

# Amendment B: Modify Property Taxes

1 **Amendment B proposes amending the Colorado Constitution to:**

- 2     • remove the requirement that the taxable portion of residential property value be  
3     adjusted so that residential and nonresidential property make up constant  
4     portions of total statewide taxable property over time; and
- 5     • repeal the requirement that fixes the taxable portion of nonresidential property  
6     value at 29 percent.

7 **What Your Vote Means**

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**YES** A “yes” vote repeals sections of the Colorado Constitution related to property taxes, including the mechanisms for setting the residential assessment rate used to calculate property taxes. As a result, the residential assessment rate will remain constant and expected future decreases will not be required by law.

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**NO** A “no” vote leaves constitutional provisions related to property taxes in place, maintaining current mechanisms for setting the assessment rates used to calculate property taxes. This is expected to result in a decreasing residential assessment rate over time.

# Legislative Council Draft

## 1 Summary and Analysis for Amendment B

2 In Colorado, property taxes fund local governments, including schools, cities,  
3 counties, and special districts, such as local fire and police districts. This analysis  
4 first describes how property taxes are calculated, then describes what Amendment B  
5 does, and finally discusses how the measure affects taxpayers and governments.

### 6 How are property taxes calculated?

7 Property taxes are paid by residential homeowners, and nonresidential property  
8 owners, including farmers, ranchers, oil and gas operators, and other businesses.  
9 Property taxes are paid on a portion of a property's actual value. The actual value of  
10 property is determined by the county assessor or state property tax administrator.  
11 The portion of the actual value on which taxes are paid is known as taxable value.  
12 Taxable value is also known as assessed value.

13 Taxable value is calculated by multiplying the actual value by an assessment rate.  
14 The assessment rate is currently 7.15 percent for residential properties, and is fixed  
15 at 29 percent for most nonresidential properties. Mines and lands that produce oil  
16 and gas are assessed at different rates than other nonresidential property.

17 Taxable value is then multiplied by the tax rate, called a mill levy, to determine the  
18 property taxes owed. One mill equals \$1 for each \$1,000 dollars of taxable value.  
19 For example, 100 mills is equal to a tax rate of 0.1 (100/1,000), or 10 percent. The  
20 tax rate varies for each property based on the local taxing districts in which it is  
21 located. Figure 1 provides an example of how property taxes are calculated.

#### 22 **Figure 1. Property Tax Calculation**

23 *Example: Property valued at \$300,000 and taxed at 100 mills*

<b>Taxable value</b> = Property value x Assessment rate				
Residential	\$300,000	x	7.15%	= \$21,450 taxable value
Nonresidential	\$300,000	x	29%	= \$87,000 taxable value
<b>Property taxes</b> = Taxable value x Tax rate (Mills/1000)				
Residential	\$21,450	x	0.100	= <b>\$2,145 owed</b>
Nonresidential	\$87,000	x	0.100	= <b>\$8,700 owed</b>

### 24 What does Amendment B do?

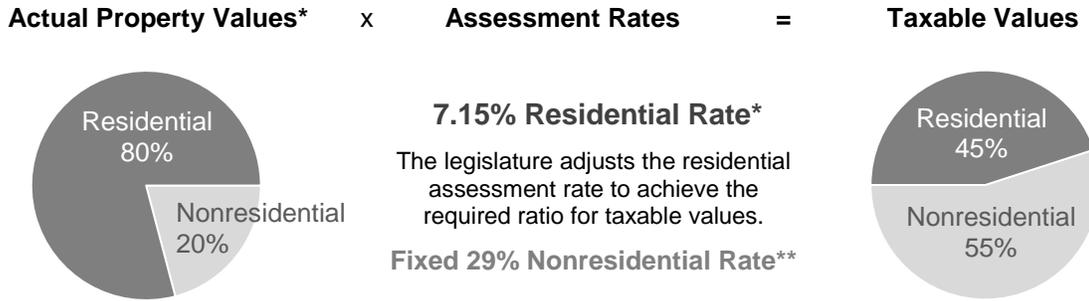
25 Amendment B repeals provisions related to the residential and nonresidential  
26 assessment rates from the constitution, including the provisions commonly known as  
27 the Gallagher Amendment.

28 The constitution currently requires that residential and nonresidential property make  
29 up constant portions of total statewide taxable property over time. Since adoption in  
30 1982, these provisions have required that the taxable value of residential property  
31 make up about 45 percent, and the taxable value of nonresidential property about 55  
32 percent of statewide taxable property. Actual property values have not matched the  
33 required ratios over time because residential property values have generally grown  
34 faster than nonresidential property values. Since the taxable portion of most  
35 nonresidential property values is fixed at 29 percent, the state legislature adjusts the  
36 residential assessment rate to maintain the required ratio, as shown in Figure 2.

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1 Amendment B removes these provisions from the constitution, leaving the residential  
 2 and nonresidential assessment rates at their current rates in state statute. Under  
 3 current law, the residential assessment rate is expected to decrease in future years,  
 4 reducing the amount of property taxes paid by property owners and collected by local  
 5 governments. By preventing this reduction and maintaining the current assessment  
 6 rate, Amendment B is expected to increase residential property taxes compared with  
 7 what would be paid otherwise.

8 **Figure 2. Assessment Rate Adjustments Under Current Law**



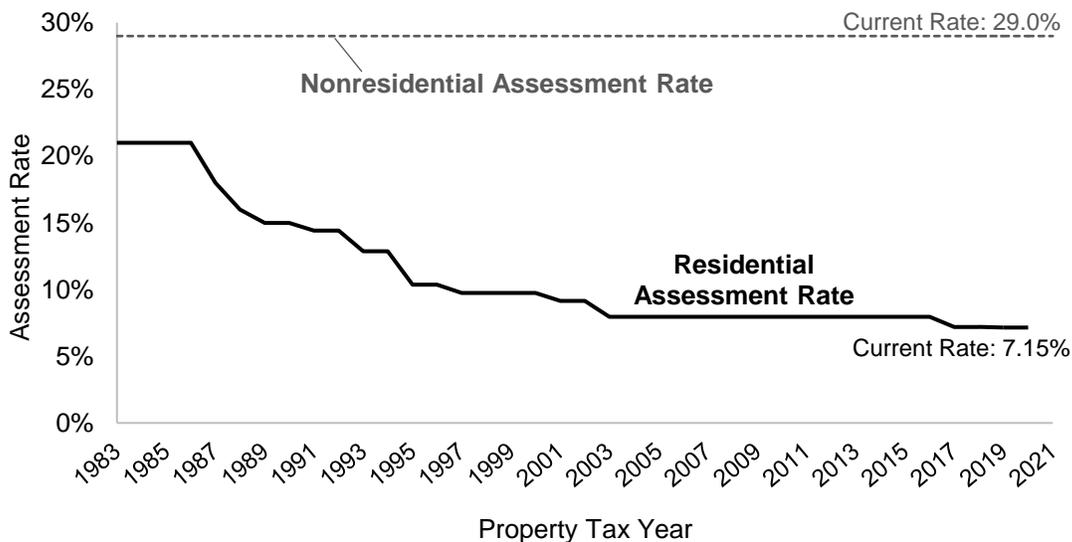
9 *\*Actual property values are for 2019. The residential assessment rate is for 2019 and 2020. This*  
 10 *assessment rate has fallen over time to maintain the fixed ratio for taxable values of about 45 percent*  
 11 *residential and 55 percent nonresidential.*

12 *\*\*Assessment rate for most nonresidential property.*

13 **How has the residential assessment rate changed over time?**

14 In most years, residential property values have grown faster than nonresidential  
 15 values, causing the residential assessment rate to be lowered so that residential  
 16 properties continue to make up about 45 percent of statewide taxable value. As  
 17 shown in Figure 3, the residential assessment rate has been reduced from 21  
 18 percent when these provisions went into effect in 1983 to a current rate of 7.15  
 19 percent. The downward trend of the residential assessment rate is expected to  
 20 continue in future years.

21 **Figure 3. Assessment Rates Since 1983**



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1 When nonresidential property values grow faster than residential property values, the  
2 residential assessment rate must increase to maintain the constant ratio; however,  
3 other constitutional provisions require that voters approve such an increase. As a  
4 result, the state legislature may decrease, hold flat, or ask voters to approve an  
5 increase in the residential assessment rate. Since 1999, there have been  
6 six instances when the residential assessment rate would have increased, but the  
7 legislature did not refer a measure to voters and the rate instead stayed flat.

## 8 **What factors impact property taxes?**

9 Property taxes paid by a property owner are dependent on three components: actual  
10 property value, the applicable assessment rate, and the tax rate (mill levy). Changes  
11 to any of these components impact the amount of property taxes paid and thus, the  
12 amount of revenue collected by a local government. Amendment B concerns only  
13 residential and nonresidential assessment rates; however, other changes to property  
14 values or tax rates also impact the amount of property taxes owed.

## 15 **How does Amendment B affect residential property taxpayers?**

16 Under Amendment B, the residential assessment rate will remain at the current  
17 7.15 percent for residential property. Without the measure, the residential  
18 assessment rate is projected to decrease in future years due to the relative growth of  
19 residential property values compared to nonresidential property values. As a result,  
20 Amendment B is expected to result in a higher residential assessment rate, and  
21 thus higher property taxes paid by residential taxpayers than there would be  
22 otherwise.

## 23 **How does Amendment B affect nonresidential taxpayers?**

24 Under Amendment B, the assessment rate will remain in state law at 29 percent for  
25 most nonresidential property. Amendment B will have no impact on the amount of  
26 taxes paid by most nonresidential property owners.

27 In some parts of the state, voters have approved automatic tax rate (mill levy)  
28 increases to offset declines in the residential assessment rate. These tax rate  
29 increases apply to both residential and nonresidential taxpayers. In these areas,  
30 Amendment B may result in lower property taxes for businesses, farmers, and other  
31 nonresidential property owners, as the higher mill levies that would have been  
32 triggered by decreases in the residential assessment rate under current  
33 constitutional provisions will no longer be required.

## 34 **How does Amendment B impact local government revenue?**

35 Under the current system, the decline in the residential assessment rate has  
36 constrained property tax revenue to local governments. The impact varies across  
37 the state, with the largest impacts occurring in areas without much nonresidential  
38 property or with only slow growth in home prices. These areas are generally small  
39 and rural; however, metropolitan areas with slow growth in home values are also  
40 impacted. Amendment B prevents further decreases in the residential assessment  
41 rate, resulting in more property tax revenue to local governments than would  
42 otherwise be received.

