

TABOR: Reading Between The Lines

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I. Introduction: Tax and Expenditure Limits (TELS)

With some twenty states considering “tax and expenditure limits,” a few similar to Colorado’s Taxpayer Bill of Rights (TABOR), an examination of existing TABOR literature will provide decision-makers with a brief overview of the effectiveness of this policy. A tax and expenditure limit, or “TEL” is used to describe a constitutional or statutory law that restricts government revenue or spending growth. TELs vary from state to state—with most limiting appropriations to the growth in state personal income.¹ While TELs are designed to restrain government spending, many TEL critics claim that a majority of them actually shift the tax burden to other governmental entities. With the exception of a few TELs that prohibit governments from shifting costs without funding, most state TELs shift cost burdens to local governments and vice versa.² The central budget restriction in TABOR however, is unique. It “forces politicians to go before the voters for *any* tax increase and extends a range of other fiscal limitations onto state and local government.”³ Due to these budgetary restrictions, as well as its constitutional nature, Colorado’s TABOR is considered the most inflexible TEL.

II. Colorado and the Taxpayer Bill of Rights (TABOR)

TABOR was adopted through a state referendum in Colorado with 52% of the vote after three prior attempts failed to win a majority. Under TABOR, state and local finances are limited by a population growth plus inflation formula. The formula requires the state to refund taxes collected in excess of this population growth plus inflation calculation. This holds true for local government, school districts, and other units of governments as well. On the local level, governments can ask voters to “de-Bruce,” or

¹ Texas has a constitutional TEL that limits appropriations to the growth in state personal income.

² Dean Stansel, *Taming Leviathan: Are Tax and Spending Limits the Answer?* Cato Policy Analysis No. 213, Cato Institute (July 25, 1994).

³ Paul Teske, *TABOR Binds Beyond the Budgetary Horizon* (University of Colorado at Denver, 2005) 2.

allow the jurisdiction to keep the surplus tax revenue they take in for a certain period of time. On the state level however, suspending the constitutional provisions of TABOR is much more difficult.

From its inception in 1992, TABOR has refunded some \$3.6 billion to taxpayers under this formula, but not without forcing cuts to government services.⁴ Teske points out that even with “some increases mandated from Amendment 23 [passed to ensure additional PK-12 funding], per pupil K-12 spending dropped to the lowest 3 states [among the 50] as a percentage of per capita state income: real per pupil spending in 2005 is \$331 less than the 1988 level and \$700 less than the national average.”⁵ Opponents of TABOR successfully argued that the severity of these cuts posed a real threat to the health and economy of Colorado and as a result, a general election in November 2005 (Referendum C) forced a five year TABOR suspension. During the debate, some TABOR supporters blamed politicians for a failed implementation of TABOR provisions⁶, while other supporters suggested that a “minor glitch” in the way TABOR legislation was drafted created a ‘ratchet effect’ problem.

It is important to note that the impact of TABOR on Colorado is complicated. Even though the Center on Budget and Policy Priorities (CBPP) states that “one can reasonably look at the provision of various types of public services before and after TABOR was enacted, and infer that TABOR had a role in bringing about the decline,” the CBPP admits that the “interaction between TABOR, the Gallagher Amendment (residential property tax restriction), and Amendment 23 (more recently enacted

⁴ See Appendix 1

⁵ Paul Teske, *Stepping Up or Bottoming Out? School Finance in Colorado*, Report prepared for the Donnell-Kay Foundation, Denver, CO. (2004).

