

TO: LCS Flood Disaster Study Committee

FROM: Colorado Municipal League (CML); Colorado Association of School Boards (CASB); Colorado Counties, Inc. (CCI); Colorado Special Districts Association (SDA)

DATE: November 5, 2013

RE: TABOR Reform

The most important tool needed by local governments when faced with a disaster is ready access to resources necessary to protect the health and safety of citizens during the disaster and to repair public infrastructure afterwards. All natural disasters are unexpected and therefore outside the regular budget and budget planning. Moreover, the larger the disaster, the greater are the resources needed beyond the budget and ordinary reserves.

This reality has been dramatically demonstrated during the recent flooding and its aftermath. Our local governments have struggled to find resources to save and protect our citizens. The destruction of roads, bridges, homes, and public buildings has been unprecedented, and the consequences of this massive disaster continue to linger. The resources and time needed for our communities to recover from the flooding remain a tremendous challenge even as the event itself fades from the headlines.

Unfortunately, these challenges for our local governments have been compounded by the confusion and the restrictions that emanate from TABOR. Is this an emergency? May we use the emergency reserves? How long have we to restore those reserves, if used? Must we wait until November 2014 to hold an election for authorization of desperately needed resources? Is there no way to gain immediate help from local taxpayers?

The ambiguities and restrictions in TABOR have mightily hindered the efforts of local governments to relieve and repair the consequences of this great flood. The members of our four local government associations have also struggled with these same impediments in recent years in the face of other disasters, such as floods, fires, tornadoes, and school shootings. It is time to take action.

We four local government associations have identified a number of statutory and constitutional changes that would enhance our ability to respond effectively to emergencies and offer them for your collective consideration.

A. Enact new legislation that would accomplish the following:

1. Define and clarify what constitutes an emergency or how an emergency may be declared under TABOR;

2. Clarify that the state grants of federal monies remain federal funds for purposes of local fiscal year spending, and that such grants are not state grants for purposes of the enterprise test;
3. Define state grants given to a local government for aid or mitigation of damages as a consequence of a disaster as gifts or damage awards that are excluded from the definition of local fiscal year spending;
4. Clarify that emergency reserves need not be immediately restored and specify the number of years permitted for restoration; and
5. In a state-declared emergency, allow counties to transfer general fund dollars to the county road and bridge fund, subject to “no substitution” language stipulating that the county road and bridge mill levy, of which cities receive 50 percent, is not reduced in such times.

B. Refer to the voters the following constitutional changes:

1. In the event of an emergency, allow a government to have a TABOR election on any date for purposes of obtaining additional resources to address any need caused by the emergency;
2. Exclude emergency state aid from local fiscal year spending;
3. Exclude state grants for emergency response and recovery from the enterprise compliance test; and
4. Eliminate the exclusion of property taxes from permitted emergency taxes.