

**KUTAK ROCK LLP**  
SUITE 3100  
1801 CALIFORNIA STREET  
DENVER, COLORADO 80202-2626  
303-297-2400  
FACSIMILE 303-292-7799  
[www.kutakrock.com](http://www.kutakrock.com)

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May 19, 2010

**2010 COLORADO DEBT AND TAX INITIATIVES**  
**ANALYZED BASED ON EXISTING TABOR CASE LAW**

This memorandum analyzes the difficult issues that Colorado governments and Colorado courts will be left to struggle with if Amendments 60 and 61 and Proposition 101 (or any of them) appearing on the November 2010 ballot are approved by the voters. Based on our experience following the adoption of the original Taxpayer's Bill of Rights (TABOR) in 1992, this struggle is likely to play out in the courts for years and, while it does, could severely limit the ability of Colorado governments to finance public projects in the capital markets.

The initiatives are summarized below in **bold text**, broken down by topic, and followed by our analysis of the text and our predictions\* of the manner in which Colorado courts are likely to interpret the text based on previous court rulings interpreting the existing language in TABOR. The full text of each initiative is attached at the end of this memorandum.

\*We have attempted to avoid definitive predictions because we do not want anyone to attempt to use the information in this memorandum as legal advice with respect to the application of the initiatives to a particular Colorado government or a particular financing, both of which are highly dependent on the specific facts relating to that government or financing, and because all provisions of the initiatives are subject to future judicial interpretation. For legal advice regarding the effect of the initiatives on a particular Colorado government or a particular financing, please consult with your own attorney or contact a Kutak Rock Denver public finance attorney.

**AMENDMENT 61**

1. Ban/restriction on "borrowing": **"Borrowing" by the state is banned. "Borrowing" by local governments must be approved by voters at a November election. "Borrowing" includes bonds and other obligations that must be voted under current law as well as lease-purchase and short-term financings that are not required to be voted under current law. The state ban/local government restriction also applies to enterprises, authorities and other political entities of the state and local governments.**

a. *Outstanding borrowings*: Amendments 61 and 60 both amend TABOR. Under Colorado Supreme Court decisions interpreting TABOR, the ban/restriction on borrowing should not apply to outstanding borrowings, remarketings of outstanding borrowings (even at a higher

interest rate) or amendments to outstanding borrowings, so long as the amendments do not change the security and repayment mechanism for the borrowing or the material terms of the borrowing, such as principal amount, maturity date and mandatory redemption provisions. *Bickel, et al. v. City of Boulder, Boulder Valley School District and Boulder County*, 885 P.2d 215 (Colo. 1994) (constitutional amendments are interpreted “in light and understanding of prior and existing laws”); *Nicholl v. E-470 Public Highway Authority, et al.*, 896 P.2d 859 (Colo. 1995) (remarketing of outstanding bonds pursuant to amended bond documents does not create a new obligation to which TABOR applies and revenues pledged to the payment of such bonds are not subject to TABOR’s spending limits). Based on the *E-470* analysis, the borrowing ban/restriction also should not apply to extensions or replacements of letters of credit, standby bond purchase agreements or other credit facilities that secure an outstanding borrowing, so long as the security and repayment mechanism for and the material terms of the documents governing the government’s obligations to the provider are not changed. In addition, the testimony of proponent Russel Haas at the title setting hearing for Amendment 61 is consistent with this analysis – he answered “yes” when asked whether Amendment 61 “doesn’t affect any current obligations of the State?”; and that the “contracts clause” of the United States Constitution invalidates state action that impairs existing contracts. The language in Amendment 61 stating that it supersedes conflicting laws should not change the analysis because the original TABOR contains substantially the same language and that language was considered by the court in *Bickel* and *E-470*.

b. *Post-2010 borrowings authorized by pre-2011 voter approval*: There is a strong argument that the ban/restriction on borrowing should not apply to post-2010 borrowings authorized by pre-2011 voter approval based on TABOR case law permitting post-TABOR tax increases pursuant to pre-TABOR voter approval of bonds and taxes to pay the bonds obtained in accordance with the law in effect on the date of the voter approval. *Bolt v. Arapahoe County School District Number Six a/k/a Littleton Public Schools, et al.*, 898 P.2d 525 (Colo. 1995) (taxes may be increased to pay debt service on outstanding bonds after the effective date of TABOR pursuant to prior voter approval obtained in accordance with the law in effect on the date of the voter approval).