⁶ Barry Poulson, Ph.D. is a Senior Fellow at the Independence Institute and an Americans for Prosperity Distinguished Scholar. Poulson contends that “the Legislature has interpreted TABOR [by financing rebates from revenue the year after the TABOR surplus is generated] so as to erode constraints imposed by the limit” and therefore exacerbated Colorado’s fiscal crises. See “Fiscal Crises in Colorado...,” by Barry Poulson (March 2003).

education guarantee) makes sorting out causality difficult.”⁷ TABOR restricts state spending and to balance the budget, cuts, sometimes drastic, need to be made. Poulson argues that mandated federal spending and mandated education spending under Amendment 23, not TABOR, are what forced cuts in government services. Poulson’s solution, one of many, is to “...eliminate mandated spending [and] [i]n the case of Medicaid spending the state should request a waiver from the federal government.”⁸ Once mandated spending is eliminated, Poulson believes that Colorado will achieve greater budget stability. Unfortunately, eliminating mandated spending through a waiver request is not always easy. Poulson provides a few other suggestions, it’s assumed, to achieve budget stability if a waiver is not granted. Those include eliminating Colorado’s income tax and replacing it with a sales tax, creating a Rainy Day Fund, prohibiting the state from relying on stopgap measures such as raiding trust funds, and closing TABOR loopholes—such as deferring of taxpayer refunds to the following fiscal year. Will these recommendations stabilize Colorado’s budget? Regrettably, determining the effectiveness of each recommendation is beyond the scope of this paper.

III. Does TABOR Work? Looking at the Arguments

The Center for Budget and Public Priorities, through extensive research, has drawn the conclusion that TABOR policy is detrimental. The CBPP sees TABOR policy as fundamentally flawed due primarily to the population growth plus inflation formula used to calculate the maximum amount of revenue the government generates. The formula fails, according to the CBPP, to accurately represent the amount of dollars needed to fund many government programs. The CBPP argues that:

⁷ David Bradley, *Fiction and Fact: A Response to the Tax Foundation’s Distortion of Colorado’s TABOR*, Center on Budget and Policy Priorities (May 2, 2005), 1.

⁸ Barry Poulson, *Fiscal Crises in Colorado: Analysis of the Worst Fiscal Crises in Colorado History*, Independence Institute (March 2003), 14.

- First, “no existing measure of inflation correctly captures the growth in the cost of the kinds of services purchased in the public sector, so the inflation adjustment generally is not sufficient to allow the continuation of existing services. State governments spend much of their money on education and health care, which typically have cost increases greater than the general rate of inflation. Within the Consumer Price Index (CPI) itself, medical care and education have been growing at twice the rate of the overall CPI.”⁹
- Second “the subpopulations that state governments serve tend to grow more rapidly than the overall population growth used in the formula. For example, while total population grew by 15.4 percent from 1990 to 2002 [in Colorado], total state prison population grew by 83 percent, disabled children in schools grew by 35 percent, and the number of elderly and disabled persons on Medicaid grew by 70 percent. Over the next 40 years, the elderly population will grow at twice the rate of general population growth.”¹⁰
- Third, the population growth plus inflation formula “fails to take into account the possibility that court, voter, or federal mandates may require a state to take on new responsibilities. Mandates, whether internal or external, may increase the responsibilities and costs borne by the state without any proactive policy change on the part of state lawmakers. Rigid tax and expenditure limits, such as those based on population change and inflation, inadequately reflect the potential costs that may be imposed on state and local governments.”¹¹
- Fourth, “state governments inevitably face spending needs that cannot be anticipated. Natural disasters, public health emergencies, economic changes, and other such occurrences place expensive but unexpected demands on state and local governments.”¹²

⁹David Bradely, Nicholas Johnson and Iris J Law, *The Flawed ‘Population Plus Inflation’ Formula: Why TABOR’s Growth Formula Doesn’t Work*, Center on Budget and Policy Priorities (January 13, 2005), 1.

¹⁰ Ibid. 2.

¹¹ Ibid 10.

¹² Ibid 13.

- And finally, because the “population growth plus inflation adjustment is applied to the amount of *actual* expenditures or revenue in the prior year,” when a states annual budget shrinks, a ratchet effect creates a “new base [each year] to which the population growth and inflation adjustment is applied [and in this case of a budget decrease] the level of public services is permanently ratcheted down.”¹³

Americans for Prosperity (AFP), a TABOR advocacy group, admits that the ratchet effect is a “minor glitch;” but believes that a new version of TABOR advocated by the AFP solves the problem.¹⁴ The AFP purports that the redrafted version of TABOR which might be placed on the November 2006 ballot in Oklahoma, know as TABOR 2.0, removes the ratchet language and solves the “glitch.”¹⁵ Unfortunately, AFP does not provide recommendations to address the other four issues raised by the Center for Budget and Policy Priorities.

