urban roads are in poor condition. 43% are in mediocre or fair condition and the remaining 15% are in good condition.
- 6% of Colorado's locally and state-maintained bridges are structurally deficient.

Colorado Transportation Metrics, 1991-2018

- Colorado's population has increased 64%
- Vehicle Miles Traveled has increased 82%
- Total Lane Miles has increased 2%
- State spending per Person has decreased from $125 to $69



Source: CO Dept of Transportation

5) TABOR has a "ratchet-down" effect on local property tax revenues by interacting with the "Gallagher Amendment" which we've also placed in our constitution.

TABOR's constraints on our state's ability to invest in public services is compounded by the way that it interacts with the "Gallagher Amendment" which Colorado voters adopted into our state constitution ten years prior to TABOR in 1982.

The Gallagher Amendment froze the ratio of the total valuation of "Residential" and "Non-Residential" property in the state so that Residential property would never constitute more than about 45% of all property value in Colorado. However, since its adoption in 1982, the valuation of Residential property has consistently outpaced the value of Non-Residential property such that Residential property now makes up about 80% of the valuation of all property in the state. Gallagher requires the legislature to reduce the rate at which Residential property is taxed in order to meet its requirement that the valuation of Residential property doesn't constitute more than 45% of the total valuation of all property in the state.

TABOR complicates Gallagher in two ways:

1. Although not yet tested in court, while the Gallagher Amendment requires that the Residential Assessment Rate be LOWERED during times when the growth in Residential valuation outpaces the growth in Non-Residential valuation, TABOR has been interpreted to prohibit the legislature from conversely abiding by Gallagher's requirement that the Residential Assessment Rate be RAISED during times when the formula would support such an increase. This results in an irreversible ratcheting down of the Residential Assessment Rate.

2. Because TABOR limits the amount of tax revenue which a taxing jurisdiction can collect without voter approval, it can force the mill levy to automatically be reduced, either

permanently or with a temporary credit, when the growth in property values and the corresponding property tax revenues exceed TABOR's revenue limit. Conversely, while mill levies were traditionally allowed to float upward when property values decreased in order to counteract economic cycles and help protect local governments' primary revenue source, TABOR prevents the mill levies from increasing without a vote of the people. (NOTE: While most counties have "de-Bruced", this still doesn't allow them to increase mill levies without a vote of the people.) As a result of TABOR's forced reduction in mill levies when property values grow and the inability of those mill levies to conversely float upward when property values decline, the collision between TABOR and Gallagher has in some cases led to a structural ratcheting down effect on the mill levy and the resulting funding for local governments.

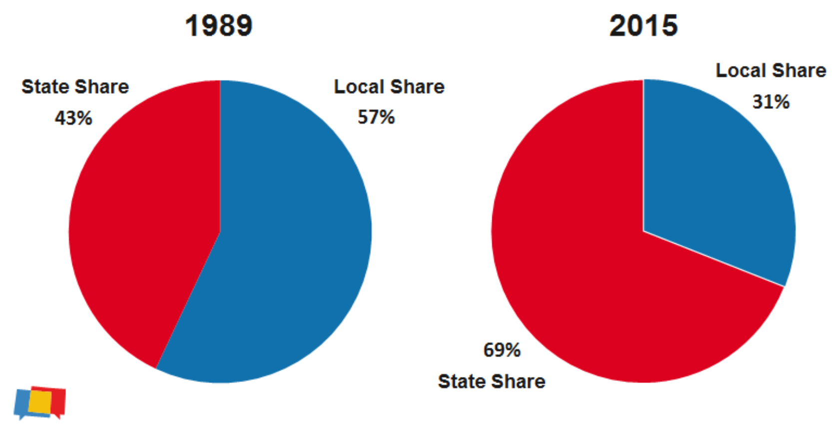
Local property taxes used to be the primary funding source for K-12 education in Colorado. In 1982, local property taxes funded 60% of K-12 education, and the state General Fund provided the other 40% of funding. A combination of interacting policies has shifted this burden to the state over time:

1. First, the Gallagher Amendment has reduced local property tax revenue by consistently forcing the Residential Assessment Rate down over time as the overall value of Residential property in the state has outpaced the overall value of Non-Residential property.
2. Second, because the TABOR Amendment forces the local mill levy down during times of net growth in property tax revenues, but conversely no longer allows that levy to float back up during times of decreasing property tax revenues, this has resulted in a gradual ratcheting-down of the local mill levy.