## 43 **How does Amendment B impact state government spending for schools?**

44 Schools are funded through a combination of state and local revenue, with the state  
45 making up the difference between an amount of school district funding identified  
46 through a formula in state law and the amount of local tax revenue generated. By  
47 preventing future decreases in the residential assessment rate, Amendment B

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1 increases local property tax collections for school districts, and reduces the amount  
2 the state must pay to make up the difference.

## 3 **If Amendment B passes, can the state legislature change the assessment rates?**

4 Under Amendment B, the state legislature may decrease the assessment rates, but  
5 cannot increase them without voter approval. Currently, assessment rates are set in  
6 state law at 7.15 percent for residential property and 29 percent for most  
7 nonresidential property.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

## 8 **Arguments For Amendment B**

- 9 1) Current constitutional provisions disproportionately impact rural and poor  
10 communities. Increases in home values on the Front Range result in a lower  
11 residential assessment rate for the whole state. This drives down the taxable  
12 value of residential properties in rural areas, meaning that local services such as  
13 fire protection, sanitation, and library services, may be reduced or eliminated  
14 because of property values elsewhere in the state. Amendment B prevents  
15 further reductions in these important services as a result of residential  
16 assessment rate decreases under current law.
- 17 2) Amendment B makes property taxes more equitable. Nonresidential property  
18 owners, including businesses, farmers, and ranchers have paid an increasingly  
19 higher proportion of property taxes over time relative to residential property  
20 owners. Currently, nonresidential property taxpayers pay 55 percent of the tax  
21 burden, but represent only 20 percent of total property value. Conversely,  
22 residential property owners only pay 45 percent of the tax burden and make up  
23 80 percent of property value in the state.
- 24 3) Amendment B prevents a school funding shortage from becoming a state budget  
25 crisis. With each decline in the residential assessment rate, the local contribution  
26 for school funding decreases and the state funding requirement increases. The  
27 state share of school finance rose from 48 percent in 1982 to 60 percent in 2019,  
28 and is expected to continue to grow. The higher state share for school finance  
29 has shifted funding from other important state programs and services, such as  
30 transportation infrastructure, human services, and public safety.

## 31 **Arguments Against Amendment B**

- 32 1) Amendment B results in higher property taxes for homeowners by preventing  
33 future drops in the residential assessment rate. Increasing home values have  
34 already resulted in higher property taxes for many homeowners. Higher taxes  
35 mean that homeowners will have less money to spend or save, and landlords  
36 may increase rents, at a time when many are already struggling to make ends  
37 meet.

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- 1 2) The property tax system is working as it was intended. It keeps residential  
2 property taxes low, and prevents special interests from obtaining tax breaks at  
3 the expense of homeowners. Amendment B removes an important protection for  
4 homeowners from the Constitution. Without these protections, homeowners may  
5 end up paying an increasing share of property taxes.
- 6 3) There are better alternatives to amending the constitution. Local governments  
7 can instead ask their voters to raise tax rates or seek other solutions to provide  
8 services such as fire protection, schools, and libraries. These alternatives would  
9 allow voters in each local jurisdiction to decide for themselves how to best fund  
10 services for their community.

## 11 **Estimate of Fiscal Impact for Amendment B**

12 **Local revenue and spending.** For many local governments, including counties,  
13 cities, school districts, and special districts, Amendment B will result in increased  
14 property tax revenue. The amount of any increase will depend on what the  
15 residential assessment rate would have been in the future without the measure, as  
16 well as whether voters have already approved local tax increases to counteract  
17 future potential decreases in the residential assessment rate.

18 **State spending.** To the extent that Amendment B increases property tax revenue to  
19 school districts, additional funding will be available for the local share of the state's  
20 system of school finance, reducing the amount the state must pay to make up the  
21 difference between local revenue and the school district funding amount identified  
22 through a formula in state law.

23 **Taxpayer impacts.** Maintaining the current residential assessment rate results in  
24 higher property taxes for many residential property owners compared to what they  
25 would owe if residential assessment rates were lowered in the future. The impact on  
26 property owners from holding the residential assessment rate constant in the future  
27 will vary based on several factors, including what future decreases in the residential  
28 assessment rate would have been required without the measure, the actual value of  
29 the property, and the tax rates of the local taxing districts. The measure does not  
30 impact the assessment rate for most nonresidential taxpayers.

# Amendment B: Modify Property Taxes

1 **Amendment B proposes amending the Colorado Constitution to:**

- 2       • remove the mechanism that adjusts the residential assessment rate so that  
3 residential and nonresidential property make up similar shares of the total  
4 statewide property tax base over time; and
- 5       • repeal the requirement that fixes the nonresidential assessment rate at  
6 29 percent.

7

8 **What Your Vote Means**

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**YES** A “yes” vote repeals sections of the Colorado Constitution related to property taxes, including the mechanisms for setting the residential assessment rate used to calculate property taxes. As a result, the residential assessment rate will remain constant and expected future decreases will not be required by law.

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**NO** A “no” vote leaves constitutional provisions related to property taxes in place, maintaining current mechanisms for setting the assessment rates used to calculate property taxes. This is expected to result in a decreasing residential assessment rate over time.

# Last Draft as Mailed to Interested Parties

## 1 Summary and Analysis for Amendment B

### 2 What does Amendment B do?

3 Amendment B repeals certain provisions related to property taxes from the Colorado  
4 Constitution. In Colorado, property taxes fund local governments, including schools,  
5 cities, counties, and special districts, such as local fire and police districts.

6 Under the constitution, the statewide property tax base must maintain a proportional  
7 relationship between residential and nonresidential property. This ratio has been  
8 about 45 percent residential and 55 percent nonresidential property since these  
9 constitutional provisions were adopted in 1982. To achieve this ratio, the residential  
10 assessment rate is adjusted by the state legislature in order to ensure that residential  
11 property makes up about 45 percent of the statewide property tax base, while the  
12 assessment rate for nonresidential property is fixed at 29 percent. These provisions  
13 are commonly referred to as the Gallagher Amendment.

14 Amendment B removes these mechanisms from the constitution, leaving the  
15 residential and nonresidential assessment rates at their current levels in state  
16 statute. Currently, the residential assessment rate is expected to decrease in future  
17 years; by preventing this reduction, Amendment B results in higher property tax  
18 revenue to local governments.

### 19 How are property taxes calculated?

20 Property taxes are paid by residential homeowners, and nonresidential property  
21 owners, including farmers, ranchers, oil and gas operators, and other businesses.  
22 Property taxes are paid on a portion of a property's actual value, as determined by  
23 the county assessor or state property tax administrator. The portion of the actual  
24 value on which taxes are paid is known as taxable value, or assessed value.

25 Taxable value is calculated by multiplying the actual value by an assessment rate.  
26 The assessment rate is currently 7.15 percent for residential properties, and is fixed  
27 at 29 percent for nonresidential properties.

28 Taxable value is then multiplied by the tax rate, called a mill levy, to determine the  
29 property taxes owed. One mill equals \$1 for each \$1,000 dollars of taxable value.  
30 For example, 100 mills is equal to a tax rate of 0.1 (100/1,000), or 10 percent. The  
31 tax rate varies for each property based on the local taxing districts in which it is  
32 located. Figure 1 provides an example of how property taxes are calculated.

33

34

35

### Figure 1. Property Tax Calculation

*Example: Property valued at \$300,000 and taxed at 100 mills*

**Taxable value** = Property value x Assessment rate

Residential	\$300,000	x	7.15%	= \$21,450 taxable value
Nonresidential	\$300,000	x	29%	= \$87,000 taxable value

**Property taxes** = Taxable value x Tax rate (Mills/1000)

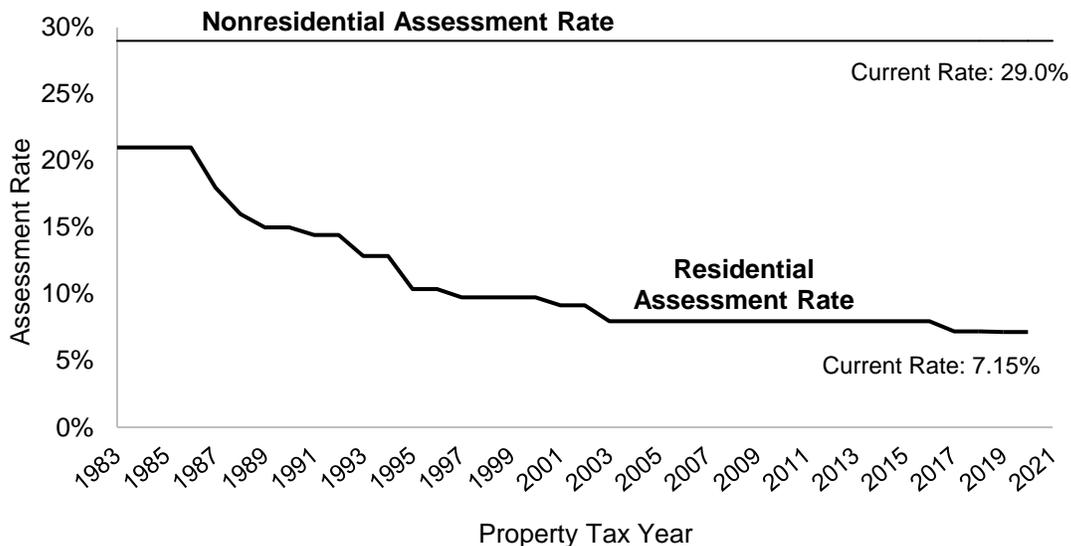
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## 1 How has the residential assessment rate changed over time?

2 In most years, residential property values have grown faster than nonresidential  
3 values, causing the residential assessment rate to be lowered so that residential  
4 properties make up about 45 percent of statewide taxable value. As shown in  
5 Figure 2, the residential assessment rate has been reduced from 21 percent when  
6 these provisions were adopted in 1982 to a current rate of 7.15 percent. The  
7 downward trend of the residential assessment rate is expected to continue in future  
8 years.

9 **Figure 2. History of Assessment Rates**



10 When nonresidential property values grow faster than residential property values, the  
11 residential assessment rate must increase to maintain the constant ratio; however,  
12 other constitutional provisions require that voters approve such an increase. As a  
13 result, the state legislature may only decrease or hold flat the residential assessment  
14 rate, as any increase requires voter approval. Since 1999, there have been  
15 six instances when the residential assessment rate would have increased, but it  
16 instead stayed flat.

