



TABOR and Property Taxation

Department of Local Affairs
Division of Property Taxation

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OVERVIEW

■ What is TABOR

- Tax rate limits
- Property tax revenue limit
- Spending limits
- Other provisions
- Related legislation & court cases

■ How does TABOR interact with other provisions

- Biennial Reassessment Cycle
- Gallagher
- Personal Property
- 5.5% Property Tax Limit
- Mill Levy Freeze – K-12 Total Program Levy



TABOR

- The Taxpayer's Bill of Rights
 - Amendment #1 of 1992
 - Authored by Douglas Bruce
 - Article X Section 20, Colorado Constitution
- See Handout #1
- Applies to the state and all local governments

Section (4) “Required Elections”

- This section contains **tax rate limits**
- Voter approval required for:
 - New tax
 - Tax rate increase
 - Mill levy increase
 - Valuation for assessment ratio increase
 - Extension of expiring tax
 - Tax policy change directly causing a net revenue gain

Section (7) “Spending Limits”

- (a) State fiscal year spending limit
 - Increase limited to inflation + change in state population
- (b) Local government fiscal year spending limit
 - Increase limited to inflation + “local growth”
- (c) Property tax limit
 - Increase limited to inflation + “local growth”
- Voters may opt out of limits (De-Bruce)

Section (7) “Spending Limits”

- Each limit is based on the prior year’s actual revenue or spending, not the prior year’s limit.
 - This is a significant contributor to the “**ratchet-down effect.**”
- The “spending limits” are generally thought of as revenue limits. Why?
 - See definition of “fiscal year spending” in subsection (2)(e).

Subsection (2)(e)

“Fiscal year spending”

- Fiscal year spending includes:
 - All district expenditures
 - All reserve increases (savings)
 - Exceptions: refunds, gifts, federal funds, collections for another government, employee pension contributions, pension fund earnings, reserve transfers or expenditures, damage awards, property sales

- $\text{Spending} + \text{Savings} = \text{Revenue}$

Subsection (2)(g) “Local Growth”

- Local growth for school districts:
 - Change in student enrollment
- Local growth for non-school districts
 - Percentage change in actual value of real property from
 - New construction
 - Destroyed/demolished property
 - Other additions to taxable real property
 - Other deletions from taxable real property
- See Handout #2

Subsection (2)(f) “Inflation”

- “Inflation’ means the percentage in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.”
- Inflation rates projected by Legislative Council and the Office of State Planning and Budgeting are available on the web site of the Department of Local Affairs.
 - <http://www.dola.state.co.us/dlg/ta/budgeting/inflation.html>

Section (8) “Revenue Limits”