   Since 1992, the combination of both the declining Residential Assessment Rate and the declining mill levy has dramatically reduced the amount of local property tax revenue which School Districts receive.
3. Third, the School Finance Act, which is designed to ensure that every student in Colorado has the same opportunity for a quality education regardless of where the student lives and regardless of the student's unique personal and family circumstances, requires that the State automatically backfill these reduced K-12 revenues. (For example, small rural school districts receive extra funding under the formula to make up for their lack of any economies of scale due to their small size and geographic isolation, and districts which have a high percentage of at-risk students receive extra money under the formula to help pay for their more expensive education.)

As the amount of funding which School Districts receive from local property tax revenues has declined, and as the State has subsequently had to backfill this declining local funding source, the burden of funding K-12 has gradually and consistently shifted from local governments to the State. The state now provides almost 70% of funding for K-12 schools, with local property taxes providing only 30% of funding. This increasing shift in the burden for funding local K-12 School Districts now consumes 40% of the state's General Fund, which leaves a shrinking amount of state funding to pay for other priorities like prisons and higher education.

Shift in Responsibility for Funding Local School Districts: Local to State



2005: How "Referendum C" changed TABOR

As originally crafted, TABOR's revenue limit – which allows state revenues to grow only as fast as "Population and Inflation" – was based on the prior year's SPENDING which therefore required the revenue limit to be REDUCED whenever economic recessions reduced state revenues, and that reduced revenue limit was allowed to grow again only as fast as the growth of "Population and Inflation". Because TABOR's "Population and Inflation" rate of growth always occurs at a slower rate than an economic recovery, this original provision of TABOR forced state revenues to "ratchet down" over time as those revenues dropped rapidly during economic downturns and were not allowed to recover with the economy before they were forced down again by the next recession. This "ratchet down" effect happened in FY2001-02 and FY2002-03 and the resulting drop in state revenue threatened state funding for Colorado's higher education system.

To address this "ratchet down" effect, Colorado voters adopted "Referendum C" in 2005. "Referendum C" made two changes to TABOR's state revenue limit:

1) "Referendum C" reset the "base year" from which state revenues could grow.
   Referendum C created a 5-year "timeout period" between FY 2005-06 and FY 2009-10 during which the state was allowed to spend or save the full amount of revenue it collected, effectively setting the spending limit equal to revenue. After the 5-year "timeout" period in FY 2010-11, Referendum C allowed the state to establish a new base year from which the revenue cap could grow based on the year in which the highest amount of revenue was collected during the 5-year timeout period; this new "base year" turned out to be FY2007-08 and therefore state revenues are allowed to grow from that year at a rate equal to TABOR's "Population and Inflation" limit. Referendum C required that revenue collected above the original limit but below the new Referendum C cap could only be spent only on health care, public education, transportation, and local fire and police pensions.

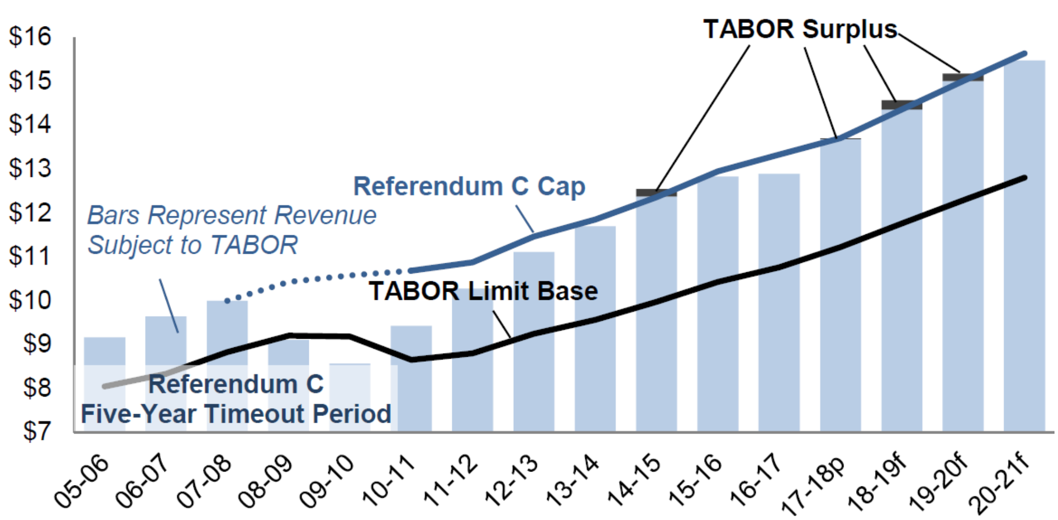
2) "Referendum C" eliminated the "ratchet effect".
   The newly reset "Ref C" cap is allowed to grow from the prior year's cap by an amount equal to TABOR's "Population and Inflation" limit, irrespective of whether state revenue is below or

