

# **SCHOOL SPENDING AND THE TAXPAYER BILL OF RIGHTS\***

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According to the U.S. Bureau of the Census report, *Public Elementary-Secondary Education Finances: 1999-2000*, Colorado ranked 32nd among the 50 states plus the District of Columbia in total current spending per pupil, and 36th in current spending for instruction per pupil. As a percentage of state personal income, the state's total current spending ranked it 49th in the nation, and its instructional spending put it in 48th place.

On November 3, 1992, a majority of Colorado voters approved a state constitutional amendment called the Taxpayer's Bill of Rights (TABOR) that became Section 20 of Article X of the Colorado Constitution. That amendment sets limits on the annual increase in spending and revenues of all governmental units in the state. These limits can be exceeded in any governmental unit only with the approval of its voters. School districts are singled out explicitly in the amendment; their maximum annual percentage increase in spending is set at the sum of the prior year's inflation rate plus the percentage change in student enrollment, while for other local governments the cap is the inflation rate plus the net percentage change in the actual value of taxable real property.

A natural question is, therefore, whether Colorado's low rank in school spending was the result of the TABOR limitations over the past ten years, or whether that ranking is the result of other forces. Just how, and to what degree, has TABOR affected school spending levels in Colorado? What has been the role of the Public School Finance Act of 1994? And what is the likely impact of the adoption of Amendment 23 in November 2000?

An initial bit of evidence concerning TABOR's impact on Colorado's ranking among the states is provided by the Census Bureau report, *1992 Census of Governments, Vol. 4, No. 1, Public Education Finances*. Colorado's ranking among the states for per-pupil current spending in 1991-92, before the adoption of TABOR, was 30<sup>th</sup> for all current spending and 29<sup>th</sup> for instructional spending. As a percentage of state personal income, Colorado's total current spending in 1992 put the state in 35<sup>th</sup> place, and its spending for instruction in 36<sup>th</sup> place. Thus there definitely was some slippage in the rankings from 1992 to 2000, especially in relation to personal income. However, this slippage might or might not have been due to TABOR restrictions.

It would seem much more likely that TABOR spending limits have had a significant impact if each local school district had a high level of discretion to set its own property tax rate and its own spending level, and that discretion was then constrained by TABOR. School districts did have a great deal of discretion throughout the first half of the twentieth century. But a chain of events beginning in 1971 has greatly curtailed that discretionary spending authority.

### **The 1971 *Serrano* Decision**

In 1971, in the case of *Serrano v. Priest*, the California Supreme Court ruled that California's school finance system was in violation of constitutional guarantees of equal protection of the laws because it made the level of expenditure for a child's education dependent on the level of taxable wealth in the school district in which she lived. This ruling shook the system for financing schools across the United States to its foundations. Although the *Serrano* case was limited to California, it was quickly recognized that similar cases and rulings were possible in all of the fifty states, and the California Supreme Court was widely regarded as a

trend-setter in such matters. All of the states began a long, slow march toward greater equality of educational opportunity, while trying to balance that concern with the time-honored principle of local control of school systems.

In 1973, in the aftermath of *Serrano*, the Colorado General Assembly adopted a new system of state school aid that provided enough state aid to guarantee that every school district would generate a certain minimum number of dollars per pupil for each mill of property taxes levied. If the local district's property tax base was insufficient to generate the minimum, state aid made up the difference. While this system did not insure equal spending per pupil, the idea was to equalize the *capacity* for financing schools, since a given mill levy would generate the same number of dollars per student in every district. Each district could then choose for itself how much to utilize that capacity by setting its preferred mill levy.

However, responding to political pressure to relieve property taxes in even the wealthiest districts by making more state funds available, the General Assembly added a provision that no district was to receive less than a minimum level of state aid per pupil per mill of property taxes levied, regardless of the wealth of the district's assessed valuation per pupil. This provision thus *guaranteed* that wealthier districts could spend more per pupil than poorer districts. In 1974, nearly 80 of the 181 districts in the state received the guaranteed minimum in state aid.