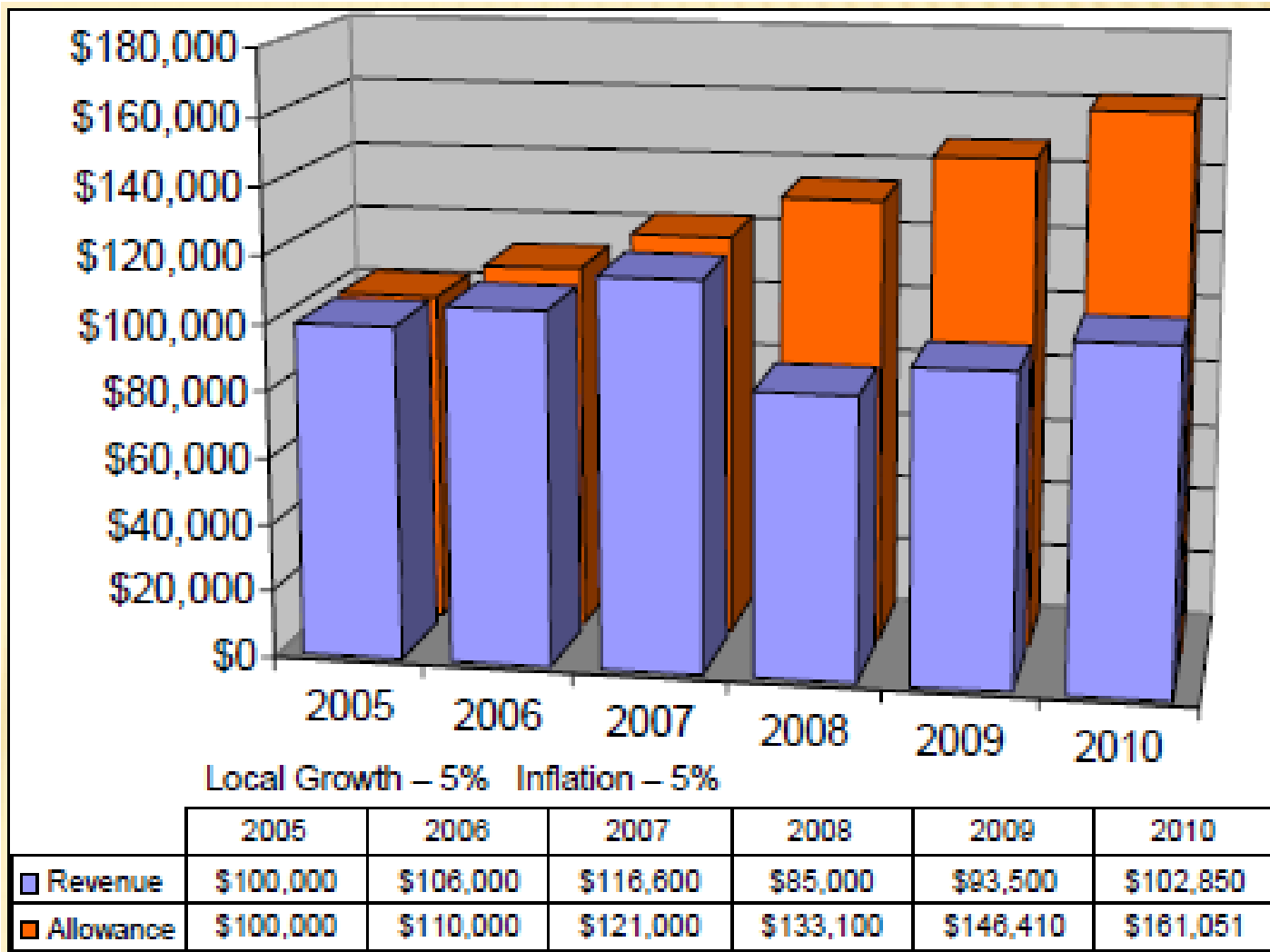
- New or increased **transfer taxes** on real property are prohibited.
- The **state** cannot impose a **property tax**.
- A **local government** cannot impose an **income tax**.
- The **state** cannot impose multiple income tax rates.
- Each local government may enact **personal property exemptions** or credits.
- **NOVs** must be mailed annually.
- Taxpayers may **appeal annually** with no presumption in favor of assessor’s valuation.
- **Foreclosure resales** are valid comparable sales.
- **Actual value** must be stated on all tax bills and notices of valuation.
- **Residential property** shall be valued solely by **market approach** to value.

“Ratchet Down Effect”