in excess of the cap. Referendum C effectively eliminated the possibility of ratcheting-down the revenue limit because the cap on the state's revenue grows from the prior year's CAP instead of the prior year's SPENDING.

The figure below shows the TABOR spending limit and state revenue subject in recent years.

- The blue bars indicate the amount of state revenues subject to the TABOR limit.
- The black line labeled "TABOR Limit Base" represents TABOR's original limit on state revenue, and the blue bar above that (labeled "Ref C Cap") represents the amended higher revenue limit as a result of "Referendum C". The amount of the annual revenue bars ABOVE the "TABOR Limit Base" and BELOW the new "Ref C Cap" represents the amount of revenues which the state would have otherwise been required to cut from state services and refund to taxpayers if Referendum C had not passed.
- The black tops of the bars labeled "TABOR Surplus" represents the amount of money beyond the "Ref C Cap" which must be refunded to taxpayers.

The Impact of "Referendum C's" modified
TABOR Revenue Cap on State Revenues



Surplus amounts above the amended "Referendum C" revenue limit:

FY 14/15 = $159.1 mil	FY 18/19 = $209.4 mil
FY 17/18 = $16.2 mil	FY 19/20 = $174.8 mil

Source: Office of the State Controller and Legislative Council Staff

As intended, in FY2010-11 and FY2011-12, Referendum C's higher cap didn't provide for new money to the state, but rather allowed the state to maintain existing programs instead of having to cut them while the state was recovering from "The Great Recession" of 2008-10.

Efforts to "De-Bruce" from TABOR's Revenue Constraints

Most local governments in Colorado – 51 of Colorado's 64 counties, and over 90% of cities – have received approval from their voters to retain and spend revenues beyond TABOR's revenue limit, thereby effectively eliminating the revenue limit as it applies to their taxing jurisdiction. Such efforts to be exempted from TABOR's revenue limit are referred to as "de-Brucing", named after Douglas Bruce, the author of the TABOR amendment.

While LOCAL governments have largely been successful at their efforts to "de-Bruce", the STATE has had limited success in this regard. Coloradans did, however, vote to "de-Bruce" tax revenues from the sale of medical marijuana (2013) and recreational marijuana (2015) in order allow the state to use all of those revenues for the intended benefit of schools, police, and drug education. Additionally, voters previously approved "de-Brucing" similar new taxes which were established for cigarettes, tobacco and gaming. Voters have also approved "de-Brucing" the approximately 7% of state income tax revenues which are dedicated to the State Education Fund as part of Amendment 23 (2000), and they've also subsequently approved "de-Brucing" incremental increases in tobacco and gaming tax revenues.

Additionally, state "Enterprises" are exempt from TABOR's revenue limitation and represent the largest share of TABOR-exempt state revenue[4]. State enterprises are self-supporting, government-owned businesses that receive revenue (usually primarily from fees) in return for the provision of goods or services. An enterprise must be designated so by the General Assembly and may only receive up to ten percent of its annual revenue from government sources, and must otherwise be financially independent. Because enterprise programs are primarily user-funded, they can increase fee revenue over time at rates sufficient to pay for expenses without contributing to the state's TABOR surplus and thereby affecting the General Fund budget.

