

**CSFP Briefing Document: Colorado's Constitutional Impacts from:
Gallagher, TABOR, Amendment 23 and the Negative/Budget Stabilization Factor**

The ***Gallagher Amendment*** was referred to the ballot by the legislature and passed by voters in 1982 to control for residential and commercial fluctuations in property tax support for local governments. It created a formula that could fluctuate mill levies up and down but assured a consistent local contribution and adjust for economic changes in residential and commercial growth patterns. **In 2020, voters removed this amendment from the state constitution and placed in statute. The residential assessment rate dropped in 2022 and 2023 to 6.95% and the non-residential rate will remain at 29%.**

The ***TABOR Amendment, or Article 10 Section 20 of Colorado's Constitution***, was passed by the voters of Colorado in 1992. Article 10 Section 20 added numerous changes and limits to Colorado's constitution:

- **Operations of state and local governments:**
 - no taxing authority by elected officials
 - both a revenue and a spending cap for state and local governments.
- **Election process:**
 - mandates all revenue increases be voted
 - defines when and in what year elections can be held
 - requires specific language terminology that must be used when asking voters to raise revenue.
- **Situations not contemplated:**
 - Adjustments in revenue and spending limits to state and local budgets when there is a change in tax collections or a change in the economy
 - Impact of Gallagher to state and local government budgets in conjunction with Article 10 Section 20.
- **Between 1966 and 1990 there were 7 attempts to pass a tax limitation initiative** before the TABOR amendment passed in 1992.
- **Referendum C (referred by the legislature) - passed by voters in 2005 to address the revenue limit in Article 10 Section 20.** A time-out was granted and the ratchet effect in Article 10 Section 20 was removed. This gave temporary relief to the state's budget.

- In 2019, the Colorado Supreme Court ruled that the complete repeal of TABOR is possible as a single-subject ballot initiative. This means that an initiative could be placed on the ballot. If voter approval is obtained the provision could be repealed ([Click here](#) to read full opinion.)
- In 2020, voters approved a measure that requires voter approval of new enterprises (fees) if the revenue will be greater than \$50 million within the first five years.
- In 2021, the TABOR surplus enough to fund all three refund mechanisms, including the following two which are administered by the Department of Revenue. All 2021 taxpayers will receive income tax rate reduction, from 4.55% to 4.50%.
- In 2022, Governor Jared Polis signed [Senate Bill 22-233](#) giving 2021 taxpayers refund payments of \$750 to each qualified individual (\$1,500 for individuals who filed jointly).
- In 2023, [Senate Bill 23-287](#) included a \$180M buydown of the Budget Stabilization Factor.
- It is expected to be TABOR surpluses in FY 2023-24 and 2024-25.
- [Amendment 23](#) was a citizen’s initiative approved by the voters in 2000. It was designed to increase funding in Colorado after years of decline from the late 1980s through the 1990s. Amendment 23 was not a tax increase, was a diversion of state income tax to be used for education. Amendment 23:
 - Required the statewide base and total funding for categorical programs increase by at least the rate of inflation. (For the first 10 years funding increased by the rate of inflation plus 1% to return funding to 1988 levels.)
 - Categoricals are outside the school finance formula – consisting of special education, Emerging Bilinguals, Gifted and Talented, small attendance centers, transportation, and career and technical education.
 - Created the State Education Fund – diverting 1/3 of 1% of income tax to the State Education Fund. This revenue is exempt from TABOR limitations.

In 2009, the Legislature created the “[Budget Stabilization Factor](#)” as a mechanism in the school finance act to reduce Amendment 23’s requirement of annual inflationary increases to per pupil funding. In 2010 the Legislature renamed the Budget Stabilization Factor to the “Negative Factor”. Then in 2017 the Legislature renamed the Negative Factor to the “Budget Stabilization Factor.”

- This **Factor takes money away** from per pupil funding.
- The 2015 Dwyer ruling of the **Supreme Court determined that this is legal** and that the voters in 2000 allowed for the legislature to reduce funding.
- Between **2009 and 2024 the Negative / Budget Stabilization Factor has resulted in over \$10 billion in lost revenue to K-12**. The Budget Stabilization Factor has now been in place for 14 fiscal years.