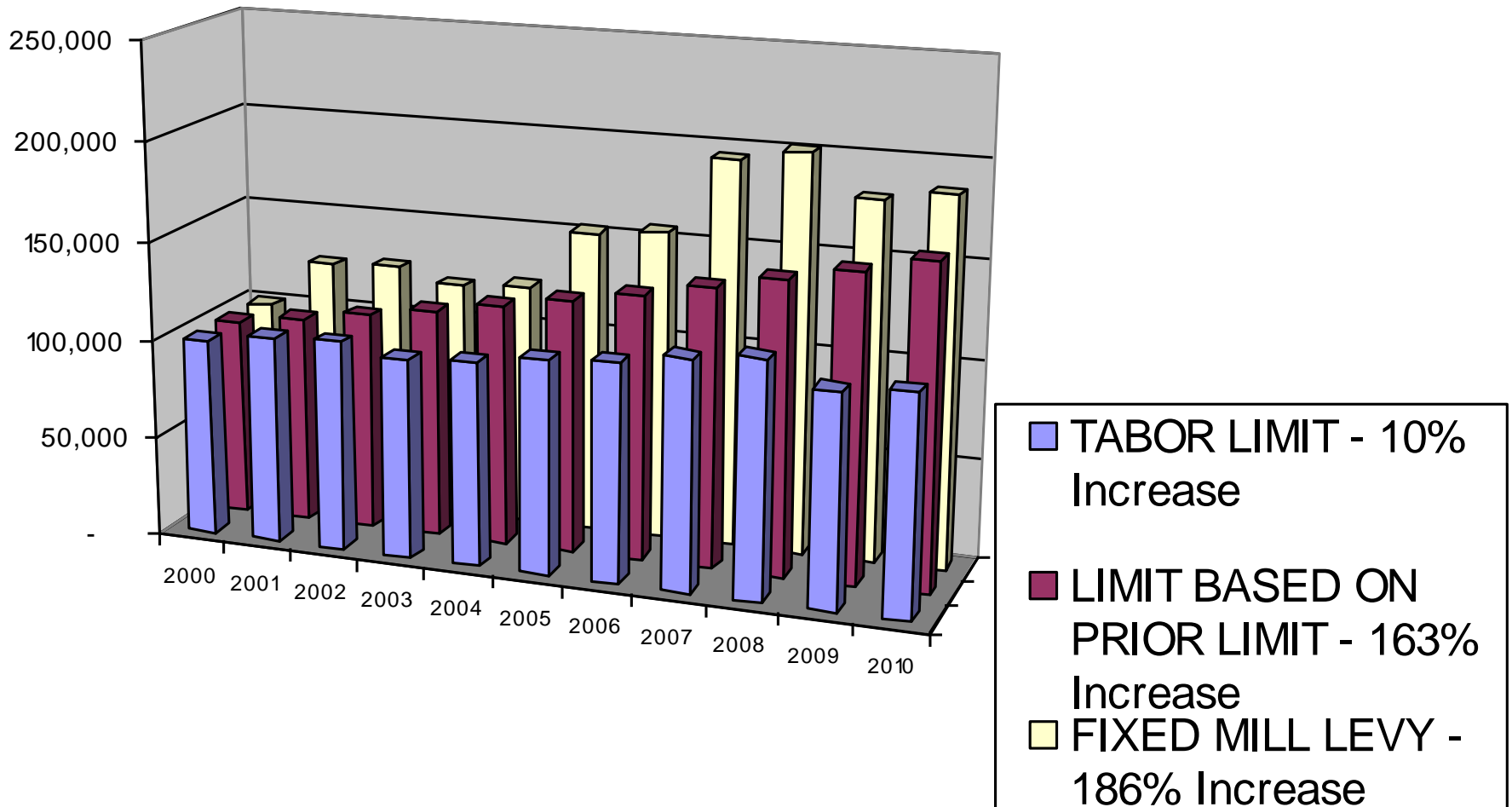
- TABOR combines two concepts that cause a ratchet-down effect on property tax revenue and fiscal year spending over time.
 - Section (4) - Tax rate increase restrictions
 - Section (7) - Revenue/spending limits based on prior year revenue/spending, not prior year limit

- **Blue – How TABOR works**

- **Red - Some other states: Limit based on prior year limit**



Inflation + Local Growth = 5.0% annually



Biennial Reassessment

- Per § 39-1-104(10.2), C.R.S., most real property is revalued every two years.
- To a great extent, inflation gets double counted during reappraisal years, and it is not accounted for during intervening years.
- For intervening years, the total assessed value generally goes up by less than inflation + local growth, ratcheting down the trend line for property tax revenue and fiscal year spending.