Current enterprises include such programs as:

- all state colleges and universities
- the Colorado Healthcare Affordability and Sustainability Enterprise (which was created in 2017 to replace what was previously known as the "Hospital Provider Fee")
- the State Lottery
- College Assist and CollegeInvest tuition assistance
- Correctional Industries, which provides job training/employment opportunities for prison inmates
- the state nursing home system
- the State Fair Authority
- the Division of Wildlife
- the Colorado Tolling Enterprise
- the Unemployment Insurance Program

TABOR's state revenue base must be adjusted when a program's enterprise status changes. When a program becomes an enterprise, its revenue is no longer counted as TABOR revenue and the TABOR revenue limit is therefore reduced by that amount. Similarly, when a program loses enterprise status, that former enterprise's revenue is subject to the TABOR limit and the TABOR limit is adjusted upward accordingly.

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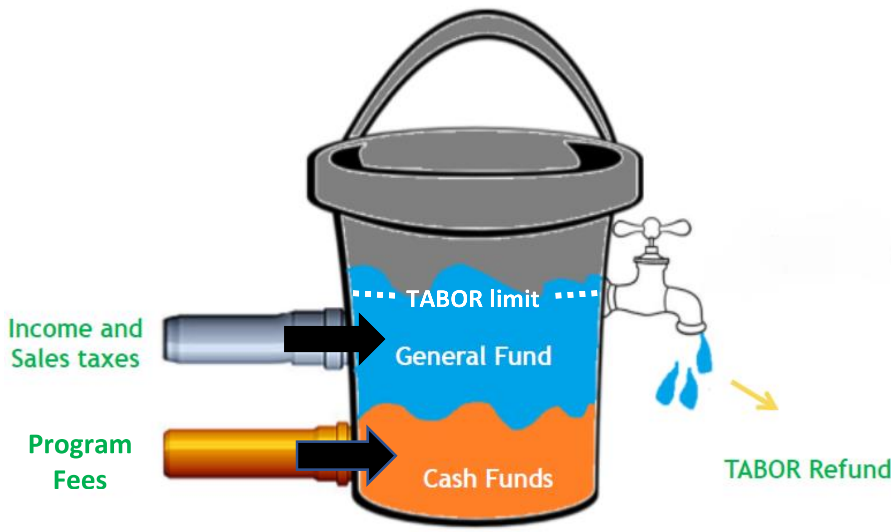
[4] Colo Legislative Council memo, "State Spending Limitations: TABOR and Referendum C" (2009) (http://leg.colorado.gov/sites/default/files/tabor_limit_and_referendum_c_-_a_primer.pdf)

How “Cash Funds” revenues affect the TABOR Revenue Limit

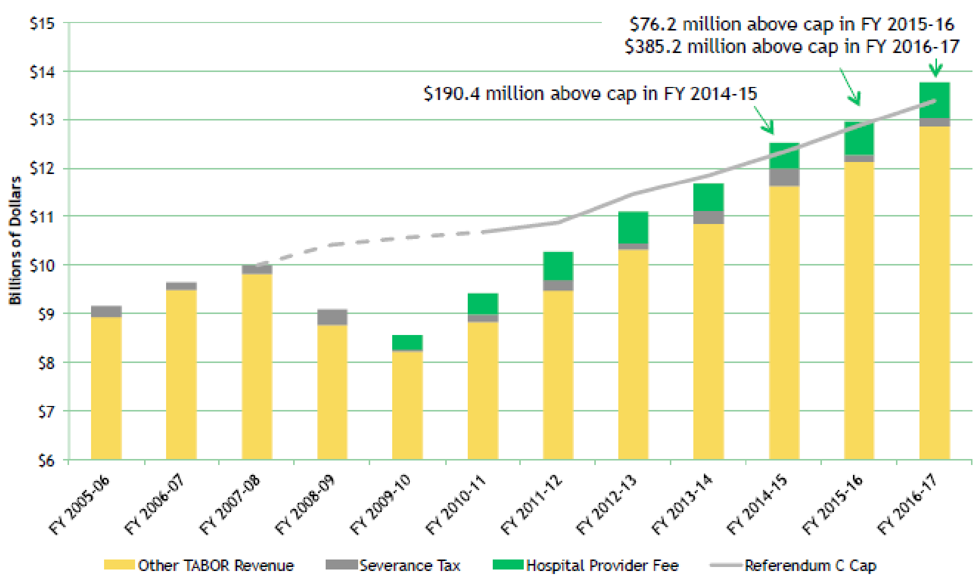
An additional challenge which the state faces in complying with TABOR’s revenue limit is that, because most “Cash Funds” (except for Enterprise funds) contribute towards the revenue limit, and only tax revenues from the “General Fund” are used to refund surplus revenues to taxpayers, the “cash” fees which are generated from one program (such as the “severance taxes” which energy producers pay to extract oil and gas reserves) can force the state to cut “general” funding for other programs (like higher education).