c. *Conduit financings*: There is a strong argument that the ban/restriction on borrowing should not apply to conduit financings (financings payable from and secured by the revenues and/or assets of a nonprofit organization or other private party and not by the revenues or assets of any Colorado government) because a conduit financing does not involve a financial obligation of any Colorado government. See *Campbell v. Orchard Mesa Irr. Dist.*, 972 P.2d 1037, at 1039 (Colo. 1998) (the objective of TABOR is “to prevent governmental entities from enacting taxing and spending increases above TABOR’s limits without voter approval”); *Havens*, at 522 (the evident purpose of TABOR is to limit the discretion of government officials to take certain taxing, revenue and spending actions).

d. *Subject-to-appropriation operating leases*:

*Possible Interpretation 1*: The ban/restriction on borrowing should not apply to subject-to-appropriation operating leases (leases under which the government’s financial obligations are subject to annual appropriation, that do not include a below market purchase option and that have a term shorter than the useful life of the leased property) based on the

following: (i) Amendment 61 provides that the ban/restriction “covers any loan” and then lists transactions that are to be treated as loans for this purpose; (ii) Operating leases are not “loans” under existing Colorado law and are not on the list of transactions in Amendment 61 that are to be treated as loans (although other types of leases – lease-purchases and lease-backs – are on the list); and (iii) The application of the ban/restriction to operating leases would cripple the everyday workings of government, result in prohibitively high election costs and could not, therefore, have been the intended meaning of the voters. See *In re Interrogatories on House Bill 99-1325*, 979 P.2d 549, at 557 (Colo. 1999) (any extension of the term multiple-fiscal year financial obligation in (4)(b) of TABOR beyond transactions involving the borrowing of money would cripple the everyday workings of government, result in prohibitively high election costs and could not, therefore, have been the intended meaning of the voters).

Possible Interpretation 2: An operating lease is covered by the language in Amendment 61 providing that the ban/restriction on borrowing applies to “borrowings of other items of value.” A counter argument is that operating leases are a subcategory of the common term “leases,” Amendment 61 lists only two subcategories of leases (lease-purchases and lease-backs) and the exclusion of operating leases from the list means that the ban/restriction does not apply to them.

e. *Miscellaneous contracts*: Intergovernmental agreements, employment contracts, construction contracts and economic development should not be subject to the ban/restriction on borrowing under Amendment 61 for many of the same reasons that operating leases should not be subject to the ban/restriction. In addition, the “borrowings of other items of value” argument that is available with respect to operating leases does not apply to such contracts. Note, however, that, depending on their specific terms, such contracts may be multiple-fiscal year financial obligations subject to TABOR (4)(b).

f. *Entities that are not TABOR “districts” under existing law*:

Possible Interpretation 1: The ban/restriction on borrowing (and the other amendments to TABOR under Amendments 61 and 60) does not apply to entities that are not TABOR “districts” under existing law because they do not levy taxes on the public at large for general governmental purposes and any voting rights of such entities is not based on the traditional “one person, one vote” concept. *Campbell v. Orchard Mesa Irr. Dist.*, 972 P.2d 1037 (Colo. 1998) (an irrigation district that imposes special assessments on benefitted land and in whose elections only landowners, not all residents, vote is not a TABOR “district” because subjecting it to TABOR does not further the objective of TABOR, which is “to prevent governmental entities from enacting taxing and spending increases above TABOR’s limits without voter approval”); *Olson v. City of Golden*, 53 P.3d 747 (Colo. App. 2002), *certiorari denied* (September 3, 2002) (urban renewal authority that does not impose taxes and does not hold elections or have voters is not a TABOR district).

Possible Interpretation 2: Courts may rule that Amendment 61 changes the “objective” of TABOR and that the language of Amendment 61 applying the borrowing ban/restriction to “authorities and other political entities” includes entities that are not TABOR “districts” under existing law.

2. 10% of assessed value borrowing limit: **A non-enterprise may not borrow if the total principal of its borrowings would exceed 10% of the assessed taxable value of real property in its jurisdiction.**

a. *Types of borrowings to which the limit applies:*

*Possible Interpretation 1*: The borrowing limit applies to all borrowings because the language does not distinguish between different forms of borrowings or different sources of payment.

