**KEYSTONE CHARTER COMMISSION MEMORANDUM**

**TO:** Keystone Charter Commission Members

**FROM:** Jennifer Madsen

**RE:** Overview on TABOR

**DATE:** May 28, 2023

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This memorandum provides background on TABOR for purposes of the discussion of the Financial Management section of the draft Charter provisions.

Summary:

The Taxpayers' Bill of Rights, Section 20 of Article X of the Colorado Constitution (TABOR), has been in effect since its approval by Colorado voters in 1992 and contains several key provisions:

1. Prior voter approval requirements for tax revenue increases, to include:
   - new taxes
   - tax rate increases
   - tax policy changes resulting in net revenue growth.
2. Prior voter approval requirements for multi-fiscal year debt, to include loans and bonds but not multi-year lease purchase agreements.
3. Limitation on types of taxes that can be imposed such as no new real estate transfer taxes.
4. Limitation on spending by limiting revenue collection, and
5. Requiring excess revenues to be refunded.

Background:

TABOR formally became law on January 14, 1993, and began a new era for Colorado municipalities. Those supporting and opposing TABOR characterized the amendment as a dramatic departure from business as usual – and significant legislation that would, at the very least, restrict the growth of government.

Since the adoption of TABOR, there has been significant litigation to interpret the meaning of the complex constitutional amendments. At the time that TABOR passed, some were worried that TABOR would cause deterioration of governmental services; however, that fear has not generally been borne out. TABOR created and continues to create certain burdens on municipalities but no empirical study has shown how, if at all, municipal services or infrastructure has suffered since 1983 as a result of the constitutional amendment.

TABOR is applicable to "districts" which include the state or any local government, other than "enterprises." The Town of Keystone will be a "district." TABOR proponents convinced a majority of Colorado voters to approve it in 1992 with a campaign essentially based on the message: "VOTE ON TAXES!" What may be interesting is that TABOR did not give rise to any significant voting right. Several preexisting state and local laws and charter provisions already required municipal voters to approve tax increases. However, by broadly constitutionalizing the principle that voters should always be allowed to vote on new taxes, TABOR did raise the stakes on the most fundamental interpretive questions: What is the difference between a fee and tax? When does a change to an existing tax law trigger the need for voter approval?

The biggest change caused by the adoption of TABOR is its formulaic limitation on the annual growth of municipal revenues. TABOR does not limit the amount of money that can be budgeted. It does not limit the amount of money that may be appropriated. It does not limit the amount of money that may be spent. Instead, it limits the amount of revenue that may be retained in any particular year from most sources (including both taxes and fees) according to a revenue cap and requires a refund of excess revenue received in any particular year absent voter approval to keep the excess.

TABOR also contains many detailed requirements on how elections and fiscal matters may be handled. Further, TABOR only allows for elections on these questions to be held with the (1) state general election (November of even numbered years); (2) first Tuesday in odd-numbered years; or (3) biennial local district election dates. A TABOR ballot issue may not be sent to the voters for a special election.

Most TABOR ballot questions seek voter approval of (1) new taxes, (2) long-term debt (issuance of bonds and new tax or tax increases to support repayment), or (3) to keep revenues in excess of the TABOR revenue limits, rather than refund them.

TABOR prohibits certain taxes: real estate transfer taxes, state property taxes, and local income taxes. TABOR requires the maintenance of an Emergency Reserve equal to 3% of Fiscal Year Spending (excluding debt service) and the reserve must be replenished in the next year.

Revenue Limitation:

The revenue limitation is one TABOR issue that will certainly need to be considered by Keystone.

It is easiest to understand the revenue limitations requirement of TABOR by using the "black box theory". This theory starts with a base year of revenue flowing into a box. Under TABOR, the amount of revenue that the government can keep for the next year is limited to the base year's revenue plus an annual growth factor (which is derived from property valuation increases plus inflation). Here is a mathematical example:

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|---|---|---|
| *BASE YEAR*<br>*Year 1*<br>*Revenue*<br>*$1,000,000* | Multiplied by Growth Factor (Inflation (CPI) + % increase in real property valuations) Ex. 5% | *NEXT YEAR*<br>*Year 2*<br>*Revenue Cap*<br>*$1,050,000* |

Applying TABOR to the above scenario, if revenues in Year 2 exceed $1.05 million, the Town would be required to refund the excess over the $1.05 million. All revenue is included in this calculation including tax sources and all other revenue streams (permit fees, development fees, grants, court fines, etc.)

A municipality can submit a question to voters asking for a TABOR waiver. A TABOR waiver (sometimes referred to as a “deBrucing” because TABOR was authored in part by Douglas Bruce) ballot question asks voters to allow the government to retain and spend funds in excess of the TABOR revenue and spending cap. With a TABOR waiver, if revenues exceed the TABOR revenue cap, the Town would be permitted to keep revenues in excess of the cap.

This deBrucing ballot issue has been submitted to voters by many local governments and the overwhelming majority of voters in these local governments have approved of the deBrucing measure.

Repeal Efforts

Since its adoption, TABOR opponents have tried to challenge it in various ways. There have been efforts to challenge TABOR through the courts. In addition, there have been efforts to repeal TABOR through ballot questions. There have been some successes in litigation related to the interpretation of TABOR; however, none of the efforts have been outright successful in a repeal of TABOR.