Amendment #1 - 1982

- Made substantial changes to the property tax system:
 - Statewide equalization
 - Valuation methodology and exemptions
 - Stabilization of the tax burden on the residential property class (**Gallagher**)

Statewide Equalization

Amendment #1 – 1982

- Established the annual **1% audit** of assessor values
- Directed the State Board of Equalization to issue **reappraisal orders** to assessors found out of compliance
- Required the county to **pay back** excess state aid to schools and the cost of supervision
- Changed the composition of the **State Board**
- Made the **Property Tax Administrator** an appointee of the state board

Valuation Methodology and Exemptions

Amendment #1 – 1982

- **Actual value** established through consideration of the cost, market and income approaches
- **Residential** by cost and market only
- **Agricultural land** by earning or productive capacity
- **Oil & gas** and **mines** valued as a percentage of the value of production
- **Exempted** the following personal property:
Inventory, supplies, livestock, agricultural products, agricultural equipment, residential personal property

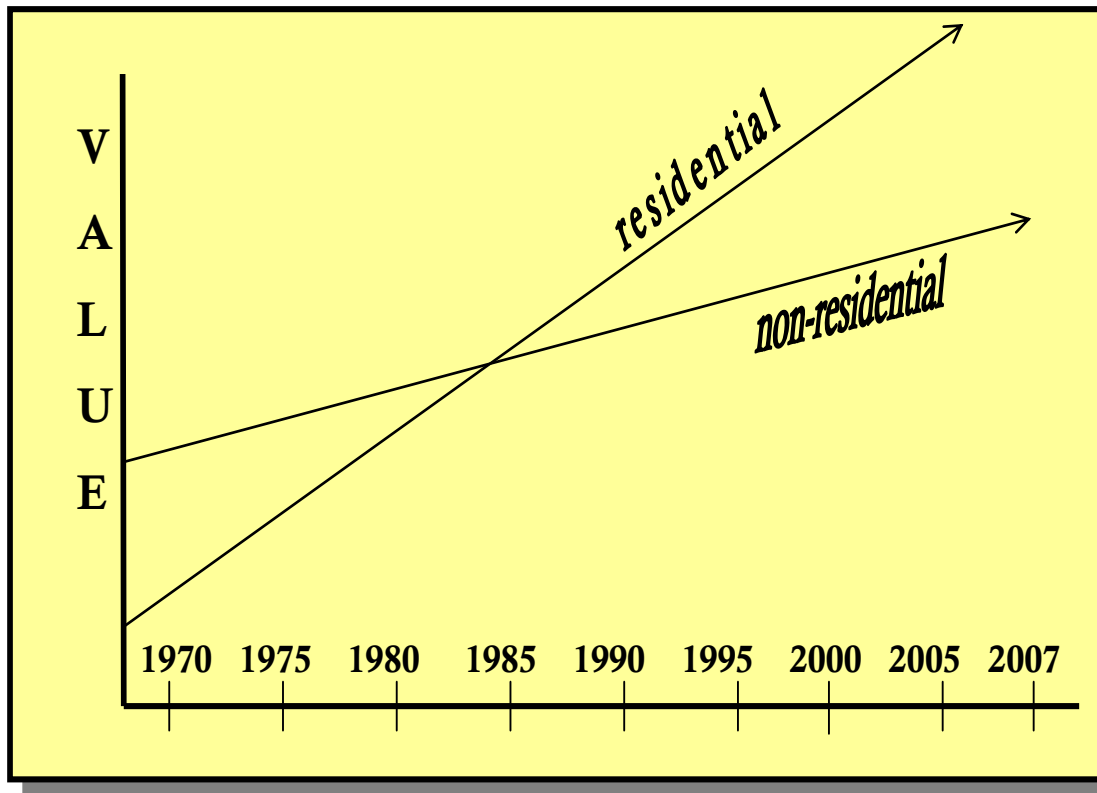
Gallagher

Amendment #1 – 1982

- During a year of general reassessment, the percentage of total statewide tax base attributable to residential property shall remain the same as it was the prior year after adjusting for new construction and changes in the volumes of oil and gas, mining and natural resource production.
- Sometimes referred to as the 45%-55% split.
- § 3(1)(b), art. X, COLO. CONST. & § 39-1-104.2, C.R.S.