*Possible Interpretation 2*: The borrowing limit only applies to borrowings payable from property taxes because (i) the limit is measured by the assessed taxable value of real property, which is only relevant for purposes of property taxes; (ii) there is no rational relationship between assessed taxable value of real property and a borrowing payable from a source other than property taxes; (iii) therefore, it would be an “unjust, absurd or unreasonable result” to apply the limit to borrowings payable from sources other than property taxes. See *Bickel*, at 299 (an unjust, absurd or unreasonable result should be avoided in interpreting a constitutional amendment).

*Possible Interpretation 3*: The borrowing limit is only intended to create a uniform limit on general obligation debt for all Colorado local governments based on the factors described in Possible Interpretation 2 and the fact that the new borrowing limit is being added to the Colorado Constitution in an amendment that (in Section 1 of Amendment 61) repeals existing constitutional language authorizing the General Assembly to enact different debt limits for general obligation debt of different local governments.

b. *Existing debt limits*: Because existing debt limits are not repealed and do not necessarily conflict with the new borrowing limit, existing debt limits may continue to apply (resulting in a “lesser of” test).

3. Refinancings: **No borrowing may continue past its original term and all current borrowing shall be paid.**

a. *Voter approval of refinancings:*

*Possible Interpretation 1*: This language, read together with the borrowing ban/restriction discussed in #1, requires specific voter approval for any refinancing of a borrowing (in addition to any voter approval required for the refinanced borrowing).

*Possible Interpretation 2*: A refinancing at a lower interest rate does not require specific voter approval based on the following: (i) The existing TABOR (4)(b) specifically permits refinancings of “bonded debt at a lower interest rate”; (ii) Amendment 61 adds a new TABOR (4)(c) but does not repeal or amend (4)(b); (iii) The new (4)(c) does not mention refinancings; (iv) The language in (4)(b) that specifically permits refinancings at a lower interest rate should override the more general language in the new (4)(c) (which does not mention refinancings); and (v) In the absence of clear language in Amendment 61 stating that specific voter approval is required for a refinancing, existing Colorado law that treats a refinancing as a “continuation” of the original financing, not a new obligation, should apply. *Town of Aurora v.*

*Watkins*, 236 P. 556 (Colo. 1925) (debt represented by refunding bonds represented the same debt incurred by municipality when issuing original bonds); *Bolt*, at f.n. 4 (“As the district court found, a refunding bond pays off a previously issued bond and does not create new debt.”)

b. *Final maturity of a refinancing*: If a refinancing does not require specific voter approval, the language prohibiting a borrowing from continuing past its original term may restrict the final maturity of the refinancing (that, under existing law, is a “continuation of the original financing”) to the final maturity of the refinanced borrowing.

c. *Bonded debt*:

Possible Interpretation 1: The TABOR (4)(b) voter approval exception for a refinancing of “bonded debt at a lower interest rate” may not apply to refinancings of lease-purchase financings, short term borrowings and other obligations that are not “bonded debt” under current law.

Possible Interpretation 2: The voter approval exception should apply to refinancings of future lease-purchase financings and short term borrowings because they are “borrowings” under Amendment 61 (see #1) and Amendment 61 provides that “future borrowing . . . shall be bonded debt” (see #7). This argument technically would not apply to refinancings, lease-purchase agreements and short term borrowings outstanding on the effective date of Amendment 61, but a court may rule that they also may proceed without specific voter approval based on the case law holding that a refinancing is not a new obligation and the fact that treating existing and future borrowings differently for this purpose may be “unjust, absurd or unreasonable result” that should be avoided under *Bickel*.

d. *Other issues*: Does the language of Amendment 61 requiring that “all current borrowing shall be paid” create a constitutional obligation to pay that is in addition to the issuer’s current contractual obligation to pay? Does this language override (eliminate) the government’s contractual right not to appropriate annual rent under a lease-purchase agreement? If so, is that an impairment of the government’s contract in violation of the contracts clause of the United States Constitution?

4. Reduction in tax rates when borrowings repaid: **Current tax rates must decline when non-enterprise borrowing is fully repaid by an amount equal to its planned average annual repayment, even if not repaid by taxes.**

a. *Tax rates to be reduced*:

Possible Interpretation 1: The rate reduction applies to all taxes because the language does not distinguish between types of taxes or the purposes for which taxes are imposed.