Because “Cash Funds” (i.e. fees) can also contribute to TABOR’s Revenue Limit, but only General Funds (i.e. “taxes”) are used to refund surplus revenues to taxpayers, “fees” which support one program may force unintended cuts in funding for other programs.



Unlike state sales and income taxes which primarily make up the “General Fund”, “Cash Funds” are additional revenues generated by specific state services and are restricted to be used to fund only those services and prescribed program areas. While Cash Funds from state “enterprises” are exempt from TABOR’s revenue limit, most other Cash Funds – like the Energy and Mineral Severance Tax, motor vehicle fees, and motor fuel taxes – count towards the state’s revenue limit. These Cash Fund revenues can fluctuate significantly from year-to-year (such as when energy severance taxes rise and fall during energy “booms” and “busts”) and are largely out of the control of the legislature. And when these Cash Funds contribute to the state collecting more total revenue than allowed by the TABOR revenue limit, then the state must cut OTHER programs in the “General Fund” and refund those monies to taxpayers to comply with the revenue limit. For example, before the "Hospital Provider Fee" was reestablished as a state enterprise in 2017, those growing fee revenues were forcing the legislature to make additional cuts to Higher Education and other General Fund programs.

Creating the "Colorado Healthcare Affordability and Sustainability Enterprise" in 2017 removed the "Hospital Provider Fee" revenue from TABOR's revenue limit and prevented cuts to other programs.



TABOR in Other States

While many other states have some form of "Tax & Expenditure Limit" (TEL), none are as restrictive as Colorado's TABOR constraint[5]. There are a number of reasons why Colorado's TABOR tax constraint is more restrictive than other states' TELs:

1) Because TABOR was passed as a constitutional amendment rather than a statutory law, it may only be amended by a vote of the people. While there are provisions for a supermajority of the legislature to pass an override in case of an emergency, the definition of an emergency is fairly restrictive and therefore Colorado has never used this emergency provision.

2) TABOR's revenue limit is based on "Population and Inflation" which is more restrictive than limits in other states that generally allow growth to increase at the rate of personal income growth or in some cases by the maximum of either income growth or inflation. As a result, Colorado's budget is forced to shrink relative to the size of the economy because the economy

[5] Economic Policy Institute briefing, "The Colorado Revenue Limit: The economic effects of TABOR" (https://www.urban.org/sites/default/files/publication/50226/1000940-The-Colorado-Revenue-Limit.PDF)

grows faster than inflation. Only three other states have a revenue limit based solely on population and inflation and, in those other states, the limit either applies to the proposed rather than the enacted budget, or only applies to limited portions of the state budget.

3) TABOR's "Population" constraint on revenue doesn't take into consideration higher natural growth rates that can occur in specific expenditure programs. For example, the segments of our population requiring the most state services, such as senior citizens and children, are expanding more rapidly than the population overall; therefore, as population grows, the state's cost per person also grows, but TABOR doesn't allow revenue to grow accordingly.

4) TABOR's "Inflation" constraint on revenue doesn't take into consideration that the inflation rate for many government services (i.e. medical expenditures) is higher than the general inflation rate for other consumer goods (i.e. toasters), so the TABOR limit requires cuts in either the real level of service for a specific program (such as Medicaid expenditures) or forces cuts in other programs to offset this growth.

5) While most other states' TELs limit state EXPENDITURES, Colorado's TABOR limit applies to OVERALL REVENUES. TABOR's limit on revenue limits not only the state's ability to SPEND money, but also limits the state's ability to SAVE money.

The Bottom Line

TABOR is a story of two very valid and competing values.
On the one hand, TABOR has helped to reduce Coloradans' tax burden.
On the other hand, in life, we generally get what we pay for, and reduced tax revenues has meant reduced investment in our public infrastructure, and therefore reduced performance in public services such as the quality of K-12 education, access to higher education, and the capacity of our transportation system.