Bradley, Lyons, and Lav show that even fixing the ratchet language would not have prevented the deterioration of public services TABOR caused in Colorado.¹⁶ Their rationale stems from the fact that public services in Colorado declined before the 2001 recession and thus before the ratchet could have gone into effect. For example, between 1992 (enactment of TABOR) and 2001 (the year downward ratcheting began):¹⁷

- Colorado declined from 35th to 49th in the nation in K-12 education spending as a percentage of personal income.
- Colorado declined from 35th to 46th in the nation in spending on higher education as a share of personal income.
- Colorado declined from 23rd to 45th in the nation in access to prenatal care.

¹³ Ibid, 2.

¹⁴ Americans for Prosperity: *Colorado Voters Say They Want Their Taxpayer’s Bill of Rights to Look Like The Improved Versions Being Considered in Other States* (November 2, 2005).

¹⁵ Americans for Prosperity: *Oklahoma Groups Say Citizens ‘Deserve to Know the Truth About TABOR’* (October 25, 2005)

¹⁶ David Bradley, Karen Lyons, and Iris J. Lav, *A Faulty Fix: Repairing the “Ratchet” Will Not Repair TABOR*, Center on Budget and policy Priorities (March 21, 2006).

¹⁷ Ibid, 3.

- Colorado declined from 18th to 44th in the nation in health coverage for low-income children.

Furthermore, the CPBB states that “[h]ad a TABOR with no ratchet been in place in all states starting in 1990, state spending would have declined steadily as a share of GDP, from 6.5 percent in 1990 to 5.4 percent in 2004. In 2004, states would have had \$158 billion (20 percent) less ability to support services than they actually had. Put another way, if all states had had a TABOR without a ratchet, they would have experienced a deterioration in public services that is similar to what Colorado experienced prior to the recession.”¹⁸

With or without a ratchet effect, TABOR policy evokes a sense of passion among both supporters and detractors. Supporters fear that Referendum C will move Colorado’s state and local spending as a percentage of personal income back in line with the U.S. average.¹⁹ According to the Heritage Foundation, this will hurt Colorado’s economy and business activity will suffer. As a result, businesses will flee to a lower tax state, consequently slowing job creation and wage growth. The Center for Budget and Policy Priorities disagrees—citing Colorado’s nonpartisan Legislative Council Staff to show that “both the economic boom of the 1990s and the bust of the last several years reflect the nature of Colorado’s economy, and have little to do with fiscal policy.”²⁰ Moreover, the CBPP’s own analysis reveals that “there is no correlation between TABOR and economic performance in Colorado.”²¹ Not surprisingly, an empirically rigorous analysis carried out by the Economic Policy Institute (EPI) employing regression analysis to compare

¹⁸ Ibid, 3.

¹⁹ Alison Acosta Fraser, *Colorado’s Taxpayer’s Bill of Rights should not be Breached*, Heritage Foundation (July 28, 2005).

²⁰ Nicholas Johnson and Karen Lyons, *Is Colorado’s TABOR Creating Jobs?* Center on Budget and Policy Priorities (January 13, 2005), 2.