Possible Interpretation 2: The only tax rates required to be reduced are the rates of taxes that were imposed to pay off the borrowing based on the following: (i) Reductions in taxes that were not imposed to pay off the borrowing would be “an unjust, absurd or unreasonable result” that should be avoided under *Bickel*; (ii) Reductions in taxes that were not imposed to pay off the borrowing would result in a reduction in government services in violation

of *Bolt* (The Colorado Supreme Court, in holding that TABOR does not require that voters approve abatement and refund mill levies, said, in *Bolt*, at 537: “We decline to adopt a rigid interpretation of [TABOR] which would have the effect of working a reduction in government services.”); for similar statements by the Colorado Supreme Court, see *Mesa County Board of County Comm’rs v. State*, 203 P.3d 519, 529 (Colo. 2009); *F.T. Havens v. Board of County Comm’rs*, 924 P.2d 517, 521; and *In re Interrogatories on House Bill 99-1325*, at 557; (iii) At the title setting hearing for Amendment 61, when asked whether the “current tax rates must decline” language “only applies where there was a tax rate change or taxes were imposed to pay off [the] borrowing,” Amendment 61 proponent Michelle Northrup answered: “In terms of changing tax rate, yes”; and (iv) Amendment 61 proponent Russel Haas testified at the title setting hearing that the clause “even if not repaid by taxes” was included to cover the unexpected payment of a borrowing from a source other than taxes that were imposed to pay off the borrowing, a clarification that would not have been necessary if the rate reduction was not limited to taxes that were imposed to pay off the borrowing.

b. *Taxes approved by voters before 2011:*

Possible Interpretation 1: Taxes approved by voters before 2011 should not be subject to the rate reduction based on the holding in *Bolt* that TABOR does not prevent a post-TABOR tax increase pursuant to pre-TABOR voter approval that complied with the law in effect on the date of the voter approval.

Possible Interpretation 2: The rate reduction language applies to all taxes because it does not distinguish between the manner in or date on which taxes were approved by voters.

c. *Other issues:* If the tax rate reduction applies to all taxes, how does the government determine which taxes to reduce? Can the rate reduction be avoided if the ballot question authorizing either the borrowing or the taxes specifically states that taxes do not decline when the borrowing is repaid?

5. **“No-call” periods and redemption premiums: Future borrowing may be prepaid without penalty.**

Possible Interpretation 1: This language prohibits “no-call” periods and redemption premiums.

Possible Interpretation 2: “No-call” periods and reasonable redemption premiums are permitted, so long as the “no-call” period does not extend to the final maturity of the borrowing because: (i) Neither a “no-call” period nor a reasonable redemption premium is a “penalty” under the dictionary meaning of the term or Colorado law. Merriam-Webster’s Online Dictionary defines “penalty” to mean “the suffering or the sum to be forfeited to which a person agrees to be subjected in case of nonfulfillment of stipulations.” Under Colorado law, a “penalty” means an amount payable by a party who breaches a contract that is in excess of the reasonably anticipated costs incurred by the non-breaching party. See CRS § 4-2-718 in the Colorado UCC. Normal “no-call” periods and redemption premiums are negotiated with investors at the time bonds are marketed to compensate investors for reinvestment risk and are directly related to the pricing of the bonds – a longer “no-call” period or a higher redemption

premium results in a lower interest rate; a shorter “no-call” period or lower redemption premium results in a higher interest rate. An issuer can easily avoid a “no-call” period or a redemption premium by simply paying a higher interest rate from the date the borrowing is issued; and (ii) The language does not provide that a borrowing must be prepayable “at any time” so long as it can be prepaid at some point before its final maturity; if “at any time” was intended, those three words could have easily been included in the language of Amendment 61.

6. Maturity limit: **Future borrowing shall be repaid within ten years.**

Is the ten-year period measured from the date the borrowing is issued (the more likely answer) or the date the borrowing is approved by the voters? This provision may not apply to refinancings at a lower interest rate (see Possible Interpretation 2 under #3.a).

7. Future borrowings as bonded debt: **Future borrowing shall be bonded debt.**

*Possible Interpretation 1*: All future borrowings must be in the form of bonded debt.