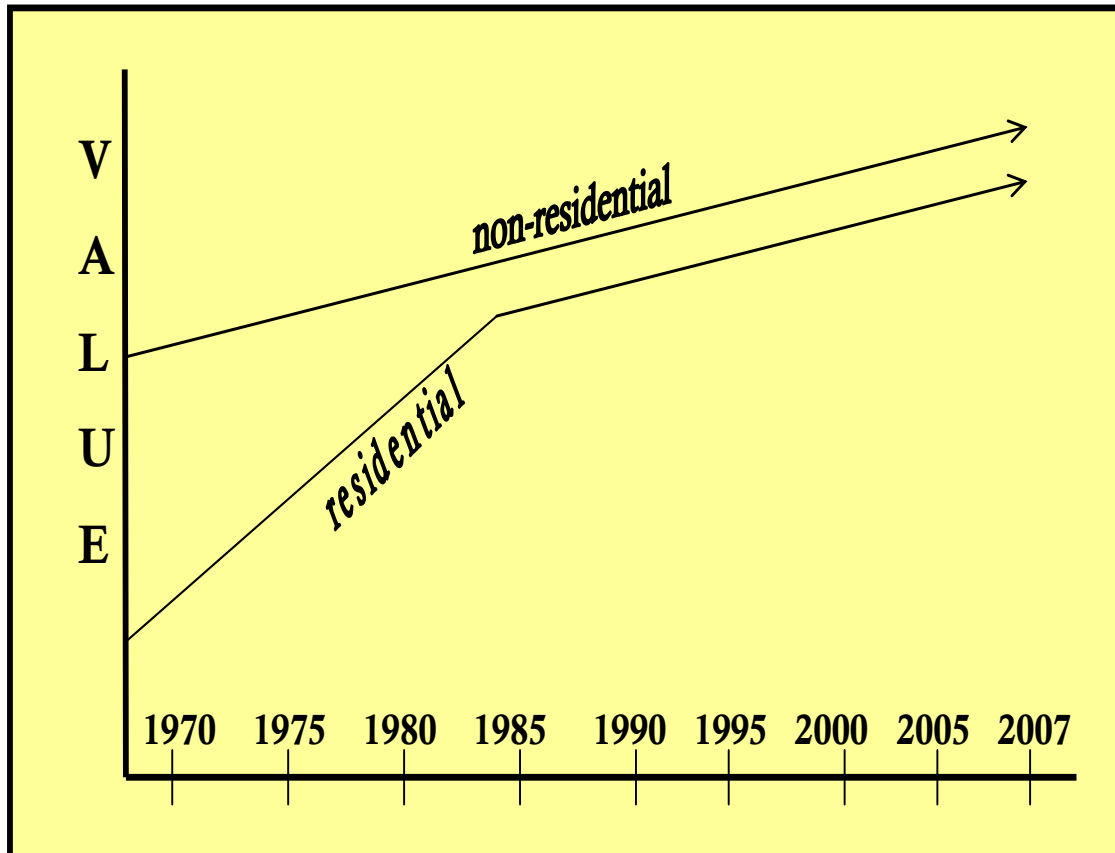
Why Gallagher?

ACTUAL (MARKET) VALUES



Result of Gallagher

ASSESSED VALUES UNDER GALLAGHER



Gallagher

- Under Gallagher, the Division of Property Taxation conducts a study to determine two things:
 - The new **target percentage**
 - An estimate of the **residential assessment rate** needed to achieve the target percentage
- The 2009 preliminary and final study reports are available on our web site at:
http://www.dola.state.co.us/dpt/dpt_news/index.htm
- Target and Rate enacted by General Assembly
 - § 39-1-104.2(3), C.R.S.

