DENVER METRO CHAMBER OF COMMERCE

TABOR

Background:
The Taxpayers Bill of Rights (TABOR), passed by Colorado voters in 1992, is a Colorado Constitutional amendment to limit growth in government revenue and restrict expenditures. TABOR applies to all levels of government in Colorado: State government, cities, counties, school districts and special districts. It is considered by many to be the most restrictive tax and spending limitation in the country. TABOR's main provisions are that any tax increase must be approved by a vote of the people and State expenditures are restricted based on a formula using population growth and inflation. Any growth in revenue that exceeds the cap must be returned to taxpayers.

Additionally, the TABOR cap resets during recessionary times when government revenues are contracting instead of growing, commonly referred to the "ratchet down effect." This essentially maintains State funding below increases in population and inflation, making it difficult to provide effective government services. In 2005, the State cap was reset through Referendum C (Ref C), which provided a five-year reprieve from TABOR spending limits (from FY 2005-2006 to FY 2009-2010), and provided for increased spending on K-12 and higher education, health care and transportation. Due to the passage of Ref C, which also reset the TABOR cap, the State has been able to retain $12.2 billion in additional revenues from 2005-2014. The Ref C timeout has expired, but Colorado continues to benefit from the reset in the cap. Ref C also removed the "ratchet down effect" during the last recession.

It is estimated that in 2016, for the first time in a more than a decade, taxpayers will receive a refund. Refunds are estimated to run between $23 and $72 per taxpayer, depending on income. At this time, both general funds and cash funds, such as the hospital provider fee, count toward the TABOR limit. Cash funds differ from general funds in that they can only be used for specific purposes. And while they count toward the TABOR limit, any refund of TABOR excess must be provided only out of general funds, causing a disproportionate draw on the General Fund.

This is problematic because even as we prepare to rebate the people of Colorado, the reality is that our state faces significant funding challenges for transportation, education and public safety. Since TABOR's passage, our state's population has grown by more than 50 percent. With that dramatic growth comes new challenges and changing budget needs. Our budget constraints are exacerbated by the fact that Coloradans have not passed a statewide tax increase other than tobacco and marijuana since the passage of TABOR (in 1992). Those constraints have meant that we have been forced to either rely on user fees and enterprises (like tolls and vehicle registration fees) to generate additional funding or decrease funding to critical programs (higher education).

It is anticipated that, because of the TABOR refund, the funding provided by SB 09-228 for transportation infrastructure will be cut in half in 2015-2016 and may be cut entirely in 2016-2017. SB 09-228 provides a five-year General Fund transfer to supplement gas tax revenues in the Highway Users Tax Fund and increase transportation funding, which was cut to zero during the recession. However, when the TABOR surplus reaches 1 percent of General Fund revenue, SB 09-228 triggers a requirement that the transfer be cut in half. If the TABOR surplus exceeds 3 percent of General Fund revenue, it triggers a complete elimination of the transfer. The prospect of losing hundreds of millions of dollars for transportation funding is alarming.

To further complicate our state's budgetary challenges, Amendment 23 channels additional dollars to education. This occurs even in years in which State revenues are declining, which results in more required spending on K-12 education and leaves less opportunities to address funding needs of higher education, transportation, health care and public safety. In years where the TABOR limit is hit, it exacerbates the issue, requiring more education funding, while also requiring a refund from the General Fund.

At the same time, Medicaid enrollee numbers continue to grow as do the costs for running prisons and mental health facilities. Despite this growth, prisons and mental health treatment facilities have not seen comparable funding increases.

Since the passage of TABOR in the early 1990s, local ballot issues to reform revenue and spending have been overwhelmingly successful in Colorado. According to a survey conducted by the Colorado Municipal League, revenue and spending ballot issues have had a statewide success rate of 86 percent since 1993. That percentage reflects the passage of nearly 470 successful revenue retention initiatives in Colorado municipalities. (This is the number of elections, with many municipalities having multiple elections. The number of municipalities with full revenue de-Bruced is 201 of 271.) Furthermore, 49 of 64 counties and 174 of 178 school districts have successfully removed all revenues from TABOR limits, allowing the government entity to retain and use the revenues.

Challenges:

- Cost of a campaign: 2016 is an expensive year and we know we need education and awareness to be successful (In 2005, Ref C and D proponents spent $7.4 million on the campaign). Further, with the likelihood of a refund in the next year, it would be more challenging to get voters to support the State keeping the revenue.
- Legislative solutions have been mixed.
  - 2015 session: HB 1389 → Shift the hospital provider fee into an enterprise fund. This bill died in legislature. Although the hospital provider fee did not exist at the time TABOR revenue caps were set or when Ref C passed, revenues generated by the fee are included in the total State budget revenue, bringing us closer to the TABOR revenue caps and resulting in an inaccurate reflection of State revenue growth. HB 15-1389 would have shifted the hospital provider fee into an enterprise fund, thereby exempting it from contributing to the TABOR cap. As it stands today, the hospital provider fee is reflecting hundreds of millions of dollars in general revenue growth despite the fact that its funds are not collected in the General Fund and are clearly earmarked for health care, making an enterprise fund the more appropriate place for them to reside.