Despite this limitation, substantial progress was made in reducing disparities in school spending per pupil. In 1969-70, the highest-spending district in Colorado spent 6.3 times as much per pupil as the lowest spending district. By 1978 this ratio was only 2.8-to-one. But inequities continued. For example, in 1978, the property tax base in the Rangely School District generated \$339.68 per student per mill. With a state minimum of \$11.35 per student per mill in

state aid, the District's property tax rate of 5.74 mills generated \$1,950 per student in local revenues plus \$65 per student in state aid for a total of \$2,015 per pupil. On the other hand, the tax base in the South Conejos School District generated \$6.10 per pupil per mill. For that year, the system of state aid guaranteed every district a total revenue of \$35 per pupil per mill (from local revenue and state aid combined), so the South Conejos District qualified for \$28.90 per pupil per mill in state aid. It levied a property tax rate of 33.75 mills and thus produced \$206 per pupil in local funds plus \$975 per pupil in state funds for a total of \$1,181 per student. Thus levying a tax rate almost six times as large as Rangely's produced a spending level of just under 60 percent of that in the Rangely School District. For reasons like these, the court cases continued, and so did the movement toward greater equality of opportunity across districts.

#### **The Public School Finance Act of 1994**

What a difference a generation can make! In 1994, a new chapter in Colorado school finance opened with the passage of the Public School Finance Act. That legislation provides for the establishment of a common base amount of spending per pupil for every district across the state. Adjustments are made for cost-of-living differences (and therefore salary differences) among districts, for differences in economies of scale achievable in large districts but not possible in small districts, and for differences in the number of at-risk children. With the adjustments, the amount determined is called the total program funding per pupil from both state and local sources that the district is allowed to spend. The Act does include a provision that allows a local district, with voter approval, to levy and collect additional property tax revenue, called an override, to supplement its spending, provided the amount does not exceed 20 percent of the total program or \$200,000, whichever is greater. A district's voters may also approve a

bond issue to be redeemed by an additional dedicated mill levy.<sup>1</sup> In addition, there are several categorical state grants for specific purposes—transportation, special education for disabled and for gifted and talented students, vocational education, English language proficiency, and others—that add to each district’s total spending. But ignoring these various adjustments, the ratio of highest per-pupil spending to lowest per-pupil spending is now capped by law at 1.20-to-1.

Because of the various adjustments and categorical programs, the actual situation is somewhat different. In fiscal year 2001, for example, the lowest level of current expenditures (excluding transportation) per pupil was \$5,024 in Ellicott School District 22 in El Paso County, while the highest was \$12,592 in Silverton School District 1 in San Juan County. The ratio of highest to lowest was thus 2.5-to-1. However, this disparity is no longer attributable to differences in income or assessed valuation per pupil. Silverton had only 85.3 full-time equivalent students and therefore high overhead costs per pupil. The size factor in the state formula for total program funding compensated for these higher costs. Moreover, about half of these students lived in families with incomes low enough to qualify them for free lunches under the National School Lunch Act. This meant the district received substantial funding for at-risk pupils under the state formula. For all 178 school districts in fiscal year 2001-2002 (FY02), the correlation coefficient between per-pupil operating revenues and assessed valuation per pupil was only 0.135.

As for the local overrides, there are 49 districts whose voters have approved some amount. For FY03 the amounts range from \$15,862 to \$35,560,000, with an average of

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<sup>1</sup>Voters may also approve an additional levy of up to ten mills for up to three years for installation of instructional technology or for construction. And districts may seek voter approval for an additional levy to cover transportation costs not reimbursed by the state.