History of Target Percentages and Residential Assessment Rates

Tax Year	Residential Rate Enacted	Res. Rate Calculated, Not Enacted	Target Percentage Enacted
1983-1986	21.00%		
1987	18.00%		
1988	16.00%		
1989-90	15.00%		44.51%
1991-92	14.34%		44.57%
1993-94	12.86%		44.73%
1995-96	10.36%		45.29%
1997-98	9.74%		46.17%
1999-2000	9.74%	9.83%	46.49%
2001-02	9.15%		46.61%
2003-04	7.96%		47.08%
2005-06	7.96%	8.17%	47.22%
2007-08	7.96%	8.19%	47.43%
2009-10	7.96%	8.85%	46.82%

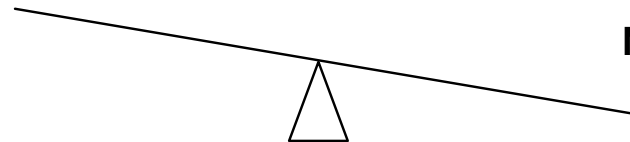


TABOR/Gallagher Ratchet Down

- A drop in the residential assessment rate can cause the total assessed value of a local government to drop or to increase by less than inflation + local growth. This causes a ratchet down of future limits..
- 2003 Tax year:
 - Residential rate dropped from 9.15% to 7.96%
 - This is a 13 percent reduction
 - 22 of 64 counties had their total assessed value drop
- Revenue:
 - 30 counties collected less for schools
 - 19 collected less for municipalities
 - 15 collected less for special districts
 - 16 collected less for the county

Currently, the residential target percentage cannot be achieved at 7.96%. Why?

Residential target = 46.82%



Non-res. target = 53.18%

<u>Class</u>	<u>2009 Assessed Values</u>	<u>Percentage</u>
Residential (real property)	42,297,938,878	43.26% (at 7.96%)
Non-Residential	55,486,961,573	56.74%
Vacant (real property)	6,202,155,769	6.34%
Commercial (real & personal)	27,354,184,714	27.97%
Industrial (real & personal)	3,268,774,175	3.34%
Agricultural (real property)	874,548,984	0.89%
Natural Resources (real & personal)	431,952,540	0.44%
Producing Mines (real & personal)	532,160,826	0.54%
Oil and Gas (real & personal)	11,858,552,261	12.13%
State Assessed (personal & real)	4,964,632,304	5.08%
Total	97,784,900,451	100.00%

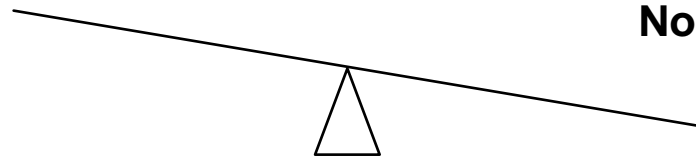
Personal Property

- TABOR and Gallagher make it more difficult for the General Assembly to exempt personal property.
- In 2009 we estimated that a full exemption of personal property would reduce the residential assessment rate to 7.11%.

Residential target = 46.82%



Residential rate goes down



Non-res. target = 53.18%



If personal property exempted

5.5% Property Tax Limit

- Imposed by § 29-1-301, C.R.S., the limit has existed in some form since 1913.
- Prohibits an increase in property tax revenue greater than 5.5% above the prior year revenue limit. Certain items are excluded.
- Applies to all local governments except school districts and home rule cities and counties.
- Districts can seek voter approval to opt out of the limit.
- Enforced by the Department of Local Affairs, Division of Local Government

5.5% Property Tax Limit

- Revenue from the following assessed values is excluded:
 - New construction real and associated personal property
 - Increased production of a producing mine
 - Annexations/inclusions
 - Previously exempt federal property
 - Production-based value of a new oil or gas well
- See Handout #2

5.5% Property Tax Limit

- Taxes abated or refunded between August 1 of the prior year and July 31 of the current year is also excluded.
- Taxes collected on omitted property between August 1 of the prior year and July 31 of the current year is treated in the opposite manner. It reduces the limit for one year and is added back the following year.
 - This is opposite of the manner that TABOR treats the actual value of omitted property.
- See Handout #2

De-Bruce and De-5.5%

- De-Bruced - Voters of the following entities have voted to retain and spend property tax revenue above the TABOR property tax limit either temporarily or permanently.
 - School districts – 98 percent
 - Counties – 81 percent
 - Municipalities 76 percent Special Districts
- Special Districts: Voters in about 45 percent of roughly 2,600 special districts have approved waivers of the 5.5% property tax limit. In most cases these entities also “de-Bruced” from the TABOR property tax and spending limits.