## 17 How does Amendment B affect residential property taxpayers?

18 Amendment B is expected to result in a higher residential assessment rate, and  
19 thus higher property taxes for residential taxpayers, than there would be otherwise.  
20 Under Amendment B, the residential assessment rate will remain at the current  
21 7.15 percent for residential property. Without the measure, the residential  
22 assessment rate is projected to decrease in future years due to the relative growth of  
23 residential property compared to nonresidential property.

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25 Under Amendment B, the assessment rate will remain in state law at 29 percent for  
26 nonresidential property. Amendment B will have no impact on the amount of taxes  
27 paid by nonresidential property owners.

28 In some parts of the state, voters have approved tax rate (mill levy) increases to  
29 offset declines in the residential assessment rate. These tax rate increases apply to  
30 both residential and nonresidential taxpayers. In these areas, Amendment B may  
31 result in lower property taxes for businesses, farmers, and other nonresidential

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1 property owners, as higher mill levies would have been triggered by decreases in the  
2 residential assessment rate under current constitutional provisions.

## 3 **How does Amendment B impact local government revenue?**

4 Under Amendment B, higher property taxes will result in more revenue to local  
5 governments over time. Under the current system, the decline in the residential  
6 assessment rate decreases property tax revenue to local governments. This  
7 revenue decrease varies across the state, with the largest decreases occurring in  
8 areas without much nonresidential property or with only slow growth in home prices.  
9 These areas are generally small and rural; however, metropolitan areas with slow  
10 growth in home values are also impacted. Amendment B prevents further decreases  
11 in the residential assessment rate, resulting in increased property tax revenue to  
12 local governments.

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14 Schools are funded through a combination of state and local revenue, with the state  
15 making up the difference between an amount of school district funding identified  
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29 value of residential properties in rural areas, meaning that local services such as  
30 fire protection, sanitation, and library services, may be reduced or eliminated  
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38 burden, but represent only 20 percent of total property value. Conversely,

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1 residential property owners only pay 45 percent of the tax burden and make up  
2 80 percent of property value in the state.

3 3) Amendment B prevents a school funding shortage from becoming a state budget  
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15 when many are already struggling to make ends meet.

16 2) The property tax system is working as it was intended. It keeps residential  
17 property taxes low, and prevents special interests from obtaining tax breaks at  
18 the expense of homeowners. Amendment B removes an important protection for  
19 homeowners from the Constitution. Without these protections, homeowners may  
20 end up paying an increasing share of property taxes.

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24 allow voters in each local jurisdiction to decide for themselves how to best fund  
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## 26 **Estimate of Fiscal Impact for Amendment B**

27 **Local revenue and spending.** For many local governments, including counties,  
28 cities, school districts, and special districts, Amendment B will result in increased  
29 property tax revenue. The amount of any increase will depend on what the  
30 residential assessment rate would have been in the future without the measure, as  
31 well as whether voters have already approved local tax increases to counteract  
32 future potential decreases in the residential assessment rate.

33 **State spending.** To the extent that Amendment B increases property tax revenue to  
34 school districts, additional funding will be available for the local share of the state's  
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## Last Draft as Mailed to Interested Parties

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2     higher property taxes for many residential property owners compared to what they  
3     would owe if residential assessment rates were lowered in the future. The impact on  
4     property owners from holding the residential assessment rate constant in the future  
5     will vary based on several factors, including what future decreases in the residential  
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7     the property, and the tax rates of the local taxing districts. The measure does not  
8     impact the assessment rate for most nonresidential taxpayers.

# Last Draft Comments from Interested Parties

## **Amendment B Modify Property Taxes**

### **Mike Fields, representing himself:**

I'm sure you don't always get positive feedback, so I just wanted to say that I think this draft is really good. Thanks!

### **Linda Gorman, representing the Independence Institute:**

Thank you for the opportunity to comment on Draft 2. My comments proceed through the document sequentially.

#### **Page 1, Line 1: "...repeals certain provisions related to property taxes from the Colorado Constitution..."**

Is "from" correct? Should it instead be "...repeals certain provisions related to property taxes in the Colorado Constitution?"

#### **Page 1, Line 6-13: "...Under the constitution, the statewide property tax base must maintain a proportional relationship between residential and nonresidential property..."**

Tax base is a technical term that is not well understood by the general population. In my experience, it is important to explain assessed value. For whatever reason, people often find it confusing that tax authorities only tax a fraction of their property's value. Suggest something like:

...the portions of the constitution that Amendment B would repeal determine how much of the total value of Colorado's residential and non-residential properties is subject to property tax. Property taxes are only applied to a fraction of a property's value. That fraction is called the assessment rate, and the dollar amount of a property's value subject to tax is the property's assessed value.

In 1982, voters amended the Colorado Constitution to include what is commonly referred to as the Gallagher Amendment. It specified that the total assessed value of all Colorado property should be divided between residential and non-residential property in a roughly 45 to 55 percent ratio. It set the assessment rate for non-residential property at 29 percent of its total market value. It then required the state to set non-residential property assessment rates so that the total assessed value of residential property is 45 percent of the total assessed value of all property, residential and non-residential. The Gallagher Amendment does not set property taxes or determine property tax revenues, it only determines how much of a property's market value may be taxed and requires that the assessment rate be uniform throughout the state.

#### **Page 1, Line 17-18: "...Amendment B results in higher property tax revenue to local government..."**

This is an opinion that is not necessarily true, especially over longer time periods. The following three items list common cases in which it would not be true:

1. There is strong evidence that housing markets capitalize the rate of property taxes. Over time, increasing property taxes lowers the price buyers will pay for a home. Rates of

# Last Draft Comments from Interested Parties

**Linda Gorman, representing the Independence Institute (cont.):**

appreciation may decrease, and if property taxes are high enough, market values will fall and assessed values will fall with them. The same is true of markets for non-residential property. For representative academic references see Livy, “ Intra-school district capitalization of property tax rates,” Journal of Housing Economics, 2018; Oliviero, “Property tax and property values: Evidence from the 2012 Italian tax reform,” European Economic Review, 2018.

2. If people in an area do not want to pay the higher property taxes that would automatically flow from an assessment rate increase, the local government could lower its property tax rates by enough to keep property tax revenue constant.
3. If the local government pursues actions that make living in its jurisdiction less desirable and people choose to relocate elsewhere, its property tax revenues may fall along with the value of the property in its jurisdiction even if Amendment B is repealed.

**Page 3, Lines 5-8: “...the residential assessment rate has been reduced from 21 percent when these provisions were adopted in 1982 to a current rate of 7.15 percent.”**

Voters cannot reasonably decide whether to repeal a constitutional provision unless they know something about the harms it was intended to mitigate. Voters should also be given some indication of the rates that prevailed before Gallagher passed so that they know what they are potentially exposing themselves to if they decide to repeal it.

Lines 5-8 of the Draft imply that residential assessment rates were 21 percent when Gallagher was passed in 1982. Other sources suggest this is not correct. According to Table 7 on page 31 of the Forty-Ninth Annual Report by the Division of Property Taxation, reproduced at right, residential assessment rates were 30 percent in 1982. In the Annual Report text preceding Table 7, the Division notes that from 1958 to 1982, “...the percentage of total assessed value consisting of residential property increased from 29 to 44 percent...primarily because market value increases to residential property greatly outpaced market value increases to non-residential property.”

Gallagher imposed the 21 percent residential assessment rate that took effect in 1983. It remained in effect until the state determined the required assessment value ratios in 1985. The wording in the Draft should be changed to reflect that.

TABLE 7

RESIDENTIAL ASSESSMENT RATE ENACTED INTO LAW	
Tax Year(s)	Rate
Prior to 1983	30%
1983-1986	21%
1987	18%
1988	16%
1989 - 1990	15%
1991 - 1992	14.34%
1993 - 1994	12.86%
1995 - 1996	10.36%
1997 - 2000	9.74%
2001 - 2002	9.15%
2003 - 2016	7.96%
2017 - 2018	7.20%
2019 - 2020	7.15%

**Page 3, Figure 2**

## Last Draft Comments from Interested Parties

### Linda Gorman, representing the Independence Institute (cont.):

Figure 2 does not show assessment rates as they existed before Gallagher. It only shows the history of assessment rates after Gallagher was passed. It is titled a “History of Assessment Rates.”

Consider expanding its range to show rates as they were before Gallagher or by adding a table like the one above. At the very least, the graph it should be retitled to show that it only shows assessment rates after Gallagher was passed.

**Page 3, Lines 11-12: “...residential assessment rate must increase to maintain the constant ratio: however, other constitutional provisions require that voters approve such an increase.”**

Is this true? Has it ever been litigated? Can you cite a court ruling requiring it? Things have changed a lot since the 1993 Attorney General’s ruling saying that a popular vote would be required to raise assessment rates.

In 2009 in Mesa County Board of County Commissioners v. State of Colorado, the Colorado Supreme Court opinion apparently held that state action is not a tax policy change because the state “cannot cause a ‘tax policy change’ at the local district level? And although TABOR discusses voting to approve tax increases, a narrow view of the matter might hold that changing tax assessment rates is not the same as changing taxes.

Given this, and other recent jurisprudence on TABOR, it is certainly possible that if the state legislature raised assessment rates, pointed out that assessment rates are not taxes, and did not hold a popular vote, the courts would agree. In that case TABOR would not apply and no popular vote would be required. See Robert G. Natelson, The Colorado Taxpayer’s Bill of Rights, Independence Institute, IP-3-2016, September 2016, pp. 42ff for more discussion of the narrow view the Colorado courts have taken of TABOR’s applicability and a discussion of the effects of recent court decisions.

If Gallagher is repealed, courts may well rule that TABOR does not require a vote to increase assessment rates. The Draft should make Colorado voters aware of the genuine uncertainty surrounding this issue.

**Page 3, Lines 14-16: “...Since 1999, there have been six instances when the residential assessment rate would have increased but it instead stayed flat.”**

The assessment rate does not go up or down on its own. Suggest adding some agency here, changing it to “...there have been six instances [give the dates in a table] when the constitution would have allowed an increase in the residential assessment, but the legislature decided not to increase it.”

