



Colorado Department of Transportation Policy Brief

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Amendment 61 State and Local Debt Limitations

Given the potential impact this measure has on transportation, the Department of Transportation (CDOT) has been asked to provide a financial impacts statement. This Policy Brief explains CDOT's assessment of the impacts of Amendment 61 on the Department's programs. This assessment is factual in nature and not intended to indicate support or opposition to the Amendment.

Background

Amendment 61 restricts the ability of governmental entities to finance their acquisitions and operations by prohibiting the use of a wide array of debt and other long-term financing mechanisms.

Amendment 61 would prohibit the state government and its enterprises from issuing debt or using other non-debt financing instruments. CDOT and other departments of state government occasionally make use of these financing methods in order to:

- Build public assets that increase the productive capacity of Colorado's economy and, by extension, the tax base;
- Take advantage of favorable construction cost environments and/or differentials between interest rates and expected rates of construction cost inflation to achieve present value savings on large infrastructure projects;
- and
- Ensure that those who benefit from new or improved public facilities contribute towards paying for the cost of their acquisition.

Bonding

A bond is a promise to repay a loan over a specified period of time at a specified rate of interest. Governments issue bonds in the municipal finance markets in order to finance over multiple years the acquisition or improvement of major public infrastructure.

In 1999 the voters of Colorado authorized CDOT to issue \$1.7 billion of transportation revenue anticipation notes (TRANS) in order to complete significant improvements to an array of statewide highway improvement projects. The Department allocates \$168.0 million per year for debt service on these notes. Payments are currently scheduled to expire in FY 2016-17. By forbidding any borrowing by state government Amendment 61 would preclude seeking voter approval to use this method of project finance in the future.

Certificates of Participation (COPs)

Certificates of Participation are a method of finance whereby CDOT or other departments of state government make annual lease payments on a physical asset for a period of time and take ownership of the asset at the conclusion of the lease. As all lease payments must be annually appropriated and because there is typically no pledge of a revenue source or other collateral, COPs are not legally considered debt.

In 2004 the Department issued \$20.0 million in certificates of participation in order to raise funds for critical repairs and replacements of laboratories, engineering facilities, and some office space for its staff. CDOT makes annual lease payments of \$1.1 million which are scheduled to expire in FY 2033-34. Currently, the Department requires specific authorization from the General Assembly to enter into COP agreements. Amendment 61 forbids COPs as a method of "borrowing"; therefore this method of making improvements to CDOT facilities would no longer be available.

Enterprises

Under current law, state-owned businesses such as the High Performance Transportation Enterprise and the Statewide Bridge Enterprise may issue debt without a statewide vote of the people. Debts owed by government-owned businesses are not liabilities of state or local governments because those debts are secured neither by the full faith and credit of the government nor by any general-purpose revenue source nor by any tax revenue source.

Therefore the fiscal impact of Amendment 61 to the High Performance Transportation Enterprise and the Statewide Bridge Enterprise is to potentially delay the construction and increase the present-value costs of constructing toll highways and repairing and replacing bridges rated as poor.

Potential Impacts on Funding Streams

Depending on how proposed subsection 4 (c) (III) of Article X, Section 20 of the Colorado constitution is interpreted, state motor fuel taxes may be reduced by \$168 million per year after FY 2016-17. The Legislative Council Staff memorandum provided to members of the General Assembly dated July 8, 2010 assumes that the provision requiring lowered tax rates after borrowing is repaid applies to current outstanding debt. As motor fuels taxes are not directly linked to the repayment of the Department's TRANS and COP obligations, it is unclear which tax rate(s) may be lowered should this interpretation of the Amendment prevail.

Text of Amendment 61

State and Local Debt Limitations

Ballot Title:

An amendment to the Colorado constitution concerning limitations on government borrowing, and, in connection therewith, prohibiting future borrowing in any form by state government; requiring voter approval of future borrowing by local governmental entities; limiting the form, term, and amount of total borrowing by each local governmental entity; directing all current borrowing to be paid; and reducing tax rates after certain borrowing is fully repaid.

Text of Proposal:

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 repaid 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.