Temporary Property Tax Credit

- Authorized by § 39-1-111.5, C.R.S., as a way of refunding money collected in excess of the TABOR limits.
- Entities that currently have a temporary tax credit:
 - 22 counties
 - 64 cities and towns
 - 1 school district
 - 265 special districts

Abatement Mill Levy

- Abated/refunded revenue is excluded from the 5.5% limit under § 29-1-301, C.R.S. and § 39-10-114(1)(a)(I)(b), C.R.S.,
- Section 39-10-114(1)(a)(I)(b), C.R.S., also directs a school district to certify a mill levy to recover revenue lost due to abatements
- The state supreme court ruled that this concept does not violate TABOR
 - Bolt v. Arapahoe County School District Number Six, 898 P.2d 525 (Colo. 1995)

School Funding

- TABOR, Gallagher, and Amendment 23.

K-12 School Funding

	1986	2009
State Share	44%	65%
Local Share	56%	35%

School Mill Levy Freeze

- Prior to SB07-199, the Total Program levy was the lesser of the following:
(§ 22-54-106(2)(a), C.R.S.)
 - I. The prior year Total Program mill levy
 - II. The mill levy needed to fund the Total Program minus the district's minimum state aid and minus specific ownership taxes
 - III. The mill levy needed to generate the maximum revenue allowable under the TABOR property tax limit

School Mill Levy Freeze

- After SB07-199:
 - I. The prior year Total Program mill levy
 - II. The mill levy needed to fund the Total Program minus the district's minimum state aid and minus specific ownership taxes
 - III. FOR A DISTRICT THAT HAS NOT "DE-BRUCED" FROM THE TABOR PROPERTY TAX LIMIT, the mill levy needed to generate the maximum revenue allowable under the TABOR property tax limit
 - IV. TWENTY-SEVEN MILLS
(this reduced the mill levy for 33 school districts)

