



Amendment 23

Background:

Amendment 23 was a constitutional change passed in 2000 to reverse a decade of budget cuts experienced by Colorado school districts throughout the 1990s. During that decade, Colorado's education spending did not keep pace with the inflation rate and per pupil funding for education was well below the national average.

Amendment 23 requires that the per pupil funding base for K-12 education be increased by inflation plus 1 percent for 10 years through FY 2010-11 and at the rate of inflation thereafter. In addition to the base, per-pupil funding is also determined through a complex formula that takes into account categorical programs, including transportation, English language proficiency, at-risk students and special education (including gifted and talented programs).

Amendment 23 also created the State Education Fund, which is a trust fund appropriated for a number of education-related programs and capital construction. Money is transferred to the State Education Fund from the General Fund at an amount equivalent to a rate of .33 percent of federal taxable income in Colorado.

Amendment 23 funding and the State Education Fund are exempt from TABOR, which means that in years in which the state has a TABOR surplus, Amendment 23 will decrease tax refunds by the amount deposited into the State Education Fund. The impact of Amendment 23 on TABOR is that it reduces the TABOR refund in years that revenues exceed TABOR limits. In years during which the TABOR limit is not met, Amendment 23 results in more required spending on education and less revenue left for other categories of spending, including infrastructure, transportation and health care.

In practice how the interplay between Amendment 23, Gallagher and TABOR has worked is that the commercial assessment rate must be maintained (Gallagher) and the residential rate can only be adjusted down (never up due to TABOR). Together this has resulted in less local property tax collections shifting school funding from local to state government to backfill the loss in local collections.

State and local government education funding roles have reversed as a result of Gallagher. Previously the state funded 40 percent of K-12 education costs in the state and now it provides 60 percent of the funding. Today, K-12 education comprises about 40 percent of General Fund dollars.

Once Amendment 23 took effect, K-12 education funding increased until state government revenues were severely impacted by the great recession. In 2010, the state legislature reversed course and began cutting K-12 education spending. They removed

the complex formula that was tied to the per pupil funding base that includes such things as percentage of at-risk students, rural districts, and special needs. This is widely referred to as the “negative factor” that allowed them to cut almost \$1 billion on an annual basis from public schools in order to balance the state budget. The total amount available in the factors is \$1.4 billion and once that threshold is reached there is no more money that could be cut using the negative factors.

Challenges:

A group of educators, parents and school districts filed a lawsuit against the state of Colorado that seeks to enforce Amendment 23 and eliminate the “negative factor”. Plaintiffs want the negative factor to be eliminated from the school funding law and want the legislature to be prohibited from using a similar factor in the future. Arguments over whether the state has violated the intent of a constitutional amendment passed by Colorado voters were presented in front of the Colorado Supreme Court in early June. A ruling is expected within the next few months. A decision in favor of the plaintiffs would lead to a budget crisis for the state, and leave even less funding available for other needs, including transportation infrastructure, higher education and health care.

Education funding is extremely important to the economic development of our state and region. This includes P-20 education, not just K-12 funding. Without a strong and fully funded education system, we will not be able to grow the workforce needed for our high growth economy. Amendment 23 should be considered in any discussion related to unravelling the state public finance Gordian knot in which we find ourselves. As they stand, TABOR, Gallagher and Amendment 23 leave us with little flexibility in state public finances to grow our future.

We know that higher education leads to a higher standard of living, which contributes to the overall health and growth of our economy. Moreover, companies are attracted to states in which a robust research university environment exists, both for the relationships and innovation that comes out of partnerships with them as well as the personal benefit received from employees and their families attending them. Nonetheless, polling on public perceptions on the benefit of a higher education degree indicates that such a degree is still widely viewed as a private benefit for individuals rather than a benefit to the broader community.

Opportunities

With growing discussions about whether Colorado should “de-Bruce” TABOR (as many municipalities and counties have done), eliminating the ratchet down impact on public finances in a post-recessionary period, and interest in curbing the negative impact of Gallagher on school funding, there is an opportunity to move forward to ensure consistent, robust funding for education, which should include a look at how Amendment 23 functions in a different environment.

Options:

Amend the Constitution to allow a timeout during a recession in terms of the inflationary growth requirement in 23.

Pro: less opposition than other alternatives.

Con: less impact than other alternatives.

Amend the Constitution to allow the funding collected from Amendment 23 to be spent on the P to 20 pipeline.

Pro: Allows early childhood and higher education (P to 20 pipeline) access to the funds currently collected on an annual basis.

Con: K-12 is further constrained financially.

Amend the Constitution to allow GOCO funds to be used for education as well.

Pro: Just another source of funding.

Con: Really invites a new opposition group—environmentalists.