

Senate Bill 09-228: Arveschoug-Bird Repeal

For the Health District of Northern Larimer County Board of Directors

February 24, 2009

Bill Title:	Concerning an increase in the flexibility of the General Assembly to determine the appropriate use of state revenues.
Issue Summary:	The bill would repeal the Arveschoug-Bird provision that limits the growth of the General Fund to 6% per year
Bill History:	Introduced in Senate; Assigned to
Date of Analysis:	February 16, 2009
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BILL SUMMARY

The bill repeals Title 24-75-201.1, commonly referred to as the Arveschoug-Bird statute after the two legislators who sponsored it, which limits the growth of the state's General Fund to 6% over the past year's expenditures.

BACKGROUND

How Revenue Flows Into the General Fund

As state revenue comes in that is destined for the General Fund, it flows first to some General Fund obligations that are outside the 6% limit (this is a pretty small number) and then 4% of the money is set aside in a statutory reserve fund. After those obligations are met, the rest of the available revenue can be appropriated. The Arveschoug-Bird provision only allows the Legislature to appropriate 6% more than the previous year's total state General Fund appropriations. Any money over and above the 6% is then diverted. Money is first diverted to the Highway Users Tax Fund (HUTF). This is referred to as the SB-1 transfer after the legislation that created it. SB-1 diverts 10.355% of state sales and use tax revenue from the General Fund excess to the HUTF. After the SB-1 transfer, any additional revenue is divided and two-thirds is used for highways and one-third is used for capital construction. (See attachment for visual description of division of General Fund moneys.)

Competing Pressures on General Fund Appropriations

The Taxpayers Bill of Rights (known as TABOR) limits the amount of total revenue the state may collect and keep. Although the voters adopted Referendum C in 2005 which provided for a 5-year time-out from some of the provisions of TABOR, including the provision that would have rebated revenue above a certain limit, TABOR will resume limiting state revenue in 2011. In addition, TABOR requires voter approval of any tax increases and limits other tax options to raise revenue.

Amendment 23, a constitutional amendment passed by voters in 2000, requires the legislature to fund guaranteed increases in spending on K-12 education. According to the Colorado Fiscal Policy Institute, Amendment 23 requires an "annual increase in per pupil funding in the School Finance Act and total state funding for programs of at least the inflation rate plus one percent from FY 2001-2 throughout FY 2010-11 and by the inflation rate thereafter. Amendment 23 also contains a "maintenance of effort" (MOE) provision that requires General Fund appropriations for state aid under the School Finance Act to increase by at least 5% annually, except when state personal income grows by less than 4.5%. During economic downturns, when General Fund revenue sources such as income tax receipts tend to decline or grow at slower rates, Amendment 23 mandates increases in spending and further reduces General Fund revenues available for use on programs and services other than K-12 education."¹

How Arveschoug-Bird Affects General Fund Expenditures

Because the General Fund can only grow by 6% over the past year's expenditures, any remaining funds are subject to spending rules that dictate a portion of money (10.355% of state sales and use tax revenue) goes to transportation expenses via the SB-1 transfer of funds to the Highway Users Tax Fund (HUTF). Any remaining funding after the SB-1

¹ Colorado Fiscal Policy Institute, The Colorado Budget Primer, Update 2007-2008, accessed at www.clponline.org

transfer, the general fund excess reserve is diverted with one-third going to capital construction and two-thirds to transportation. The statutory budget requirements that transfer any excess general fund revenue over the 6% limit to transportation and capital construction mean that if programs funded by General Fund revenue grow faster than 6% each year, they put pressure on other programs funded out of the General Fund. In short, there is a “crowd out” effect, with programs that have a growth rate of more than 6%, crowding out funding needed for other expenditures and priorities for General Fund revenue. State fiscal policy is further complicated by other constitutional spending measures such as Amendment 23 which guarantees a certain level of state funding for K-12 education.

The Interpretation Questions

According to the Colorado Fiscal Policy Institute, the Arveschoug-Bird statute was adopted by state legislators in 1991 in an attempt to appease advocates pushing the adoption of the constitutional amendment known as the Taxpayers Bill of Rights (TABOR). The hope was that by limiting the growth of the General Fund, voters could be dissuaded from passing the more stringent revenue and spending limits contained in TABOR. TABOR passed in 1992. Its author, Douglas Bruce, and other backers included a statement in TABOR indicating that the amendments should be interpreted to “reasonably restrain most of the growth of government.” TABOR requires voter approval of any new tax, tax rate increase, debt increase, increase in mill levies, and any tax policy change that will result in a net revenue gain. Importantly, relative to the discussion of the Arveschoug-Bird limit, TABOR prohibits the weakening of limits on revenue, spending and debt without voter approval. This “weakening provision” of TABOR has been conservatively interpreted to apply to the Arveschoug-Bird statute. Indeed, some think that the passage of TABOR effectively “enshrined” Arveschoug-Bird in the constitution meaning that it was a spending limit that fell under the purview of TABOR and could only be changed by a vote of the people. This perception may have originated in a memo drafted by the Office of Legislative Legal Services which stated that a court would “probably conclude” that Arveschoug-Bird is a limit on spending and would therefore fall under the purview of the TABOR restriction against weakening a spending limit. The alternative interpretation is that Arveschoug-Bird does not limit the *amount* the legislation can spend, it limits the *way* the legislation can spend revenue. The passage of the bill would surely invite a court challenge to determine which interpretation will stand.