\$4,802,847. Half of these districts, however, have approved overrides for \$1,181,000 or less. For the 129 districts without overrides, the mean assessed valuation per pupil is \$88,466 and the mean FTE pupil count is 1,422. For the 49 districts which have approved an override, mean assessed valuation per pupil is \$170,868, and the mean FTE pupil count is 10,823. The differences in these means are statistically significant for both of these variables. Thus the districts with approved overrides tend to be larger districts with higher assessed valuation per pupil. The amount of the override per pupil ranges from \$43 to \$1,748 with a mean of \$569.

Nevertheless, the per-pupil amount of Public School Finance Act total program funding plus overrides (if any) plus categorical grants has negligible correlation with assessed valuation per pupil. The long march toward the elimination of that correlation that began with *Serrano* in 1971 has reached its fruition.

### **The Public School Finance Act and TABOR**

An important historical fact is that the Public School Finance Act of 1994 was not adopted in a vacuum. Its enactment followed the adoption of TABOR by just two short years. TABOR had a strong influence on the shaping of the Public School Finance Act of 1994. For one thing, the Act prescribed that in generating the local share of the total program funding, each district's property tax rate was to be kept the same as in the previous year unless that mill levy would generate an increase in property tax revenues greater than that allowed by TABOR (the inflation rate plus the percentage change in enrollment). If a district's growth in assessed valuation would cause the previous year's mill levy to generate more revenue than allowed, then the Act requires the property tax rate to be scaled back to the level that would meet the TABOR maximum. In addition, in very wealthy districts, the Act caps the mill levy at the rate that would

fund the district's entire total program, less the minimum state aid of \$73.40 per pupil in FY03, and also reimburse the state for ("buy out") the cost of its categorical programs.<sup>2</sup> For FY03, there are no districts subject to this mill-levy cap, and no districts receiving only the minimum in state aid per pupil. There were 45 districts whose mill levies were capped by the TABOR limit.

Note that this TABOR limit on the increase in school district property tax revenues does not actually limit district spending under the school finance act. It limits the increase in the local share of total program funding. But since the amount of state aid under the 1994 Act is determined by the total program minus the local share, any limit on the local share that TABOR imposes is made up by the state aid. Of course, TABOR also limits the annual percentage increase in state spending to the sum of the inflation rate plus the percentage change in state population, but this limit applies to total state spending, not just to state school aid in isolation. So in this particular instance, TABOR affects the division of total program costs between the state and the local school district, but does not directly impact the total program amount.

A second provision of the 1994 Act that was strongly influenced by TABOR concerns the maximum annual percentage increase in a district's total program. The Act prescribes a maximum percentage increase equal to the inflation rate plus the district's percentage change in enrollment. However, the TABOR limit itself applies only to a district's total spending. Because districts may receive additional funding beyond their total program—from state categorical grants, federal grants, and other miscellaneous sources—it is possible that a district could meet its TABOR limit on total spending even though its total program funding grows by a larger

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<sup>2</sup>The minimum state aid per pupil is set each year in the General Assembly's long appropriations bill. It is based on the amount of school lands revenues and mineral lease receipts. The amount for FY03 is 12.9% less than in FY02.



percentage, provided its other funding grows by a smaller percentage than the TABOR limit or actually decreases. If a district finds that this will be the case, it may certify that fact by December 1 and receive the maximum amount of total program funding that will still keep its total spending from all sources within the TABOR limit. Furthermore, a district's voters may authorize the collection, retention, and expenditure of revenue in excess of the TABOR limit for all future years. As of FY03, voters have now approved such authorizations, commonly known as de-Brucing, in all but eight of Colorado's 178 school districts.<sup>3</sup> Consequently, this limit on total program funding is now binding in only 4.5 percent of school districts. In the 170 districts that have passed de-Brucing elections, TABOR still requires voter approval of any new tax or tax rate increase in a school district, as well as voter approval of multiple-year school district debt. The electoral success of de-Brucing authorizations is hardly surprising, given that the authorizations remove the limit on growth in total program without changing the restrictions on the property tax rate. Thus the effect of the authorization is simply to increase a district's total program by increasing the state contribution.