Which raises the question of whether the legislature illegally shifted more of the property tax burden to non-residential properties, but that isn’t a question that needs to be addressed in the Blue Book.

## Last Draft Comments from Interested Parties

Linda Gorman, representing the Independence Institute (cont.):

**Page 3, Lines 22-23: "...decrease in future years due to the relative growth of residential property compared to nonresidential property."**

Suggest changing this to "...the relative growth of the total assessed value of residential property compared to the total assessed value of nonresidential property." Property does not usually "grow."

**Page 3, Lines 25-26: "...Under Amendment B, the assessment rate will remain in state law at 29 percent for non-residential property."**

Voters should be informed that the assessment rate "will remain in state law at 29 percent for non-residential property unless the legislature changes it" or words to that effect. This emphasizes the difference between statutory and constitutional protection, a difference which the draft does not sufficiently emphasize even though it is at the heart of the question of taking property tax assessment rates out of the state constitution and allowing the legislature to change them at will.

**Page 3, Starting at Lines 30-31: "...tax rate increases...Amendment B may result in lower property taxes for businesses, farmers, and other nonresidential property owners as higher mill levies would have been triggered by decreases in the residential assessment rate under current constitutional provisions."**

The reasoning here is not clear. It says that the state assessment rate will remain constant at 29 percent. It says that "in some parts of the state" mill levy increases have occurred to offset the decline in the residential assessment rate and that these increases apply to residential and non-residential property. In other words, local taxing districts increased property taxes to compensate for declines in the state residential property assessment rate.

But, after saying tax rates went up and the state assessment rate for non-residential property remains constant, we are then told that "Amendment B may result in lower property taxes" because higher mill levies were triggered by decreases in the residential assessment rate.

Do the tax laws that were passed have some sort of automatic tie to state residential assessment rates? If so, this needs to be stated. Otherwise, where is the evidence that governments will voluntarily reduce property revenues from business if that is indeed what this section envisions?

**Page 4, Lines 3-12: Eliminate or rewrite whole section.**

This section confuses property taxes, property tax revenues, and state assessment rates. As previously discussed, property tax rate increases are capitalized in property values.

It is simply false to assert that "the decline in the residential assessment rate decreases property tax to local governments." As the Forty-Ninth Annual Report by the Division of Property Taxation makes clear on page 56, property tax revenues to counties and municipalities steadily increased from \$1.8 billion in 1985 to \$11 billion in 2019 despite dramatic decreases in the state assessment rate. The only decline in property tax revenues to local governments occurred in 2011, and that was probably due to the recession, not to declines in the state residential assessed value rate.

**Page 4, Lines 13-19: "Amendment B increases local property tax collections for school districts and reduces the amount the state must pay to make up the differences."**

# Last Draft Comments from Interested Parties

**Linda Gorman, representing the Independence Institute (cont.):**

Amendment B changes state assessed value rate. Property tax collections may or may not change depending on other economic circumstances. According to the Forty-Ninth Annual Report (page 6), 51.2 percent of property taxes go to schools. Local authorities have plenty of things other than schools on which to spend increased revenue, and as Amendment B does not include language directing any increased revenues to schools, it should not be presented to voters as a school funding measure.

## **Page 4, Lines 20-24: Whole Section**

In view of the possibility that TABOR does not apply to state assessment rates and voters may be stripped of any property tax protections. this section should be rewritten to reflect the possibility that a vote of the people may not be required to increase assessment rates.

## **Begin Arguments for Amendment B**

### **Page 4, Lines 29-27: "...constitutional provisions disproportionately impact rural and poor..."**

Arguments for and against the proposal should be required to avoid factual misrepresentations. The state assessment rates are the same for every piece of property in the state. It is therefore false to say that there is some sort of "disproportionate impact." Furthermore, if assessed values are lower, tax revenues may be raised in a rural or poor district simply by increasing the property tax rate to support the services mentioned. The lack of services is therefore not directly related to state property assessment rates. It may instead be due to the fact that people in rural or poor districts would rather have fewer services and lower property taxes than more services and higher property taxes.

### **Page 4, Lines 34: "Amendment B makes property taxes more equitable."**

As the Draft has repeatedly stated, Amendment B affects state property assessment rates, not property taxes. Therefore, it does not "make property taxes more equitable." Furthermore, the Draft assures voters that the repeal will leave the current assessment rates unchanged because they are still in statute and that they cannot change without a vote of the people. If nothing changes, how is it factually true that keeping the same rates makes property taxes more equitable?

### **Page 5, Lines 3ff: "...school funding shortage from becoming a state budget crisis."**

Once again, a decline in the state assessment rate does not mean that "the local contribution for school funding decreases." Assessments are not taxes.

With the exception of 2011, there has been no decline in property tax revenues as residential assessment rates have declined and overall school spending has steadily increased. It is therefore factually incorrect to assert that the Gallagher Amendment has created a school funding shortage.

It is also factually incorrect to assert that property taxes will be increased by the Amendment B repeal. The current Draft flatly states that repealing Amendment B will not change state assessment rates because they are set by statute. It also says that they cannot be increased without a vote of the people. Therefore, repealing Amendment B cannot increase property tax

# Last Draft Comments from Interested Parties

**Linda Gorman, representing the Independence Institute (cont.):**

revenues because it changes neither assessment rates nor property taxes. Finally, the amount of state funding is determined by the Public School Finance Act of 1994. Its funding formula is determined by many district characteristics unrelated to property tax revenues or state assessment rates.

## **Begin Arguments Against Amendment B**

### **Suggestions for revisions to the section titled “Arguments for Amendment B:”**

1. Property taxes are particularly dangerous taxes because they are unrelated to the income or savings one must have to pay them. Amendment B would remove important constitutional protections that help equalize the proportion of the property tax burden placed on businesses and homeowners. In the 1970s, inflation made Colorado housing prices rise faster than incomes. The Gallagher Amendment was passed to limit the homelessness that can occur when property values rise faster than incomes, and property tax payments become unaffordable. Amendment B would remove constitutional protections limiting the property tax burden that can be shifted to homeowners. If protections are removed and taxing districts can adjust assessment rates at will, governments can take more money from property owners simply by keeping property taxes the same and quietly raising assessment rates, the fraction of property value that is subject to property taxes. People with fixed incomes or limited earning power have fewer reserves, are less likely to be able to cope with the increases in rents or mortgages caused by larger property tax payments, and are more likely to be forced to sell or abandon their property if property tax assessments rise. Property owners need to keep the property tax assessment protections currently in the Colorado Constitution.
2. The property tax system is working as intended. Even though residential assessment rates have fallen steadily, total Colorado property tax revenues have risen from \$1.8 billion in 1985 to \$11 billion in 2019. Requiring the same assessment rates statewide helps keep property taxes fair. It prevents state officials from passing laws to discriminate against different types of businesses or residential properties by adjusting, or failing to adjust, assessment rates in exchange for money or favors. Controlling property tax assessment rates likely contributes to higher property values. When property taxes are lower, buyers will pay more for a property. When assessments rise and property taxes increase, the cost of ownership increases, and the amount buyers will pay for a property is reduced.
3. Though state property tax assessment rates are part of what determines property tax revenue, they are not property taxes. Had those in favor of Amendment B believed that it needed to be repealed because the 29 percent non-residential assessment rate was too high and business pays too much in property tax, they could have proposed a measure that kept the Gallagher protections with a lower the non-residential assessment rate. Instead, they kept the same assessment rates and repealed the protections. Those who feel that non-residential property taxes are too high because of the 29 percent non-residential assessment rate can fix that problem by petitioning their local governments and taxing districts to lower property taxes on non-residential properties. Those who feel that residential property taxes are too low because the 7.15 residential assessment rate is too low can fix that problem by encouraging their local districts to raise property taxes.

## Last Draft Comments from Interested Parties

### **Ms. Gorman also submitted the following comments:**

Under Amendment B, the state legislature may decrease the assessment rates, but cannot increase them without voter approval.”

I am trying to figure out the authority behind the statement that an increase would require voter approval.

My inexpert term search suggests that the only place that “ratio for valuation of assessment” appears in the Colorado Constitution are in the Gallagher Amendment, which Amendment B would repeal.

Section 20, TABOR, requires elections for “valuation for assessment ratio increase for a property class.” This does not seem to refer to assessment rates, only to determining the valuations used to determine the assessment ratio. TABOR also says elections must be held for “a tax policy change directly causing a net tax revenue gain to any district,” but would the Colorado Courts interpret changes in the fraction of market value subject to tax as a policy change?

In any case, many of the local districts are “de-Bruced.” They would seem to be free to set assessment values without a vote unless a state statute specifies statewide assessment values. In that case, it would be true that the state legislature isn’t raising assessment rates because it can rely on the school districts, cities, and counties to do it for it.

### **JoAnn Groff, representing the Division of Property Taxation:**

Hello!

I have only a couple of comments on this.

Page 2, Ln 27: After percent for insert "MOST" before nonresidential properties

This should be corrected as it is erroneous as written. The assessment rate for nonresidential properties is presented throughout the document, but I think this first instance is enough clarification.

Page 3, Ln 22: after growth insert "IN VALUE" of residential

The number of residential properties has increased but what drives the RAR is the VALUE increase of residential properties.

Page 4, Ln 8: "areas without much nonresidential property or..."

I think it is more understandable if written as: "areas THAT ARE HEAVILY DEPENDENT ON A RESIDENTIAL TAX BASE or ..."

Thanks for the opportunity!

JoAnn Groff, Property Tax Administrator  
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1313 Sherman St., Suite 419, Denver, CO 80203  
JoAnn.Groff@state.co.us | [www.colorado.gov/dola/dpt](http://www.colorado.gov/dola/dpt)

# Last Draft Comments from Interested Parties

## **Benjamin Larson, representing Colorado Coming Together:**

We represent Colorado Coming Together (“CCT”), an Issue Committee supporting Amendment B repealing the Gallagher Amendment. This letter encloses CCT’s proposed revisions to the Ballot Analysis Second Draft for Amendment B (“Second Draft”) and provides an explanation for CCT’s position in proposing these revisions, which we hope Legislative Council Staff will find helpful. Please note, the enclosed redline was created from a converted PDF of the Second Draft, which created some formatting issues. Please let us know if any of the proposed redlines are unclear.