*Possible Interpretation 2*: Not every borrowing needs to be in the form of bonded debt. The new language only means that financings that are included in the new, expanded definition of “borrowing” are “bonded debt” for purposes of the many provisions of TABOR that specifically apply to bonded debt (including (3)(a), which includes rules for elections and ballot questions regarding “bonded debt”; (3)(b)(ii) and (3)(b)(iv), which describe information that must be included in the election notice for “bonded debt”; (3)(c), which specifies the form of the ballot question for “bonded debt” elections and other rules applicable to “bonded debt”; (4)(b), which describes the terms on which “bonded debt” may be refinanced; and (7)(d), which describes how the creation and retirement and refinancing of “bonded debt” affect a district’s fiscal year spending). Any other reading (i) is inconsistent with the manner in which the term is used in TABOR and in TABOR case law, including *Bickel, E-470* and *Bolt*; and (ii) is inconsistent with Amendment 61’s long list of financings that are subject to Amendment 61’s new borrowing ban/restriction, which would be meaningless if only one form of financing (bonded debt) was permitted in the future.

8. Ballot question to specify use of funds: **Ballot questions for local government debt must specify the use of funds, which shall not be changed.**

How specific must the description of use of funds be? For example, is “to construct school buildings” sufficient or does the specific school have to be named? Can the use be changed by subsequent voter approval?

9. Supersedes existing law and is to be strictly enforced: **Conflicting laws, rulings, and practices are repealed, overturned, and superseded and future borrowing is void if it violates the new TABOR (4)(c), which shall be strictly enforced.**

Language in the original TABOR (which is amended by Amendments 61 and 60) that is substantially similar to the “supersedes” language and providing that TABOR’s “preferred interpretation shall reasonably restrain most the growth of government” language has not stopped the courts from interpreting TABOR “in light and understanding of prior and existing law” and

in a manner that avoids an unjust, absurd or unreasonable result or from applying a “substantial compliance” standard when reviewing enforcement claims. *Bickel*, at 226, 228 and 229.

AMENDMENT 60

10. Ten year limit on future property tax increases: **Future property tax increases shall expire within ten years.**

a. *Taxes approved by voters before 2011*:

Possible Interpretation 1: The ten-year limit applies to all future property tax increases because the language does not distinguish between taxes approved by voters before and after January 1, 2011.

Possible Interpretation 2: Future property tax increases approved by voters before 2011 should not be subject to the ten-year limit based on the holding in *Bolt* that TABOR does not prevent a post-TABOR tax increase pursuant to pre-TABOR voter approval (see #4.b).

b. *Questions for which there is no guidance in existing law*: Does the ten-year period begin on the date the tax increase is approved by voters or the date the property taxes are levied? If the ten-year period begins on the date the property taxes are levied, could a single ballot question authorize a series of ten year property taxes, one following the other?

11. Property tax payments by enterprises and authorities: **Enterprises and authorities shall pay property taxes and taxing authorities shall lower their tax rates to offset the additional revenue.**

a. *Outstanding revenue bonds*:

Possible Interpretation 1: The obligation to pay property taxes is superior to the rights of the bondholders to revenues and assets pledged to outstanding revenue bonds in the same manner as the lien for taxes is superior to liens for real estate mortgage debt.

Possible Interpretation 2: The obligation to pay property taxes either does not apply to, or is subordinate to, the rights of the bondholders to revenues and assets pledged to the payment of outstanding revenue bonds based on: (i) the holding in *E-470* that the TABOR spending limits do not apply to revenues pledged to the payment of bonds that were outstanding prior to TABOR; (ii) the contracts clause of the United States Constitution, prohibiting state action that impairs existing contracts; and (iii) specific language in Amendment 60 stating that “Nothing here shall limit payment of bonded debt issued before 2011” (see #14 below).

b. *Dissolution/disqualification of enterprises and authorities*: Colorado governments are likely to consider dissolution or disqualification of some of their enterprises and authorities in order to avoid the obligation to pay property taxes. TABOR (7)(d) provides that “Qualification or disqualification as an enterprise shall change district [spending limit] bases and future year [spending] limits.”

12. Termination of existing property tax de-Brucings: **Prior actions to keep excess property taxes (a/k/a “de-Brucings”) are “expired.”**

*Possible Interpretation 1:* The termination of existing property tax de-Brucings is valid because it only applies from the effective date of Amendment 60 forward.

*Possible Interpretation 2:* The termination of voter-approved property tax de-Brucings is invalid based on *Bolt*, which held that TABOR does not prevent a post-TABOR tax increase pursuant to pre-TABOR voter approval (see #4.b). There also is an argument that the invalidation of the existing de-Brucings, which were adopted by local voters, by another group of voters (the approval of Amendment 60 by all the voters in the state) violates the due process clauses of the United States and Colorado Constitutions.