²¹ Ibid. 2.

growth rates in Colorado to other states revealed similar results. By using annualized growth rates in employment and annualized growth rates in real per capita income, the EPI concluded “TABOR did not significantly boost Colorado’s economy.”²² A study by Poulson, again—a TABOR advocate and distinguished scholar with American for Prosperity, startlingly revealed somewhat similar results. Poulson’s comparative analysis of Colorado (a TABOR state) and Texas (a non-TABOR state) covering the 1990s actually found that “Texas has done somewhat better in terms of employment growth.”²³ He did, however, find that Colorado’s income per capita increased by 70 percent, but admitted that was only 9 percent more than Texas’ 61 percent increase.²⁴ Although fiscal policy may not directly affect economic activity in Colorado, it certainly can exacerbate the boom-bust cycle in state finances:

Because TABOR required very large tax refunds in the boom years, the state was unable to put money into a rainy day fund or make other investments that could have eased the crisis when it arrived. It may well be that the TABOR-driven tax cuts during the boom years helped overheat the state’s economy, while large TABOR-driven budget cuts during the recession worsened the job loss by withdrawing demand from the economy at a time when it already was weak.²⁵

The EPI study also showed that even though TABOR had a positive effect on employment growth in the five years following passage of the law, the “short run effect was not sustained into the second half of the decade.”²⁶

²² Therese J. McGuire and Kim S. Ruben, *The Colorado Revenue Limit: The Economic Effects of TABOR*, Economic Policy Institute (March 2006), 10.

²³ Poulson, Barry, *A Taxpayer’s Bill of Rights for Texas*. Americans For Prosperity Foundation (January 2005): 4.

²⁴ *Ibid.* 4

²⁵ Johnson and Lyons, *Is Colorado’s TABOR Creating Jobs? 2*.

²⁶ McGuire and Ruben, *The Colorado Revenue Limit*, 10.

How Colorado's economy reacted to TABOR and how it will react to a TABOR suspension still remains falls short of consensus. Nevertheless, some agreement exists that Colorado's short-lived economic surge was partially attributable to TABOR, as well as the fact that TABOR is partially responsible for putting Colorado at one of the lowest levels of state spending as percentage of per capita state income. Ultimately, it is up to the electorate to decide what they value more.

IV. Public Opinion

Colorado voters remain somewhat divided on the benefits of a statewide TABOR law. The passage of TABOR and its suspension were adopted with narrow margins in both instances. An interesting note, however, is that on the local level, 1,100 de-brucing elections (election to allow the taxing jurisdiction to retain rather than refund the surplus tax revenue under TABOR) were held between 1993 and 1999—with an overall success rate of 93%.²⁷ Whether this means that Coloradoans trust their local government's handling of fiscal matters more than their state government or whether it means that the refunds were too small for taxpayers to care is uncertain. One thing is certain—every time an election is held it costs taxpayers more money.

So what direction is public opinion taking in Colorado? One only needs to look at the composition of the Colorado Legislature to conclude that public opinion in support of TABOR is slowly eroding. According to the CBPP, “the Republicans lost control of both chambers of the General Assembly [during the November 2004 election] for the first time since 1960.”²⁸ Observers have generally attributed this loss to the Legislatures inability to address voters concerns about TABOR.

²⁷ The Bell Policy Center, *Ten Years of TABOR: A Study of Colorado's Tax and Spending Limit*, Denver, Co (February 2003): 58.

²⁸ Bradley, *Fiction and Fact*, 15.

Republican or Democratic lawmakers in other states may fear the same fate as their unseated colleagues in Colorado, and as a result state Legislatures in Arizona, Kansas, Minnesota, South Carolina, and Wisconsin all rejected TABOR. Furthermore, “after a huge bipartisan public outcry [in 2006], the Ohio legislature was forced to pass legislation to remove a TABOR initiative from the ballot.”²⁹ Even a survey of 700 registered Pennsylvanian voters conducted in the spring of 2006 and released by the business-funded Pennsylvania for Effective Government (PEG) Education Committee found that only a minority support spending limits.³⁰ Once adamant TABOR supporters are also changing their minds: “In hindsight,” says Republican Senator Ron Teck about TABOR, “I wouldn’t vote for it again. It ties the hands of the representatives. It’s like trying to change the spark plug on a car that’s moving down the road at 90 miles an hour.”³¹ And finally, adding more pressure on TABOR supporters are headlines such as *AARP Oregon Urges Rejection of TABOR*,³² *AARP Wisconsin Spearheads Tabor Defeat*³³, and *AARP [Arizona] Joins ‘Bad Idea’ Coalition*.³⁴ Does this mean that TABOR’s fate is doomed? Not if Poulson has anything to say about it. His unrelenting mission to spread TABOR has caught favor with likeminded groups. These groups, such as Americans for Prosperity, will continue the healthy debate which policymakers need to hear. In turn, policymakers will need to read between the lines in order to consider the validity, accuracy, and strength of the myriad statistics and opinions available on TABOR.

