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TABOR – Yesterday, Today, ...Tomorrow?

Colorado's Taxpayer's Bill of Rights (TABOR) amendment is intended to limit the growth of government by limiting its access to Coloradans' paychecks. Spurred on by a decade of economic doldrums and expanding government, Coloradans passed it in 1992, ushering in some of the most rapid economic growth in the nation.

However, TABOR opponents have repeatedly chipped away at the law's effectiveness, limited its application, and circumvented its restrictions. The results have been accelerating growth in state and local government, and slower economic growth.

What Is TABOR?

TABOR stands for the Taxpayer's Bill of Rights, an amendment to the Colorado Constitution (Article X, Section 20) passed by popular vote in 1992. Its express purpose is to limit government by limiting government's access to money; that goal is written into the text of the amendment itself as guidance to the courts:

"...its preferred interpretation shall reasonably restrain most the growth of government."

As written, TABOR accomplished this with three main provisions:

- When state government revenue increases faster than inflation plus population growth, that excess must be refunded to taxpayers, unless taxpayers vote to allow the government to keep it.
- Any increase in general tax rates must be approved by the voters affected.
- Voter approval is required for new multi-year financial obligations, including unsecured debt.

In addition, TABOR repealed the state's progressive income tax, replacing it with a flat tax.

Economic Effects of TABOR

In a May 2016 study for the Independence Institute, Fred Holden examined Colorado's economic performance and the relative growth of both government and the private sector before and after TABOR's passage. What he found was that TABOR, when allowed to work as intended, correlated strongly with greater economic and income growth, representing greater opportunity and fulfillment for Colorado's citizens.

When looking at the numbers below, we should remember that economic performance is the result of many factors, but, in general, smaller government doesn't drain resources from the private sector, allowing it to grow.

Efforts to Weaken TABOR

Almost since its inception, TABOR's opponents have sought to weaken its effects through end-runs, creative definitions, exploiting TABOR's own provisions, and in one celebrated case, a "temporary" suspension of its effects.

Referendum C

The largest, most damaging assault on TABOR has been Referendum C passed in 2005. As originally written, TA-

1983-1992 (Pre-TABOR)	1993-2002 (TABOR as intended)	2003-2012 (TABOR weakened by Ref C tax increase)
Annual Pop. + Inflation: 4.1% Annual State Gov't Increase: 8.8%	Personal Income Growth 17% above US	Annual Pop. + Inflation: 3.2% Annual State Gov't Increase: 6.1%
Gov't Job Growth: 20% Private Job Growth: 19%	Gov't Job Growth: 22% Private Job Growth: 38%	Gov't Job Growth: 11% Private Job Growth: 4.5%
	GDP Growth 5th-Highest in USA, 1992-1998	1993-2012 savings: \$6200 per capita

BOR used each year's tax revenues as the base for the next year, resulting in a "ratchet effect" that lowered taxes as a percentage of state GDP when tax revenues fell during a recession. Referendum C was sold as a 5-year time-out from that, which would set the base TABOR limit at 2004's revenues and allow it to grow based on inflation + population, regardless of what revenues actually did.

In reality, Referendum C amounted to a forever tax increase, raising the base permanently, and all but eliminating TABOR refunds for the foreseeable future. Since TABOR opponents began their attacks starting with Ref C, the state has kept an about \$17 billion and growing (\$1.2 billion last year alone). That's roughly \$3,035 for every Coloradan, \$12,142 for a family of four.

"De-Brucing"

Named for TABOR's original author, Douglas Bruce, "De-Brucing" refers to a ballot measure where districts and municipalities can permanently retain tax revenues in excess of the population + inflation formula. It is particularly popular with school districts, which might otherwise have to lower their mill levies. In 2007, the state legislature permanently froze mill levy rates, preventing their being lowered.

Fees vs. Taxes

TABOR requires voter approval to raise taxes, but not fees. In 1989's *Bloom v. City of Ft. Collins*, the Colorado Supreme Court ruled that a fee is applied for the purpose of defraying a specific government service. However, in 2007, in *Barber v. Ritter*, the Supreme Court partially reversed itself, permitting money raised from fees to be transferred to the general fund. Not surprisingly, the legislature has found all sorts of services to which it can attach "fees" without voter approval, in lieu of raising taxes.

Enterprises

TABOR exempts State Enterprises, operations receiving less than 10% of their funding from the state. Intended to allow institutions like state colleges and universities to raise tuition as needed, it has turned into a loophole whereby the legislature creates new enterprises, and, combined with the *Barber v. Ritter* ruling, shuffle their receipts to the general fund. The most egregious recent example of this is Senate Bill 17-267, creating a state-run enterprise to manage and raise the pre-existing Hospital Provider Fee. The state will keep an additional \$1.9 billion from FY 2017-2020 and raise the Ref C cap by over \$600 million. Further, the bill allows for \$2 billion in state debt via Certificates of Participation (see below) without voter consent.

Certificates of Participation

The Colorado Constitution prevents the issuance of unsecured debt without voter approval. TABOR also requires voter approval for any new multi-year obligation. Governments have executed an end-run around these provisions using so-called "Certificates of Participation" for capital improvements. The structure is sold to a specific government-created authority, which then issues bonds, nominally secured by the building. The building is then leased back to a government district for year-to-year lease payments matching the bond payments. An Electronic Municipal Market Access (EMMA) search showed nearly 200 such issues in Colorado from 2008- 2018.

Lawsuits

The most direct attack on TABOR was a lawsuit, *Kerr v. Hickenlooper*, in which a group of lawmakers claimed that TABOR violated the US Constitution's guarantee of a republican form of government. The suit was eventually dismissed.