13. Phase out of 50% of K-12 property taxes not paying debt: **K-12 school districts shall phase out equally by 2020 half their 2011 property tax rate not paying debt and state aid shall replace that revenue yearly.**

The state “backfill” appears to include local property taxes that are not part of the school finance equalization formula, including mill levy overrides. Will the state be able to reduce other aid to K-12 schools?

14. Property tax questions must be separate from debt questions: **Property tax ballot questions must be separate from debt ballot questions.**

*Ballot issues approved by voters before 2011:*

*Possible Interpretation 1:* Pre-2011 voter ballot questions that authorize both debt and taxes are invalid as of January 1, 2011.

*Possible Interpretation 2:* Pre-2011 ballot questions authorizing both debt and taxes remain valid after January 1, 2011 based on *Bolt* (see #4.b).

15. Property tax elections limited to November: **Property tax ballot questions may be voted only in November.**

*Ballot issues approved by voters before 2011:*

*Possible Interpretation 1:* Pre-2011 ballot questions that were approved by voters at non-November elections are invalid as of January 1, 2011.

*Possible Interpretation 2:* Pre-2011 ballot questions approved by voters at non-November elections remain valid after January 1, 2011 based on *Bolt* (see #4.b).

16. Property owners may vote on property taxes: **Electors may vote on property taxes where they own real property.**

Under the definition of electors in current law, only Colorado residents who own real property in a jurisdiction will be entitled to vote.

17. Initiatives to lower property taxes: **Adapting state law, all districts shall allow petitions to lower property taxes.**

Does the General Assembly or a local legislative body have any leeway to prescribe rules that differ from the rules governing state-wide initiatives, for example, regarding number and quality of signatures, time limits and frequency of elections?

18. Extending expiring property taxes: **Extending expiring property taxes is a tax increase.**

This reversal of existing case law should not apply to property tax extensions approved by voters before 2011 based on *Bolt* (see #4.b).

19. No mandatory fee or tax by enterprise or unelected boards: **Enterprises and unelected boards shall levy no mandatory fee or tax on property.**

This ban should not apply to (i) mandatory fees or taxes pledged to the payment of bonds issued before 2011 based on *E-470* (see #1.a); (ii) “consensual” fees paid in exchange for specific services or goods, such as tolls, water and sewer charges and tap fees; or (iii) special assessments that (as is typical) are imposed by elected bodies.

20. Termination of certain property taxes: **Property tax increases after 1992 are “expired” if they: (i) exceed state law or state tax policy limits that were weakened without state-wide voter approval; (ii) exceed “the one annual, fixed, final, numerical dollar amount first listed in their tax increase ballot title as stated in [TABOR] (3)(c)”;** or (iii) were not voter approved after 1992 pursuant to a ballot question that is in the form required under TABOR (3)(c).

a. *Tax increases pursuant to pre-2011 ballot questions*: There is a good argument that none of the tax “expirations” listed in (i), (ii) or (iii) is effective with respect to tax increase authorized by pre-2011 ballot questions under *Bolt* (see #4.b).

b. *Termination of tax increases that exceed the dollar amount in the authorizing ballot question*:

*Possible Interpretation 1*: Clause (ii) terminates all voter-approved property tax increases that produce revenues in excess of the dollar amount stated in the ballot question.

*Possible Interpretation 2*: Clause (ii) only applies to taxes that are “phased in” taxes under TABOR (3)(c) (for example, property taxes levied at whatever rate is required to generate a specified dollar amount of revenue or to satisfy a particular obligation) because those are the only taxes that are voted with a “fixed, final, numerical dollar amount.” Taxes that are not voted as “phased in” taxes (for example, a specific number of mills of property tax) do not have a “fixed, final, numerical dollar amount” in their ballot title.

c. *Application to “mill levy freeze”*: Clause (i) may be intended to reverse the Colorado Supreme Court’s holding in the *Mesa County* “mill levy freeze” case. The reversal may not be effective, however, because clause (i) terminates “tax increases” and the Colorado Supreme Court held that the “mill levy freeze” was not a tax increase. See also, *Bolt*, at 534 (“To the

extent the school district's 1992 mill levy was the same as the previous year, [the provision of TABOR requiring voter approval for tax increases] simply does not apply.”)

21. Future property tax de-Brucings: **Future de-Brucings of property tax revenues are limited to four years.**

Note that this limit does not apply to de-Brucings of non-property tax revenues.

22. Property tax bills: **Property tax bills may list only property taxes and late charges.**

Special assessments and other miscellaneous charges will have to be billed separately.