²⁹ Pennsylvania Budget and Policy Center, *Pennsylvanians Opposed to Spending Limits: Business Group Poll Uncovers Little Support for Tabor in Pennsylvania*, 1.

³⁰ *Ibid.*, 1.

³¹ Katherine Barrett, Richard Greene, Michele Mariani, and Anya Sostek, *The Way We Tax: A 50 State Report*, Governing: The Magazine of State and Localities, 16 (February 2003).

³² See http://www.aarp.org/states/or/or-advocacy/aarp_oregon_urgens_rejection_of_tabor.html

³³ See http://www.aarp.org/states/wi/wi-advocacy/aarp_wisconsin_spearheads_tabor_defeat.html

³⁴ See http://www.aarp.org/states/az/az-advocacy/aarp_joins_bad_idea_coalition_to_stop_tabor.html

V. *Conclusion*

Even though a “taxpayer bill of rights” might sound like a fair TEL, unless it is meticulously devised to provide flexibility and the ability to rebound after a recession, it “leaves government stretched beyond the boundaries of ‘lean and efficient.’”³⁵ And although tying government spending to a population growth plus inflation sounds reasonable, a majority of empirically based studies have concluded the converse. Editorialists have repeatedly stated that—just like weight loss, improving our tax system is more complicated than taking a magic pill. The reality is that budget decisions are almost always complex: “They require careful analysis and the weighing of tradeoffs. Elected officials, whether they be members of the legislature, county boards, city councils, boards of supervisors, or school boards, generally invest a substantial amount of time in making fiscal decisions. They hold extensive hearings, pose questions to government administrators, study detailed budget documents, and read various position papers in preparation for making decisions on spending programs.”³⁶ As a result, prudent and thoughtful bipartisan tax policy usually emerges—in place of a referendum style process (the outcome of which was TABOR) that only allows the electorate two options: *yes or no*.

³⁵ Teske, *Tabor Binds*, 15.

³⁶ Andrew Reschovsky, *The Taxpayer Bill of Rights (TABOR): A Solution to Wisconsin Fiscal Problems or a Prescription for Future Fiscal Crises?* Paper prepared for the Wisconsin Tax Policy Colloquium, Marquette University School of Law, April 16, 2004. Also see S.B 18, passed into law during the 79th Texas Legislature, Regular Session.

Appendix 1

Measure	Colorado	
	Current	1993
Health Insurance Coverage	40 th (03-04)	21 st
Childhood Immunization	43 rd ('03)	27 th ('94)
Timely Prenatal Care	42 nd ('03)	21 st ('90)
Low Birth Weight Babies	41 st ('03)	42 nd
Infant Mortality	15 th ('02)	19 th
Child Death Rate	19 th ('02)	16 th
Teen Birth Rate	34 th ('03)	30 th
K-12 spending (total general revenue) per pupil	32 nd ('04)	22 nd
K-12 spending (total gen. rev.) relative to income	49 th ('04)	28 th
Per Capita St. Higher Ed Appropriations	49 th ('05-06)	31 st
Percent of teens who are high school dropouts	32 nd ('04)	31 st
Idle teens (% neither working nor in school)	27 th ('04)	13 th
Morgan Quitno rankings:		
“Most Livable State”	20 th ('06)	8 th
“Healthiest State”	27 th ('05)	9 th

Source: Wisconsin Council on Children and Families, *Tabor Impacts: National Rankings for Colorado and Wisconsin*, April 21, 2006. (Morgan Quitno Press is a nationally recognized state and city ranking publication).