WHY IS THIS ISSUE IMPORTANT?

Virtually all of the Health District’s health priorities are funded out of General Fund revenue. A few examples are: the state public health budget, Medicaid financing, and funding for indigent mental health. Without adequate General Fund revenue, a few items, such as the state corrections budget and the Medicaid financing will continue to crowd out other health spending priorities.

An analysis conducted by the Colorado Fiscal Policy Institute, the Bell Policy Center and the Colorado Children’s Campaign reported in January 2009 on the impacts of the current recession combined with measures like the Arveschoug-Bird limit. The Rocky Mountain News recently reported that lawmakers are fearful of the repercussions of the 6% rule in the event of very high inflation. Amendment 23, which was approved by voters in 2000, guarantees that funding for schools keep up with inflation. In the event that the state experiences high inflation, the General Fund growth would be capped at 6% and education funding would be required to keep pace with inflation; subsequently, education funding would consume an ever larger share of the General Fund, crowding out spending on every other department and program.

REASONS TO SUPPORT BILL:

- The constraints imposed by the 6% limit prevent spending on health priorities important to the health of the residents of the Health District. For example, if spending on other items funded through the General Fund such as education or corrections continue to crowd out other items such as indigent mental health care, residents of the Health District will lose access to vital health services.
- The 6% limit prevents state programs from recovering in the event of an economic downturn. Because every year’s appropriation is based on the previous year, any dip in the previous year’s appropriation becomes the base for the next year’s appropriation. This is known as the “ratchet effect”. When the economy recovers, it is impossible for program funding to catch up what was lost in the downturn because the total base is lower and can only grow by 6%. Current budget projections run by the Colorado Fiscal Policy Institute indicate that given current revenue projections the state will have trouble continuing to fund services at the 2007-2008 fiscal year level. If there is no change in the 6% limit, even extending the TABOR timeout of Referendum C will not result in any additional revenue for projects other than transportation or capital construction.

- The Colorado Fiscal Policy Institute has argued that if federal stimulus money supplants state General Fund spending in the current recession, the 6% limit's "ratchet effect" would prevent the state from resuming adequate funding of programs from General Funds when the economy recovers.
- Supporters of repealing Arveschoug-Bird might argue that the provision prevents our elected representatives from apportioning spending in a manner in line with current voters values. The current constitutional and statutory spending restrictions direct General Fund revenue away from priorities like health care, education, social services and others and to capital construction and transportation. Supporters might argue that we should give legislators the freedom to craft a state budget that reflects the state's needs without having their hands tied by spending limits that automatically prioritize capital construction and transportation.
- While opponents of the bill may point to the rejection of a measure on the ballot in the last election that would have allowed the state to keep and spend all the revenue it received as evidence that voters are unwilling to change the constitutional spending limits, voters did pass Referendum C in 2005 which allowed a five-year "time-out" from TABOR revenue limits, demonstrating that they understand the fiscal impact of the revenue limits and instead prefer to allow more state spending on priorities like health care and education.

REASONS TO OPPOSE BILL:

- Supporters of TABOR specifically cited the Arveschoug-Bird limit as the type of provision that should not be weakened without a vote of the people. Supporters of TABOR intended to limit the growth of government and the interpretation that Arveschoug-Bird cannot be weakened without a vote of the people is in line with the express intention of the electorate when it voted in favor of TABOR in 1992.
- Opponents of the bill believe that residents of the state have the right to vote on any increase in the 6% and would argue that a similar matter was put to a vote in the last election. Voters considered and rejected a measure that would have allowed the state to keep all the revenue it received in exchange for a cap in the mandatory spending on education. Supporters of Arveschoug-Bird might argue that the voters are not interested in a change in the state's constitutional spending limits.

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. Analyses are based on bills or issues at the time of their consideration by the Board and are accurate to the best of staff knowledge. It is suggested that people check to see that a bill has not changed during the course of a legislative session by visiting the Colorado General Assembly web page at www.state.co.us/gov_dir/stateleg.html. To see whether the Health District Board of Directors took a position on this or other policy issues, please visit www.healthdistrict.org/policy.

About the Health District

The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves.

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