CCT is also happy to address any other questions or concerns with this letter or the enclosed comments, which CCT has taken great care in providing because repealing the Gallagher Amendment is a critical issue for the people of Colorado. Because the Gallagher Amendment is, itself, such a complicated constitutional provision with layers of complexity and wide-ranging implications, it is essential that the Ballot Analysis describing its repeal be clear, simple, and, most importantly, accurate as to the impact of repeal and the consequences of failing to repeal.

As a threshold matter, the Ballot Analysis’s early drafts are a good start, and CCT sincerely appreciates the work that Legislative Council Staff has put into preparing the drafts. At the same time, CCT believes there are important changes to make to the Second Draft to ensure the Ballot

Analysis uses objective and accurate language (e.g., not characterizing a Gallagher repeal as a tax increase) and presents a complete view of the impacts of repealing and not repealing Gallagher.

### **Summary of What Amendment B Does**

First, the Gallagher Amendment should be described for what it is—a constitutional provision that requires residential property owners, on the one hand, and nonresidential property owners (including commercial, industrial and agricultural property owners), on the other hand, to indefinitely continue paying the same proportionate share of total statewide property taxes as when the amendment was first adopted in 1982. In fixing that proportionate share, approximately 55% of total state property taxes collected must come from nonresidential property owners and 45% from residential property owners. The central feature of Gallagher is maintaining that proportionate share by fixing the nonresidential assessment rate at 29%, while allowing the legislature to adjust the residential assessment downward only to its present rate of 7.15% to maintain the 45% share.

At times, the Second Draft drifts from accurately characterizing Gallagher by, for example, describing the 45%/55% ratio between residential and nonresidential of statewide property taxes as being “similar shares” (p. 1, line 3) when a 10% difference is not similar. Additionally, in lines 9-13 on page 2, the analysis juxtaposes the statewide proportionate share of residential property taxes (45%) against the fixed nonresidential tax assessment rate (29%)—this apples-to-oranges comparison could be confusing to voters and lead them to believe the residential property tax burden is higher than the nonresidential property tax burden when the opposite is true. The enclosed redline clarifies this portion of the Second Draft.

In addition, the summary of what Amendment B does should describe it as a measure that would lock-in property tax assessment rates at their current levels, prevent future assessment rate reductions on residential property that would otherwise be needed to ensure that nonresidential commercial, industrial and agricultural properties pay their 55% share of total taxes, and property

# Last Draft Comments from Interested Parties

## **Benjamin Larson, representing Colorado Coming Together (cont.):**

tax rates of all types could only be increased through a vote of the people. It is important to make clear that repeal of Gallagher would do all of these things at the same time because describing one element of repeal, particularly in the summary, will paint an incomplete picture for voters.

For instance, the summary section simply ends by saying that “Amendment B results in higher property tax revenue for local governments.” At a high level, that is not correct, repealing Gallagher prevents future decreases in overall tax revenues for local governments. We believe this description is critically different and more accurate for voters.

Additionally, the summary’s limited description of the impact of a Gallagher repeal leaves out critical aspects that should be included, such as:

- Repeal of Gallagher would prevent a reduction in funding to rural police and fire departments, hospitals, schools, particularly for those disproportionately impacted communities with smaller business and commercial tax bases.
- Repeal of Gallagher would stop certain automatics mill levy increases at the local level that have been put in place to counteract the impacts of Gallagher.
- Repeal of Gallagher will stop the shift in property tax burden to nonresidential property owners, including commercial, industrial, and agricultural landowners. Under Gallagher, nonresidential property owners will indefinitely pay at least 4 times the effective property tax rate of residential owners, with that ratio expected to climb to 6 times the effective tax rate if growth in residential property values on the front range continue to outpace the growth in nonresidential property values.

### **Explaining How Property Taxes Are Calculated**

This section addresses the difficult task of trying to simply explain property tax calculations to the average voter. While this section generally does that, one way to simplify the interplay between the assessment rate and the tax rate is to speak in terms of an effective property tax rate (assessment rate x mill levy) because the mill levy is constant as between residential and nonresidential property. Voters will easily be able to understand a side-by-side comparison of residential vs. nonresidential property tax rates when discussed in terms of an effective tax rate. For instance, based on the 29% assessment rate for nonresidential and the current 7.15% assessment rate for residential, nonresidential property has an effective tax rate that is 4 times higher than residential property.

### **Explaining the Higher Effective Tax Rate on Nonresidential Property**

A concept that is missing from the section, “How has the residential assessment changed over time?”, is the increased discrepancy between the effective tax rate on residential and nonresidential property as a result of Gallagher and the TABOR ratchet-down effect, which has led the residential assessment rate to only decrease in proportion to the nonresidential assessment rate. Because property tax rates, e.g., mill levies, do not distinguish between residential and nonresidential property taxes, the effect of Gallagher (combined with TABOR) has been a one-way skew in the effective tax rate (the assessment rate x tax rate) such that

# Last Draft Comments from Interested Parties

## **Benjamin Larson, representing Colorado Coming Together (cont.):**

nonresidential property is taxed at an effective tax rate that is more than 4:1 that of residential property, and that this ratio can only increase and is expected to go to 6:1. Another graph, in addition to Figure 2, tracking the ratio of the nonresidential versus residential assessment rate would be extremely helpful in assisting voters to understand this concept.

### **Explaining the Effect on Residential Property Taxes**

This section of the Second Draft inaccurately describes the effect of a Gallagher Repeal as a tax increase for residential property owners (p. 3, lines 18-20). Rather, the effect of repealing Gallagher is to fix the residential assessment rate at 7.15%. Holding property tax rates the same is not a tax increase. Generally speculating that residential property values will continue to increase for all residential property owners such that they will pay “higher property taxes” is an oversimplification and unnecessarily negative construction of a Gallagher Repeal. The analysis should avoid loaded language about tax increases, particularly where such loaded language is not accurate.

The Second Draft should make clear in this section—and anywhere else that it speaks in terms of potentially higher tax revenues—that tax rates would remain the same, that any future increase in the residential assessment rate would require prior voter approval under TABOR, and that repealing Gallagher would do nothing to change that.

### **Explaining the Effect on Nonresidential Property Taxes**

The statement in this section that “Amendment B will have no impact on the amount of taxes paid by nonresidential property owners,” is an inaccurate generalization and oversimplification of the true impact of a Gallagher repeal on nonresidential property owners. The inaccurate nature of this absolute statement is demonstrated by the next part of the analysis—for all those local jurisdictions that have de-Gallagherized, nonresidential property owners will not be subject to increasing mill levies that are required to offset Gallagher-triggered automatic tax decreases for residential property owners that are required to hold overall property tax revenues level.

Perhaps more problematic, this portion of the analysis only addresses half of the tax equation. Taxes are used to pay for government services, such as public infrastructure and public safety, which nonresidential property tax owners, including small business owners and farmers, receive in exchange for property taxes paid. Under the current Gallagher scheme, many of these nonresidential property owners in local jurisdictions that have not de-Gallagherized have been subject to—and will continue to be subject to—significantly reduced government services that are critical to their businesses because they are required to subsidize tax decreases for residential property owners that reduce overall property tax revenues that fund these services.

In sum, this section should explain that the nonresidential assessment rate will remain fixed such that nonresidential property owners will pay the same (in non de-Gallagherized jurisdiction) or less (in de-Gallagherized jurisdictions), but that where nonresidential property owners continue to pay the same, they will receive more government services for each tax dollar paid because they will not have to subsidize perpetual tax rate decreases for residential property owners.

# Last Draft Comments from Interested Parties

## **Benjamin Larson, representing Colorado Coming Together (cont.):**

### **Changes to the “For” Arguments**

CCT believes that the “For” arguments could be improved to more fully and persuasively explain the reasons why the Gallagher Amendment should be repealed. Those arguments are redlined in the enclosure.

Thank for considering our feedback and proposed redlines to the Second Draft. We are happy to discuss and answer any questions concerning our proposals.

Sincerely,

IRELAND STAPLETON PRYOR & PASCOE, PC  
Benjamin J. Larson  
William A. Hobbs

Mr. Larson also submitted comments that can be found in Attachment A.

## **Larson Silbaugh, representing himself:**

This is an excellent, easy to read 2nd draft. First, I appreciate the time and effort you made to incorporate my comments on the first draft. Below are my comments on the second draft. Hopefully the edits make sense, as I am limited to the technologies of email.

Page 1, line 3: remove the mechanism that adjusts the residential assessment rate so that the share of residential and nonresidential {strike: property make up similar shares of the total statewide} property tax base remains constant over time; and "Similar shares" makes it sound like it is 50/50.

Line 8: in the Yes paragraph, replace "for setting" with "that have lowered" because the mechanisms have only acted to lower the RAR. But for TABOR, they are bi-directional but I think you can say they lower the rate on the first page.

Page 2, line 22. ...actual value {strike: ,} . The actual value is {strike: as }determined by ... I think you can make it clearer that the actual value is determined by DPT or the assessor, not the portion of value that is taxable since assessment rates are set by state law/the constitution.

Page 2, line 27. Insert most between for and nonresidential because the rate is 87.5 percent (set in statute) for primary oil and gas property.

Page 3, line 4: properties continue to make ... I think "continue to" make up about 45% of the tax base helps voters understand that there is nothing sacred about the shares, it is just what they were when the provisions took effect back in the early 80s.

Page 3, line 13: replace "hold flat" with "maintain"

Page 3, lines 28-31, page 4, lines 1-2. Replace the current paragraph with:

## Last Draft Comments from Interested Parties

### Larson Silbaugh, representing himself (cont.):

"Over time, nonresidential property will make up a smaller share of the statewide property tax base. This may result in lower property taxes on nonresidential property or higher revenues to local governments."

We don't know what is going to happen to any individual nonresidential property so I think you should use a broader generalization.

Page 4, lines 4 through 12. This is the paragraph I struggled with the most. The sentence "Under the current system, the decline in the residential assessment rate decreases property tax revenue to local governments" is confusing since property tax revenue is increasing. You are really describing slower growth rates, rather than falling statewide property tax revenue.

Of course individual districts may have a reduction in property tax revenue year-over-year because home price appreciation did not exceed the reduction in the RAR or because of declining values in nonresidential property but that is not the case statewide. The paragraph is really about lower growth rates rather than levels.

While not explicit, it seems to take the position that a fall in the RAR is a tax cut. This is the local government position (and if true we could argue that it should revert back to the original RAR of 21% rather than keep it at 7.15%). This is also how the NFIB can claim that the Gallagher Amendment is the largest tax expenditure in the state, rather than an inherit part of the property tax system.