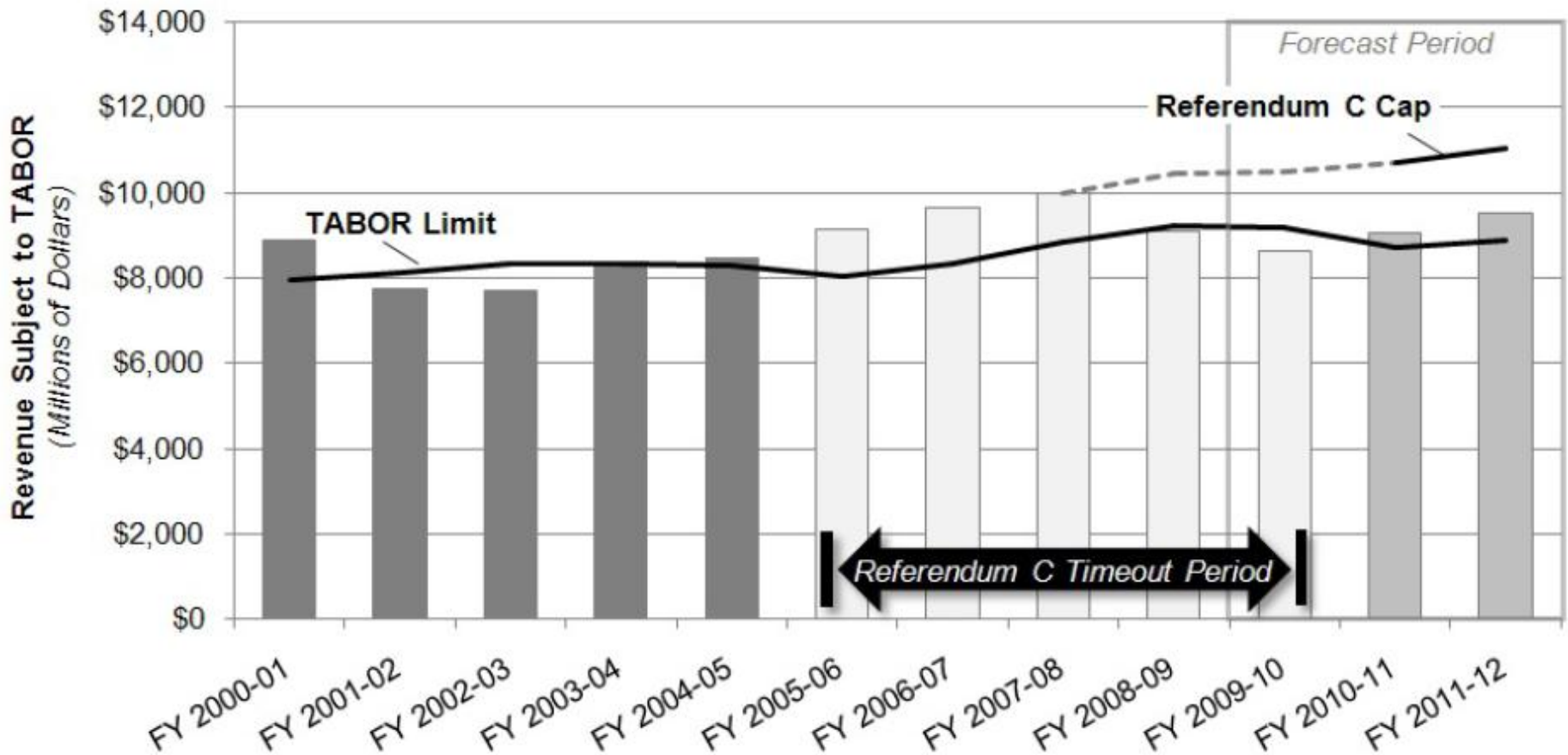
School Mill Levy Freeze

- Supreme court finds mill levy freeze constitutional
- Mesa County Bd. Of County Comm'rs v. State of Colorado, 203 P.3d 519 (Colo. 2009)
- See Handout #3

Referendum C and State Budget

Figure 1

Revenue Subject to TABOR and the TABOR Limit, FY 2000-01 to FY 2011-12



Source: Office of the State Controller; Legislative Council Staff projections FY 2009-10 through FY 2011-12 based on the December 2009 Forecast.

Amendment 60

If approved, it will add Section 10 to TABOR

- School mill levies (excluding debt levies) shall be reduced by 50% by 2020, and the lost revenue shall be replaced with additional state funds
- Prior actions to keep excess property tax revenue are expired
- Future actions to keep excess property tax revenue are tax increases expiring within four years
- Future mill levy increases expire within 10 years
- The extension of an expiring tax is a tax increase
- Eliminates abatement mill levies certified without voter approval
- Taxes exceeding state laws, policies or limits without state voter approval are expired (this would presumably overturn the school mill levy freeze)

Amendment 60

- Property tax bills shall only list property taxes and late charges
- Enterprises and authorities shall pay property taxes, and mill levies shall be proportionately reduced
 - Examples: CU, D.I.A, Div. of Wildlife, URAs, Housing Authorities
- State shall audit and enforce the “strictest compliance” with the provisions, and taxpayers may also file lawsuits
- Electors may vote wherever they own real property
- Ballot questions involving property tax and debt must be separate questions and voted on in November
- Taxpayers can petition to lower property taxes



Proposition 101 and Amendment 61

■ Proposition 101

- Reduces specific ownership taxes to \$2 on new vehicles and \$1 on older vehicles.
- Reduces other motor vehicle fees and taxes
- Reduces the State income tax from 4.63% until it eventually reaches 3.5%
- Reduces fees on telecommunication services
- Audited by the state

■ Amendment 61

- Severely restricts the ability of state and local governments to borrow money