    - Senate Bill 09-108 → established the Bridge Enterprise as an entity outside of the TABOR revenue limits to provide funding for repair of structurally deficient bridges. It was passed into law.
- No matter what action we take, we may face voter perception (and opposition messaging) that we are in some way stripping voter rights and growing big government. Although we will clearly indicate that we will preserve the right to vote on tax increases, this will likely be the opposition argument we still face.
- This is a huge undertaking given our history and experience with the Ref C and D campaign. The challenges to Ref C and D were three-fold: political control over the ballot language, well-funded opposition and a broad-based (if not apolitical) coalition. From November 2004 – April 2005, political research drove most of the policy boundaries to balance what the political leaders wanted and what the voters would accept. Central to C and D's success was that the legislature allowed the Speaker (Romanoff) and the Governor (Owens) to be the two parties leading the negotiations, and once they concurred on the policy, then the ballot issue consultants drafted the language. Ref. C was tight, clean and simple, this language followed much of what the voter's supported in focus group and polling research. By contrast, Ref D was drafted by the lawyers, was five-times in length to the language of Ref C, had no polling basis, and was mostly archaic, legal language. C, which started out at 53 percent, ended up at 51.1 percent. Ref D, which started out at close to 55 percent, finished at 49.6 percent.

  The proponents broke Colorado's funding record that year for a ballot issue, topping $7.4 million. But the opposition spent approximately $2.3 million, $800,000 of which was reportable contributions and the balance through legal loopholes in non-reportable bundled contributions (Independence Institute, Grover Norquist, etc.). This indicated a real willingness and availability of disposable money available from conservative sponsors to defend the state's TABOR policy and anti-tax sentiment. To spend this amount of money and get just over 51 percent of the vote indicates a campaign could be a very heavy financial lift. Finally, tax elections, of which C and D definitely was portrayed to be, have to be (1) led by credentialed Republicans, and (2) receive the endorsement of such a quantity of apolitical organizations as to remove, dilute or obscure the partisan nature of most tax-related ballot measures. C and D was unique in accomplishing both of those tasks which, because of the across-the-board recognition of the seriousness of the problem, suggests that the political landscape to a tax-increase election has to be genuine rather than manufactured.

Opportunities:

- State retention and utilization of this money would have a significantly higher return on investment than the relatively small individual tax refunds.
- If successful, we unlock significant and much-needed funding for some of our most critical needs as a state including transportation and education.
- If successful, this would lessen the impact on the State revenues that would be felt from the growing pressure from Amendment 23.

Options / components of a plan:
Note: regardless of which option moves forward, ***we will maintain the right for voters to vote on tax increases****.*

1. **Timeframe:** Permanent vs. Time out.
   Permanent:
   Pros: A permanent de-Brucing of General Fund revenues would provide the State the ability to invest in critical needs, manage to its tax revenues and better recover from recessions.
   - ✓ No further de-Brucing campaigns would be necessary in the future.

   Con: Could be more difficult to sell voters due to the permanence.
   Time out:
   Pros: Would provide some immediate revenue into the budget for backfilling the education negative factor, making the SB 09-228 transfers to transportation, and avoiding additional reductions to higher education.
   - ✓ It would also allow time for parties to convene to determine how else TABOR could be changed and could be easier to sell voters on.

   Con: It's temporary, which means the business community will likely have to fund a similar ballot proposal in the future.

2. **Components:** Full de-Bruce (sales tax, income tax and fees) vs. de-Bruce of cash funds only vs. de-Bruce of a single tax source such as sales, income or severance tax.
   - **Full de-Bruce:**
     Pros: Frees up maximum funds for investment.
     - ✓ Simple to explain to voters.

     Con: Could be harder to convince voters because of the scope.
   - **Single component:**
     Pros: Could be pitched as incremental change, making passage more likely.
     Cons: Frees up less funds for investment.
     - ✓ Doesn't completely solve the issue, which means ballot proposals in the future could be necessary.
     - ✓ More complicated to explain to voters.

3. **Ballot option vs. state legislative option:**
   - Non-election option: revenues from the hospital provider fee conversion to an enterprise fund. This will be part of our 2016 legislative agenda. We will take the lead on pushing this forward, while maintaining the broad coalition that tried to pass this in 2015.
     Pros: Less expensive because you are appealing to a smaller group of people
     - ✓ Frees up funds for education and transportation.

     Con: It's a temporary solution and does not de-Bruce the State budget in full.