I would suggest replacing the first two and a half sentences with something like:

"Amendment B results in higher property taxes to local governments from residential property owners. The current system depresses growth in property taxes because of decreases in the residential assessment rate. These impacts vary across the state, with the most severe impacts occurring in areas without much nonresidential property or with only slow growth in home prices."

Page 4, lines 21 through 24: This is perfect! Well done!

Page 4, line 34. Delete the second sentence in the argument 2. If you need to punch up Argument 2, add "Amendment B arrests the erosion of the residential property tax base." As the last sentence. The second sentence is confusing since you have spent the prior 4 pages telling voters that the proportion of property taxes has been constant at 45/55 and the system has been working as intended. Sentences 3 and 4 tell voters that the share of nonresidential property taxes have increased relative to their market or actual values . The second sentence says it is relative to residential property owners which is only true because residential property taxes have also been reduced relative to market or actual values but the sentence just glazes over that.

Page 5, line 27. This is an excellent paragraph.

Please feel free to reach out if you have any questions or would like further clarification on my suggested edits.

A concerned citizen,  
Larson Silbaugh,

# Last Draft Comments from Interested Parties

**Clay Vigoda, Dennis Gallagher, Dickey Lee Hullinghorst, Bob Hullinghorst, Ron Stewart, representing themselves:**

We would like to thank the CLC staff for the changes between the first and second drafts of the Amendment Blue Book language. While we feel this second draft of language is a significant improvement over the first draft, we still believe there are areas where the language can be changed to better explain the amendment. We are submitting the following additional changes in hopes that the Blue Book language can be improved and the electorate's understanding of this issue and its impacts can be improved:

**GENERAL STATEMENT FOR INCREASING VOTER UNDERSTANDING:** The Blue Book needs to use actual projected number when it has solid figures that have been publicly provided by the State. Specifically, the Tax Administrator, when reporting to the State Legislature, used a projected figure of a 5.88% likely tax assessment rate if Gallagher stays in effect for the coming tax period. While we acknowledge this is only an estimate, it provides a good indicator, from an unimpeachable source, of where the tax assessment rate is going to generally move to. In the interest of clarity and fairness, the Blue Book should make use of the projected rate to compare what the possible/projected/likely impact of this Amendment will be. **Specifically, VISUAL explanations, including the projected percentage decreases vs. the set tax rate AND how that translates into actual monetary impact to the average Colorado family is crucial.** Failing to use all the information that is available to clarify this very complicated issue does a disservice to the voters of Colorado.

**PAGE 1**

**UNDER THE "YES" SECTION**

**INSERT AFTER "the Colorado Constitution":** "known as the Gallagher Amendment," related to....

**PAGE 1**

**UNDER THE "YES" SECTION**

**ADD AT THE END OF THE LAST SENTENCE "WILL NOT BE REQUIRED BY LAW":** "A constant residential assessment ratio will increase taxes paid by homeowners and other residential property owners over time."

**OR**

**PAGE 1**

**UNDER THE "YES" SECTION**

**ADD AT THE END OF THE LAST SENTENCE "WILL NOT BE REQUIRED BY LAW":** "This will result in residential homeowners paying more in taxes than they would if the Gallagher Amendment remained in effect."

**PAGE 1**

**UNDER THE "NO" SECTION:**

**ADD AT THE END OF THE SENTENCE "RESIDENTIAL ASSESSMENT RATE OVER TIME:** "and higher taxes paid by homeowners and residential property owners."

**PAGE 2**

# Last Draft Comments from Interested Parties

Clay Vigoda, Dennis Gallagher, Dickey Lee Hullinghorst, Bob Hullinghorst, Ron Stewart, representing themselves (cont.):

**LINE 3**

**ADD AFTER “REPEALS CERTAIN PROVISIONS”:** “known as the Gallagher Amendment, related to...” \_

**PAGE 2**

**LINE 16 – 18**

**DELETE SENTENCE:** This sentence is not necessarily true. There are many factors in how much property revenue a local government can raise.

**PAGE 2**

**LINE 20:**

**INSERT AFTER “PAID BY RESIDENTIAL HOMEOWNERS:** the following: " and indirectly by renters,"

**PAGE 2**

**LINE 27**

**ADD THE FOLLOWING SENTENCE:** “The residential assessment rate may be reduced to a New Residential % of a projected 5.88% in the next assessment cycle, according to a 2020 report to the Colorado legislature.

**PAGE 2**

**LINE 32 - 33**

**CHANGE FIGURE 1:** According to Zillow.com, the average Colorado home value is now \$400,000. Any examples of how property taxes are calculated should use that figure.

**INSERT THIS CORRECTED TABLE**

Figure 1. Property Tax Calculation

Example: Property valued at \$400,000 and taxed at 100 mills.

Taxable value = Property value X assessment rate

Residential (Assumes Amendment B Passes)

\$400,000 X 7.15% = \$28,600

Residential (Assumes Amendment B Fails)

\$400,000 X 5.88% = \$23,520

Property taxes = Taxable Value X tax rate in Mills/1000

Residential (Assumes Amendment B Passes)

\$28,600 X 0.100 = \$2,860 owed

Residential (Assumes Amendment B Fails)

\$23,520 X 0.100 = \$2,352 owed

Saved under Gallagher by Residential Property first tax cycle = \$ 508 yearly

## Last Draft Comments from Interested Parties

**Clay Vigoda, Dennis Gallagher, Dickey Lee Hullinghorst, Bob Hullinghorst, Ron Stewart, representing themselves (cont.):**

### **PAGE 3**

#### **FIGURE 2:**

**MODIFY FIGURE 2:** While titled correctly, the Figure 2 chart gives the impression that the amount of taxes that are paid are ONLY determined by the assessment rates shown. This is deceptive and only tells half the story. Equally important would be showing how assessed value of residential and nonresidential has tracked over the same period, as it is the ASSESSED VALUE along with the ASSESSMENT RATE that tells the full story of taxes paid.

### **PAGE 3**

#### **LINES 17 – 23:**

**MODIFY ENTIRE PARAGRAPH:** Once again this paragraph is just a jumble of words that will be difficult for the average voter to follow unless actual numbers are put in. Saying that taxes would be higher doesn't give a true assessment of the full impact that Amendment B would have. Taxpayers should have actual numbers, as available, to make the decision of just how much higher taxes they are ok voting for.

### **PAGE 5**

#### **LINE 3:**

**DELETE ENTIRE FIRST SENTENCE:** The first section of Section 3) has no basis in fact and is complete supposition that Amendment B generate enough funds to prevent a "funding shortage from becoming a state budget crisis". What exactly constitutes "a state budget crisis" is undefined and this is not only unnecessary hyperbole, but factually inaccurate.

### **PAGE 5**

#### **LINE 15:**

**INSERT THE FOLLOWING AFTER "STRUGGLING TO MAKE ENDS MEET.":** "These higher property taxes will have a negative impact on affordable housing both in the rental market and in the ability of hard working Coloradans to afford a home."

### **PAGE 5**

#### **LINE 21:**

**STRIKE THE LANGUAGE OF 3) AND SUBSTITUE:** "At this time of economic upheaval, caused by the COVID-19 pandemic, it is not appropriate to ask homeowners and renters to pay more in taxes so that businesses can pay less. Rather it is a time to consider other better alternatives to this proposed amendment of the Constitution, alternatives which would thoughtfully modify Constitutional property tax provisions rather than eliminating the protection from rapid tax increases that is currently provided for residential property."

### **PAGE 5**

#### **LINE 25:**

**ADD 4:** The changes that Amendment B would create are unfair because of the disadvantage homeowners have in determining "fair value", compared to the substantial advantages commercial interests have in reducing the value of their property at the County Assessor and the

## Last Draft Comments from Interested Parties

**Clay Vigoda, Dennis Gallagher, Dickey Lee Hullinghorst, Bob Hullinghorst, Ron Stewart, representing themselves (cont.):**

State Board of Assessment Appeals levels. Home are valued on the basis of locally comparable sales, which are frequent, while nonresidential property is often grossly undervalued on a variety of factors including: the basis of reported net income; the basis of depreciated property values; the basis of very infrequent comparable sales; and because commercial interests are represented by highly persuasive experts testifying before governmental reviewers or panels. David has little chance before these Goliaths.

# Amendment B: Modify Property Taxes

1 **Amendment B proposes amending the Colorado Constitution to:**

2  remove the mechanism that requires the legislature to adjust the residential assessment rate so that

3 residential and nonresidential property make up fixed proportionate shares of the total

4 statewide property tax base over time; and

5  repeal the requirement that fixes the nonresidential assessment rate at  
6 29 percent.

7

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**YES**

A "yes" vote repeals sections of the Colorado Constitution related to property taxes, including the mechanisms for setting the residential assessment rate used to calculate property taxes. As a result, the residential assessment rate will remain constant and expected future decreases will not be required by law.

**NO**

A "no" vote leaves constitutional provisions related to property taxes in place, maintaining current mechanisms for setting the assessment rates used to calculate property taxes. This is expected to result in a decreasing residential assessment rate over time.

**Commented [1]:** In our converted PDF, this came through as an image. CCT proposes that, in the "Yes" summary, after, "As a result," the following be inserted: "... assessment rates on all property types will stay the same level, future required decreases in residential rates will not occur, and assessment rates on all property types can only be increased with a vote of the people."

## 2nd Draft

### 1 Summary and Analysis for Amendment B

#### 2 What does Amendment B do?

3 Amendment B repeals certain provisions related to property taxes from the Colorado  
4 Constitution. In Colorado, property taxes fund local governments, including schools,  
5 cities, counties, and special districts, such as local fire and police districts.

6 Under the constitution, the statewide property tax base must maintain a proportional  
7 relationship between residential property and nonresidential property such as farms,  
ranches, and other businesses. This ratio has been

8 about 45 percent residential and 55 percent nonresidential property since these  
9 constitutional provisions were adopted in 1982. To achieve this ratio, the residential  
10 assessment rate is adjusted by the state legislature in order to ensure that residential  
11 property makes up about 45 percent of the statewide property tax base, while the  
12 assessment rate for nonresidential property make up 55 percent of statewide property  
tax base through a residential assesment rate, fixed at 29 percent. These provisions  
13 are commonly referred to as the Gallagher Amendment.