At the level of the local school district, then, TABOR itself seems to have little direct impact on school spending. The constraint on the property tax rate simply shifts funding from the local property tax to the state, and the constraint on the annual increase in spending has been overridden by the voters in all but eight districts.

### **TABOR and State School Spending, before and after Amendment 23**

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<sup>3</sup>The eight districts which have not yet passed de-Brucing authorizations are: in Arapahoe County, Cherry Creek School District 5; in El Paso County, Harrison School District 2, Colorado Springs School District 11, Cheyenne Mountain School District 12, Academy School District 20, and Hanover School District 28; and in Yuma County, Liberty School District J-4 and Idalia School District RJ-3.

At the state level, however, TABOR most definitely constrains spending for schools. TABOR limits the annual percentage increase in total state spending to the sum of the inflation rate plus the percentage change in state population. Thus TABOR makes the state budgeting process a zero-sum game. The greater the increase in public school spending, the smaller the increases must be for prisons, higher education, highways, Medicaid, and/or human services. Since elementary and secondary education spending is by far the largest share of total state spending (about 40 percent of the total), a slight increase in the growth of state school spending would require substantial reductions in the growth of other spending areas to keep the total within the TABOR limit.

However, school spending was given a priority status in this budgeting process under the TABOR restrictions when Colorado voters adopted Amendment 23 of the Colorado Constitution in November 2000. This amendment added a Section 17 to Article IX of the Constitution. It requires that for the fiscal years FY02 through FY11, the statewide base per pupil funding that is the starting point for the Public School Finance Act of 1994 must be increased each year by at least the rate of inflation plus one percentage point. Total state funding for all categorical programs must increase by at least this rate as well. In the years following FY11, the minimum increase in both cases is the rate of inflation. The amendment established the State Education Fund and earmarked a portion of the state income tax, namely an amount equal to one third of one percent of taxable income, for this Fund (and exempted this amount from the TABOR spending limit). Appropriations from this Fund may only be made to meet the Amendment's minimum spending increases and for certain other prescribed educational objectives. These appropriations are specifically exempted from TABOR limits or any other limits on spending.

The State Education Fund appropriations must not be used to replace General Fund appropriations for total program funding and categorical programs. In fact, the Amendment requires that General Fund appropriations for total program be increased annually through FY11 by at least 5 percent, except in a fiscal year in which the increase in Colorado personal income was less than 4.5 percent in the previous calendar year.<sup>4</sup>

By requiring significant annual increases in base per-pupil funding, while doing nothing about the limitations on school district mill levies, Amendment 23 will continue the shift toward a growing state share in total program funding, and in school funding generally. Table 1 shows the historical trend this share has followed. The Amendment will also be likely to bring significant increases in overall school spending per pupil.

But will the increase be enough to push Colorado up in the rankings of spending per pupil among the states? Only time will tell. But between FY92 and FY00, the U.S. average of total current spending per pupil increased at an average rate of 4.0% per year, and instructional spending per pupil grew 4.1% per year. Over the same period, the U.S. consumer price index increased by an average of 2.6% per year. Thus the growth in U.S. spending per pupil exceeded the inflation rate by 1.4-1.5 percentage points. That would suggest that if this trend continues, and if the Colorado General Assembly continues to just meet the Amendment 23 minimum of one percentage point above inflation, then Colorado's rankings among the states are likely to continue to fall.

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<sup>4</sup>From the first quarter of 2001 to the first quarter of 2002, Colorado personal income increased only 0.4%. According to preliminary data, the increase from 2000 to 2001 was 3.8%.

**Table 1. Local and State Shares as Percent of Total Program**

Fiscal Year	Local Share	State Share
1994-95	45.7%	54.3%
1995-96	45.2%	54.8%
1996-97	44.2%	55.8%
1997-98	44.3%	55.7%
1998-99	43.4%	56.6%
1999-00	43.3%	56.7%
2000-01	42.9%	57.1%
2001-02	42.2%	57.8%
2002-03	40.7%	59.3%