23. Bonded debt issued before 2011: **Nothing in Amendment 60 shall limit payment of bonded debt issued before 2011.**

This language supports the argument in #2.a that the obligation of enterprises and authorities to pay property taxes either does not apply to, or is subordinate to, the rights of the bondholders to revenues and assets pledged to the payment of outstanding revenue bonds.

24. Supersedes existing law and is to be strictly enforced: **Amendment 60 supersedes conflicting law, opinions, and constitutional provisions and shall always be strictly enforced to favor taxpayers.**

See #9.

#### PROPOSITION 101

25. Specific ownership taxes reduced: **Specific ownership taxes shall be decreased in four equal yearly steps, starting in 2011, to \$2 for new vehicles and \$1 for other vehicles.**

This and the other tax and fee reductions pursuant to Proposition 101 may not apply to taxes and fees that are pledged to the payment of outstanding bonds under *E-470* or to taxes and fees authorized by ballot questions approved by voters prior to 2011 under *Bolt*. See #1.a and #4.b. Under the current school finance act, the state will backfill reductions in revenue from specific ownership taxes attributable to a school district's operating mill levy, but not for reductions in revenue from specific ownership taxes attributable to bonded debt mill levies or mill levy overrides.

26. Vehicle taxes: **State and local taxes shall be eliminated: (i) on vehicle rentals and leases; and (ii) on the first \$10,000 of the sales price of a vehicle, phased in \$2,500 per year over four years beginning in 2011.**

See #1 regarding outstanding bonds and taxes and fees authorized by ballot questions approved by voters prior to 2011.

27. Registration, license title and other vehicle fees: **Registration, license and title charges combined are limited to \$10 per vehicle per year. All other state and local charges on vehicles “shall cease” except tax, fine, toll, parking seizure, inspection and new plate**

charges. Except for the charges listed in the preceding sentence, all new charges on vehicles “shall be tax increases.” Sales tax rebates are not taxable.

See #1 regarding outstanding bonds and taxes and fees authorized by ballot questions approved by voters prior to 2011. Since new charges “shall be tax increases,” it should be possible to increase them with voter approval.

28. State income tax reduced: **The 2011 state income tax rate is reduced from 4.63% to 4.5%. Lowers the rate by 0.1% in each of the next ten years in which yearly income tax revenue net growth exceeds 6%.**

How will income tax net revenue growth be calculated? How will the calculation be adjusted for the fact that the state is on a July 1-June 30 fiscal year or for the delay, beyond the beginning of the next year, in the availability of data regarding net revenue growth?

29. Telecommunications charges: **Prohibits any charge by, or aiding programs of, the state or local governments on telephone, pager, cable, television, radio, internet, computer, satellite or other telecommunication service customer accounts; except 911 fees at 2009 rates. Other charges on any of such services “shall be tax increases.”**

Does this apply to franchise fees paid by telecommunications providers to governments or to the portion of the consumer charges imposed by the providers to recover franchise fees?

30. Statewide concern and supersedes conflicting law: **Declares that Proposition 101 is a matter of statewide concern and “overrides conflicting statutes and local laws.”**

Since Proposition 101 is only a statute, not a constitutional amendment, it is unlikely that the declaration of statewide concern overrides the provisions of the Colorado Constitution granting home rule with respect to matters of local concern. See #9 with respect to the “overrides” language.

31. State compliance audit: **Requires the state to conduct a yearly audit regarding compliance with Proposition and “to reduce unfair, complex charges on common basic needs.”**

## Text of Amendment 61

Be it Enacted by the People of the State of Colorado:

### SECTION 1.

Article XI, section 3 is repealed and re-enacted to read, as stated in the original constitution: “The state shall not contract any debt by loan in any form.”

Sections 4, 5, 6(2), and 6(3) are repealed as obsolete and superseded.

Section 6(1) is repealed and re-enacted as section 6 to read: “Without voter approval, no political subdivision of the state shall contract any debt by loan in any form. The loan shall not be repealed until such indebtedness is fully paid or discharged. The ballot title shall specify the use of the funds, which shall not be changed.”

### SECTION 2.

Article X, section 20 is amended to add:

(4)(c) After 2010, the following limits on borrowing shall exist:

(i) The state and all its enterprises, authorities, and other state political entities shall not borrow, directly or indirectly, money or other items of value for any reason or period of time. This ban covers any loan, whether or not it lasts more than one year; may default; is subject to annual appropriation or discretion; is called a certificate of participation, lease-purchase, lease-back, emergency, contingency, property lien, special fund, dedicated revenue bond, or any other name; or offers any other excuse, exception, or form.