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14 Amendment B removes these mechanisms from the constitution, leaving the  
15 residential and nonresidential assessment rates at their current levels in state  
16 statute. Currently, it is expected that the Gallagher Amendment would force the  
legislature to reduce the residential assessment rate in future

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17 years; by preventing this reduction, Amendment B prevents future decreases in  
18 property tax revenue to local governments.

Deleted: results in higher

#### 19 How are property taxes calculated?

20 Property taxes are paid by residential homeowners, and nonresidential property  
21 owners, including farmers, ranchers, oil and gas operators, and other businesses.  
22 Property taxes are paid on a portion of a property's actual value, as determined by  
23 the county assessor or state property tax administrator. The portion of the actual  
24 value on which taxes are paid is known as taxable value, or assessed value.

25 Taxable value is calculated by multiplying the actual value by an assessment rate.  
26 The assessment rate is currently 7.15 percent for residential properties, and is fixed  
27 at 29 percent for nonresidential properties.

28 Taxable value is then multiplied by the tax rate, called a mill levy, to determine the  
29 property taxes owed. One mill equals \$1 for each \$1,000 dollars of taxable value.  
30 For example, 100 mills is equal to a tax rate of 0.1 (100/1,000), or 10 percent. The  
31 tax rate varies for each property based on the local taxing districts in which it is  
32 located. Figure 1 provides an example of how property taxes are calculated. Because  
the mill levy is constant as between residential and nonresidential property, the difference in  
assessment rates between the two categories of property means that nonresidential property  
owners currently pay an effective tax rate that is more than four times higher than residential  
property owners.

33

#### 34 **Figure 1. Property Tax Calculation**

35 *Example: Property valued at \$300,000 and taxed at 100 mills*

**Taxable value** = Property value x Assessment rate

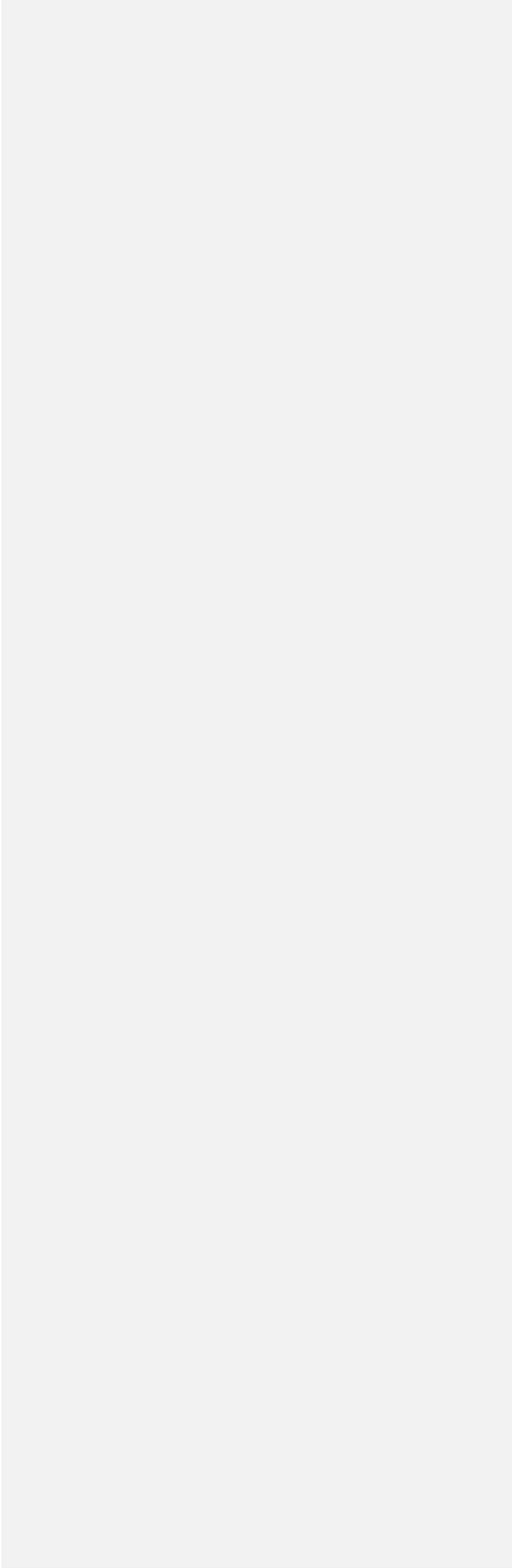
Residential \$300,000 x 7.15% = \$21,450 taxable value

Nonresidential \$300,000 x 29% = \$87,000 taxable value

**Property taxes** = Taxable value x Tax rate (Mills/1000)

Residential \$21,450 x 0.100 = **\$2,145 owed**

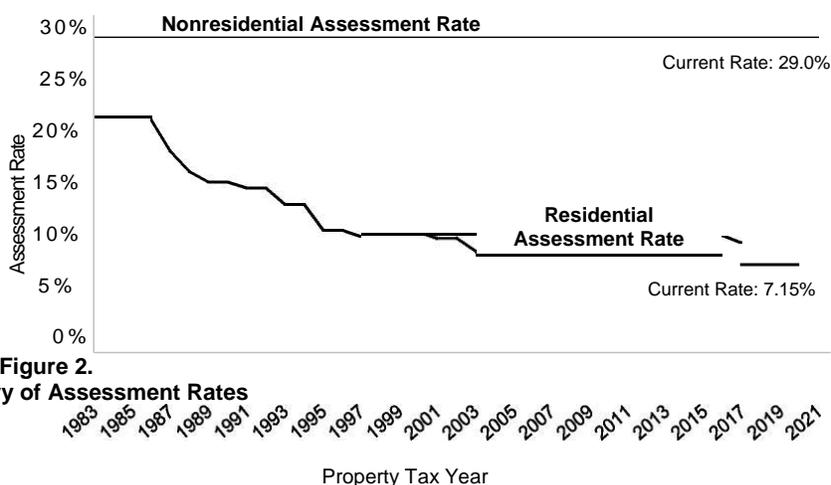
Nonresidential \$87,000 x 0.100 = **\$8,700 owed**



2nd Draft

1 **How has the residential assessment rate changed over time?**

2 In most years, residential property values have grown faster than nonresidential  
 3 values, causing the residential assessment rate to be lowered so that residential  
 4 properties make up about 45 percent of statewide taxable value. As shown in  
 5 Figure 2, the residential assessment rate has been reduced from 21 percent when  
 6 these provisions were adopted in 1982 to a current rate of 7.15 percent. The  
 7 downward trend of the residential assessment rate is expected to continue in future  
 8 years.



9 **Figure 2.**  
 10 **History of Assessment Rates**

11 When nonresidential property values grow faster than residential property values, the  
 12 residential assessment rate must increase to maintain the constant ratio; however,  
 13 other constitutional provisions require that voters approve such an increase. As a  
 14 result, the state legislature may only decrease or hold flat the residential assessment  
 15 rate, as any increase requires voter approval. Since 1999, there have been  
 16 six instances when the residential assessment rate would have increased, but it  
 17 instead stayed flat. [As a result, the effective tax rate on nonresidential property has  
 gotten increasingly higher as compared to residential property. In 1982, nonresidential  
 property was taxed at an effective tax rate that was 38 percent higher than for residential  
 property. Today, the effective tax rate on nonresidential property is 306 percent higher  
 than the effective tax rate for residential property.](#)

[\[INSERT CHART TRACKING RATIO OR PERCENTAGE INCREASE AS BETWEEN  
 RESIDENTIAL/NONRESIDENTIAL\]](#)

2 [Additionally, while the residential assessment rate set by the legislature has  
 decreased since 1982, and is expected to continue to decrease, homeowners may not have  
 experienced actual reductions in overall property tax payments due to increasing property  
 values and increases in mill levies that local jurisdictions have enacted to counteract the  
 decrease in local tax revenues as a result of Gallagher.](#)

17 **How does Amendment B affect residential property taxpayers?**

18 Amendment B will keep the residential assessment rate at its current level and  
19 remove mechanisms that might require a future reduction in the residential assessment rate.  
20 Any increase in residential property tax rates will require a vote of the people.

**Deleted:** is expected to result in a higher

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**Deleted:** thus higher property taxes for residential taxpayers, than there would be otherwise.

21 Under Amendment B, the residential assessment rate will remain at the current  
22 7.15 percent for residential property. Without the measure, the legislature would be  
23 forced to continue reducing the residential

**Deleted:** is projected to decrease

24 assessment rate in future years due to the relative growth of  
25 residential property compared to nonresidential property.

24 **How does the measure affect nonresidential taxpayers?**

25 Under Amendment B, the assessment rate will remain in state law at 29 percent for  
26 nonresidential property. Amendment B will have no impact on the amount of taxes  
27 paid by nonresidential property owners. It will, however, eliminate the expected  
future increase in the disparity between the effective tax rate between nonresidential and  
residential property, and could result in an increase in government services received per tax  
dollar paid by nonresidential property owners. Property tax rates on nonresidential property  
owners could only be increased by a vote of the people.

**Deleted:**

28 Additionally, Amendment B may result in lower property taxes for farmers, ranchers,  
and other businesses

1

## 2nd Draft

in parts of the state where voters have approved automatic tax rate (mill levy) increases to offset declines in local tax revenues resulting from the Gallagher Amendment. These tax rate increases apply to both residential and nonresidential taxpayers and would not occur if the Gallagher Amendment is repealed.

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29
- Deleted: in the residential assessment rate
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30 .
- Deleted: . In these areas, Amendment B may¶  
31 result in lower property taxes for businesses farmers, and other nonresidential¶  
¶  
2nd Draft¶  
. 1 property owners, as higher mill levies would have been triggered by decreases in the¶  
. 2 residential assessment rate under current constitutional provisions.
- Deleted: higher property taxes
- Deleted: will result in more revenue to local¶  
. 5 governments over time.
- Deleted: resulting in increased

### 3 How does Amendment B impact local government revenue?

4 Under Amendment B, the assessment rate for all property owners will remain the same, which will provide greater stability to the local services funded by property taxes, including schools, roads, and local services. Under the current system, the decline in the residential  
6 assessment rate decreases property tax revenue to local governments. This  
7 revenue decrease varies across the state, with the largest decreases occurring in  
8 areas without much nonresidential property or with only slow growth in home prices.  
9 These areas are generally small and rural; however, metropolitan areas with slow  
10 growth in home values are also impacted. Amendment B prevents further decreases  
11 in the residential assessment rate, avoiding future reductions in property tax revenue  
12 to local governments.

### 13 How does Amendment B impact state government spending for schools?

14 Schools are funded through a combination of state and local revenue, with the state  
15 making up the difference between an amount of school district funding identified  
16 through a formula in state law and the amount of local tax revenue generated. By  
17 preventing future decreases in the residential assessment rate, Amendment B  
18 increases local property tax collections for school districts, and reduces the amount  
19 the state must pay to make up the difference.

### 20 If Amendment B passes, can the state legislature change the assessment rates?

21 Under Amendment B, the state legislature may decrease the assessment rates, but  
22 cannot increase them without voter approval. Currently, assessment rates are set in  
23 state law at 7.15 percent for residential property and 29 percent for nonresidential  
24 property.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

### 25 Arguments For Amendment B

26 1) The Gallagher Amendment is a badly outdated formula that has no business in the constitution. If it isn't repealed, next year homeowners in Colorado's wealthiest neighborhoods will get a property tax cut, while farmers, ranchers and small businesses will pay a property tax rate more than five times higher. Rural school districts and vital services in low and middle income communities, including services for the developmentally disabled and for seniors, would see deep funding cuts because of unintended consequences in how the Gallagher formula responds to the growing value of homes and the number of homes along the growing Denver front range. Gallagher is forcing irrational outcomes on schools and small businesses, critical social services, and our agriculture communities across Colorado. It should be repealed.<sup>34</sup>

- Deleted: Current constitutional provisions disproportionately impact rural and poor¶  
. 27 communities. Increases in home values on the Front Range result in a lower¶  
. 28 residential assessment rate for the whole state. This drives down the taxable¶  
. 29 value of residential properties in rural areas, meaning that local services such as¶  
. 30 fire protection, sanitation, and library services, may be reduced or eliminated¶  
. 31 because of property values elsewhere in the state. Amendment B prevents¶  
. 32 further reductions in these important services as a result of residential¶  
. 33 assessment rate decreases under current law.¶

2) The Gallagher Amendment is bad for vital local services and it isn't protecting taxpayers. Because of Gallagher's irrational outcomes, cities, counties and local districts are increasing property taxes across-the-board to pay for vital local services. This means homeowners realize little benefit from Gallagher's formulas all while small businesses and farmers get a double-whammy of higher property taxes. Repealing Gallagher simply means property tax rates stay the same. It isn't a tax increase. Under referendum B, property taxes on homes or businesses could only be increased through a vote of the people.

3) Referendum B will prevent a school funding crisis. Unintended consequences in the Gallagher Amendment are reducing local funding for students and teachers in communities that do not have a large base of business and commercial property taxpayers. This in turn forces the state to backfill spending to avoid school cuts in these areas. But the growing cost of these backfills forces the state to cut funding for other important programs, like relieving traffic congestion, water quality, and basic healthcare services for the poor. Repealing the Gallagher Amendment is an important step in making sure the state budget can respond to demands of our growing population, and it does so without raising taxes.

## 10 Arguments Against Amendment B

- 11 1) Amendment B results in higher property taxes for homeowners by preventing  
12 future drops in the residential assessment rate. Increasing home values have  
13 already resulted in higher property taxes for many homeowners. Higher taxes for  
14 homeowners mean that they will have less money to spend or save, at a time  
15 when many are already struggling to make ends meet.
- 16 2) The property tax system is working as it was intended. It keeps residential  
17 property taxes low, and prevents special interests from obtaining tax breaks at  
18 the expense of homeowners. Amendment B removes an important protection for  
19 homeowners from the Constitution. Without these protections, homeowners may  
20 end up paying an increasing share of property taxes.
- 21 3) There are better alternatives to amending the constitution. Local governments  
22 can instead ask their voters to raise taxes or seek other solutions to provide  
23 services such as fire protection, schools, and libraries. These alternatives would  
24 allow voters in each local jurisdiction to decide for themselves how to best fund  
25 services for their community.

## 26 Estimate of Fiscal Impact for Amendment B

27 **Local revenue and spending.** For many local governments, including counties,  
28 cities, school districts, and special districts, Amendment B will result in increased  
29 property tax revenue. The amount of any increase will depend on what the  
30 residential assessment rate would have been in the future without the measure, as  
31 well as whether voters have already approved local tax increases to counteract  
32 future potential decreases in the residential assessment rate.

33 **State spending.** To the extent that Amendment B increases property tax revenue to  
34 school districts, additional funding will be available for the local share of the state's  
35 system of school finance, reducing the amount the state must pay to make up the  
36 difference between local revenue and the school district funding amount identified  
37 through a formula in state law.

**Deleted:** Amendment B makes property taxes more equitable. Nonresidential property¶  
35 . owners, including businesses, farmers, and ranchers have paid an increasingly¶  
36 . higher proportion of property taxes over time relative to residential property¶  
37 . owners. Currently, nonresidential property taxpayers pay 55 percent of the tax¶  
38 . burden, but represent only 20 percent of total property value. Conversely,¶  
2nd Draft¶  
1 . residential property owners only pay 45 percent of the tax burden and make up¶  
2 . 80 percent of property value in the state.

**Deleted:** Amendment B prevents a school funding shortage from becoming a state budget¶  
4 . crisis. With each decline in the residential assessment rate, the local contribution¶  
5 . for school funding decreases and the state funding requirement increases. The¶  
6 . state share of school finance rose from 48 percent in 1982 to 60 percent in 2019,¶  
7 . and is expected to continue to grow. The higher state share for school finance¶  
8 . has shifted funding from other important state programs and services, such as¶  
9 . transportation infrastructure, human services, and public safety.¶

## 2nd Draft

1 **Taxpayer impacts.** ~~Repealing the Gallagher Amendment will fix assessment rates at~~  
2 ~~their current levels.~~ The impact on  
3 property owners from holding the residential assessment rate constant in the future  
4 will vary based on several factors, including what future decreases in the residential  
5 assessment rate would have been required without the measure, the actual value of  
6 the property, and the tax rates of the local taxing districts. The measure does not  
7 impact the assessment rate for most nonresidential taxpayers.  
8

**Deleted:** Maintaining the current residential assessment rate results in¶  
1 higher property taxes for many residential property owners compared to what they¶  
2 would owe if residential assessment rates were lowered in the future

**Amendment B**  
**Modify Property Taxes**  
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## Amendment B Modify Property Taxes

1 **Ballot Title:**

2 Without increasing property tax rates, to help preserve funding for local districts that provide  
3 fire protection, police, ambulance, hospital, kindergarten through twelfth grade education, and  
4 other services, and to avoid automatic mill levy increases, shall there be an amendment to the  
5 Colorado constitution to repeal the requirement that the general assembly periodically change the  
6 residential assessment rate in order to maintain the statewide proportion of residential property  
7 as compared to all other taxable property valued for property tax purposes and repeal the  
8 nonresidential property tax assessment rate of twenty-nine percent?

9 **Text of Measure:**

10 *Be It Resolved by the Senate of the Seventy-second General Assembly of the State of Colorado,*  
11 *the House of Representatives concurring herein:*

12 **SECTION 1.** At the election held on November 3, 2020, the secretary of state shall submit to the  
13 registered electors of the state the ballot title set forth in section 2 for the following amendment to  
14 the state constitution:

15 In the constitution of the state of Colorado, section 3 of article X, **amend** (1)(b) as follows:

16 **Section 3. Uniform taxation - exemptions.** (1) (b) Residential real property, which shall include  
17 all residential dwelling units and the land, as defined by law, on which such units are located, and  
18 mobile home parks, but shall not include hotels and motels, shall be valued for assessment. ~~at~~  
19 ~~twenty-one percent of its actual value. For the property tax year commencing January 1, 1985,~~  
20 ~~the general assembly shall determine the percentage of the aggregate statewide valuation for~~  
21 ~~assessment which is attributable to residential real property. For each subsequent year, the~~  
22 ~~general assembly shall again determine the percentage of the aggregate statewide valuation for~~  
23 ~~assessment which is attributable to each class of taxable property, after adding in the increased~~  
24 ~~valuation for assessment attributable to new construction and to increased volume of mineral and~~  
25 ~~oil and gas production. For each year in which there is a change in the level of value used in~~  
26 ~~determining actual value, the general assembly shall adjust the ratio of valuation for assessment~~  
27 ~~for residential real property which is set forth in this paragraph (b) as is necessary to insure that~~  
28 ~~the percentage of the aggregate statewide valuation for assessment which is attributable to~~  
29 ~~residential real property shall remain the same as it was in the year immediately preceding the~~  
30 ~~year in which such change occurs. Such adjusted ratio shall be the ratio of valuation for~~  
31 ~~assessment for residential real property for those years for which such new level of value is used.~~  
32 ~~In determining the adjustment to be made in the ratio of valuation for assessment for residential~~  
33 ~~real property, the aggregate statewide valuation for assessment that is attributable to residential~~  
34 ~~real property shall be calculated as if the full actual value of all owner-occupied primary residences~~  
35 ~~that are partially exempt from taxation pursuant to section 3.5 of this article was subject to~~  
36 ~~taxation. All other taxable property shall be valued for assessment. at twenty-nine percent of its~~  
37 ~~actual value. However, The valuation for assessment for producing mines, as defined by law, and~~  
38 ~~lands or leaseholds producing oil or gas, as defined by law, shall be a portion of the actual annual~~  
39 ~~or actual average annual production therefrom, based upon the value of the unprocessed~~  
40 ~~material, according to procedures prescribed by law for different types of minerals. Non-producing~~

1 unpatented mining claims, which are possessory interests in real property by virtue of leases from  
2 the United States of America, shall be exempt from property taxation.

3 **SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or "No/Against"  
4 on the following ballot title: "Without increasing property tax rates, to help preserve funding for  
5 local districts that provide fire protection, police, ambulance, hospital, kindergarten through  
6 twelfth grade education, and other services, and to avoid automatic mill levy increases, shall there  
7 be an amendment to the Colorado constitution to repeal the requirement that the  
8 general assembly periodically change the residential assessment rate in order to maintain the  
9 statewide proportion of residential property as compared to all other taxable property valued for  
10 property tax purposes and repeal the nonresidential property tax assessment rate of  
11 twenty-nine percent?"

12 **SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a  
13 majority of the electors voting on the ballot title vote "Yes/For", then the amendment will become  
14 part of the state constitution.