(ii) Local districts, enterprises, authorities, and other political entities may borrow money or other items of value only after November voter approval. Loan coverage in (i) applies to loans in (ii). Future borrowing may be prepaid without penalty and shall be bonded debt repaid within ten years. A non-enterprise shall not borrow if the total principal of its direct and indirect current and proposed borrowing would exceed ten percent of assessed taxable value of real property in its jurisdiction.

(iii) No borrowing may continue past its original term. All current borrowing shall be paid. Except enterprise borrowing, after each borrowing is fully repaid, current tax rates shall decline as voter-approved revenue changes equal to its planned average annual repayment, even if not repaid by taxes. Such declines do not replace others required. Future borrowing is void if it violates this paragraph (c), which shall be strictly enforced. Conflicting laws, rulings, and practices are repealed, overturned, and superseded.

**Text of Amendment 60**

Be it Enacted by the People of the State of Colorado:

Article X, section 20, The Taxpayer's Bill of Rights, is amended to add:

(10) Property taxes.

Starting in 2011:

(a) The state yearly shall audit and enforce, and any person may file suit to enforce, strictest compliance with all property tax requirements of this section. Successful plaintiffs shall always be awarded costs and attorney fees; districts shall receive neither. This voter-approved revenue change supersedes conflicting laws, opinions, and constitutional provisions, and shall always be strictly interpreted to favor taxpayers.

(b) Electors may vote on property taxes where they own real property. Adapting state law, all districts shall allow petitions to lower property taxes as voter-approved revenue changes. Property tax issues shall have November election notices and be separate from debt issues. Property tax bills shall list only property taxes and late charges. Enterprises and authorities shall pay property taxes; lower rates shall offset that revenue. Enterprises and unelected boards shall levy no mandatory fee or tax on property. Future property tax rate increases shall expire within ten years. Extending expiring property taxes is a tax increase. Prior actions to keep excess property tax revenue are expired; future actions are tax increases expiring within four years. Non-college school districts shall phase out equally by 2020 half their 2011 rate not paying debt; state aid shall replace that revenue yearly. Nothing here shall limit payment of bonded debt issued before 2011.

(c) These property tax increase, extension, and abatement rates after 1992 shall expire:

(i) Taxes exceeding state laws, tax policies, or limits violated, changed, or weakened without state voter approval. Those laws, policies, and limits, including debt limits, are restored.

(ii) Taxes exceeding the one annual fixed, final, numerical dollar amount first listed in their tax increase ballot title as stated in (3)(c).

(iii) Those rates without voter approval after 1992 of a ballot title as stated in (3)(c).

## Text of Proposition 101

Be it Enacted by the People of the State of Colorado:

Title 39, article 25 of the Colorado Revised Statutes

### **Reducing government charges**

(1) **Enforcement.** This voter-approved revenue change shall be strictly enforced to reduce government revenue. It is self-executing, severable, and a matter of statewide concern that overrides conflicting statutes and local laws. Prevailing plaintiffs only shall have their legal fees and court costs repaid. The state shall audit yearly compliance with this reform to reduce unfair, complex charges on common basic needs.

(2) **Vehicle.** Starting January 1, 2011:

(a) All annual specific ownership taxes shall decrease in four equal yearly steps to: New vehicles, \$2; and other vehicles, \$1. All state and local taxes shall cease on vehicle rentals and leases, and on \$10,000, reached in four equal yearly steps, of sale prices per vehicle. Sale rebates are not taxable.

(b) All registration, license, and title charges combined shall total \$10 yearly per vehicle. Except those charges, and tax, fine, toll, parking, seizure, inspection, and new plate charges, all state and local government charges on vehicles and vehicle uses shall cease. Except the last six specific charges, added charges shall be tax increases.

(3) **Income.** The 2011 income tax rate shall be 4.5%. Later rates shall decrease 0.1% yearly, until reaching 3.5%, in each of the first ten years that yearly income tax revenue net growth exceeds 6%.

(4) **Telecommunication.** Starting January 1, 2011, except 911 fees at 2009 rates, no charge by, or aiding programs of, the state or local governments shall apply to telephone, pager, cable, television, radio, Internet, computer, satellite, or other telecommunication service customer accounts. Added charges shall be tax increases.